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The Making of a Law Q & A with Edward Yingling (ABA Banking Journal)

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Edward Yingling

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briefing/Q&A

The making of a law

Edward Yingling has been running ABA's government relations group since July 1985. Over the ensuing 14 years, he's had one predominant goal—quest would probably be a better word—to update the antiquated laws that wrapped banks in a cocoon of restrictions and rules.

Actually the quest began earlier. Yingling had joined ABA from a noted Washington law firm where he was a bank lobbyist for many years, working on expanding bank powers.

Yingling, who last fall was promoted to deputy executive vice-president of the ABA, could easily write a book about all that's occurred along the path to financial modernization. Perhaps he will. What you'll read below is a preview, in effect, of that book. It is Yingling's responses to questions from Editor-in-Chief Bill Streeter and Executive Editor Steve Cocheo just after Congress voted to approve the law.

He said at the beginning of the interview that this achievement was not about Ed Yingling, but about all the bankers, ABA staffers, state association executives, and elected officials and their staffs who toiled tirelessly for so long. Quite true—but it's equally true that the passage of this bill represents his life's work to date. New challenges remain, surely. But this was big.

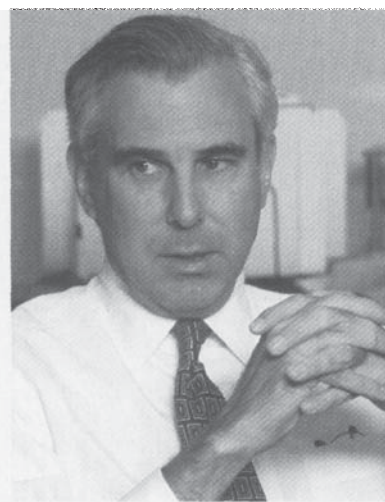
Here are Yingling's observations, edited for clarity and length.

Q. The tenth anniversary of the fall of the Berlin Wall was recently celebrated. Would you agree that passage of S. 900 is the financial equivalent of tearing down the Berlin Wall?

A. The analogy really should be: we'd broken the wall down to rubble but the rubble was in the way. Now we've cleared away the rubble.

Along the road some bankers had said to the ABA leadership, "I can offer what I want to offer today, so modernization is not that important." But we always believed it *was* important. You may be able to offer what you want today, but you have no idea what the three hottest

ABA's chief lobbyist, Ed Yingling, reflects on the process, players, and politics leading to the law that finally erased Depression-era rules



products are going to be two years from now or five years from now, much less ten years from now. And you may not be able to offer those products if we don't change the law. With this change, banks will be involved in whatever comes down the pike.

Q. What made this happen now after all these years of trying?

A. A lot of credit goes to individuals on the Hill. Sen. [Phil] Gramm and Rep. [Jim] Leach worked on it night and day. Also, we built an alliance with the securities and insurance industries, and that alliance was very critical.

More broadly, for years we had our strategy of going to the agencies every chance we got, going to the courts, going to the state legislatures to get changes. We always thought Congress would come later. In fact in previous years we spent most of the time in Congress protecting the gains made in the courts, with

the regulators, and in the states.

We also had the strategy that we would never go backwards. We were the ones who blocked this bill several times in the past. We had gotten to the point where the securities and insurance companies, and to some degree the agents, needed the bill more than we did.

Q. Why was that?

A. Because we had knocked so many holes in the walls separating commercial and investment banking and insurance, we were able to aggressively enter their businesses—in some cases more aggressively than they could enter ours. So first the securities industry, then the insurance companies, and finally the agents came over and said let's negotiate a deal and work together. A lot of what's in the bill—insurance agency language, for example—was actually negotiated out among the different groups.

The agents cut their deal and stepped aside basically. Then the major trade associations for banks, the securities industry, and insurance companies all worked together, even up until the last day in conference when all of us met with [House Majority Leader Richard] Arme and [Senate Majority Leader Trent] Lott. Ultimately, stepping back from all the details, that's what really changed: in the meetings when we all went in together, the leadership looked around and said, "This is different. You guys are all together, you're all telling us you want the bill."

One of the interesting things is that never in any of this process did anybody offer an amendment to the basic core of the bill, which was that banks should be able to offer all financial services. After all those years of people saying, "Absolutely not," everybody just said, "Yeah, that's right." We'll still have some work to do in terms of implementing this with regulations, but *the core concept in this bill is you can offer all financial services, period—very broadly defined.* It takes into account technology, it takes into account what your competitors are doing, and it even takes into account the delivery of

Photography by John Troha

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the services. We basically won it all.

Q. Talk a little about the process of putting the bill together.

A. Almost every section in this big bill had to be put in place, like putting a brick in place. And in some cases the brick was put in place two years ago, when we won a vote in some committee and nobody's ever tried to knock it out. In other cases the brick was put in place and then was knocked out; in some cases we would knock it out—the unitary thrift issue being an example. You have to go all the way back to some of those early votes to see what led up to the final two months.

For all those votes, the state associations were right there with us working, which made a big difference. Last year when we opposed the bill in the House, for example, we had a majority but the clock was kept running for 20 minutes while they got people to reverse their votes. We lost by one vote. In the long run, though, we didn't lose because the leadership and others said, "We don't ever want to go through that again. We now realize how powerful the banks and the state associations can be. Let's make sure that they're on board with the bill."

In the insurance negotiations last year, the New York Bankers Association was directly involved in negotiating the first cut. That's another example, of

If we hadn't stopped the unitaries here, we never would have stopped them because the horses were getting out of the barn

—Ed Yingling

where groundwork done paid off. That deal stuck and didn't have to be renegotiated this year.

This is really complicated stuff, and the fact that we had built such good relationships with the state associations, with a lot of trust on both sides, really made a big difference.

It also helped that we had set up the ABA Securities Association and the ABA Insurance Association, which have a very strong focus on those particular issues. In fact the securities provisions in the new law were negotiated on behalf of the banking industry entirely by the ABA Securities Association.

Q. Would this law have worked if Sen. D'Amato had remained Senate Banking Chairman?

A. Sen. D'Amato almost got it through last year. But Gramm has done a re-

ally strong job and it's a terrific bill.

Something I don't think people realize that Sen. Gramm was very important in keeping the clutter out. In the past we always had a terrible problem in conference committee with regulatory additions sneaking in. With all the groups involved, you tend to get cut up pretty badly on a big bill like this, but Gramm time after time just said, "I'm not doing that."

Q. How much of a factor was the change in the House leadership?

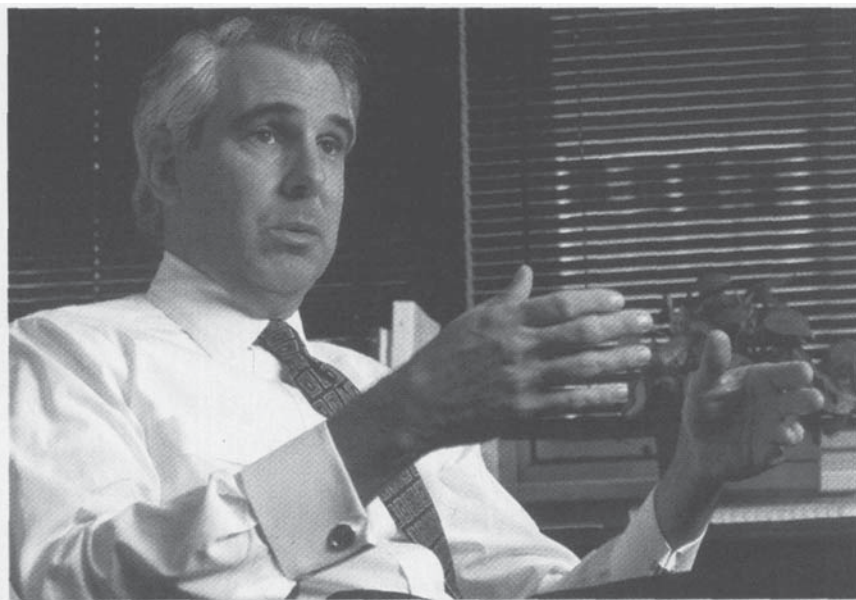
A. It's no secret that we had serious problems with Newt Gingrich. He killed us on the credit union issue for reasons we never quite fathomed. Maybe it was an inherent populism in his conservatism, but Newt was not particularly friendly towards banks. But [House Speaker] Dennis Hastert and the whole leadership team worked very hard with us. On key points they stepped in and said, "We want it done, now," and gave very tight timetables.

Q. What convinced them to make that push?

A. Partly it was lobbying. We have several board members who have excellent back-home relationships with Hastert and others in the leadership. Partly it was because we decided that instead of meeting with the House leaders only in Washington, where you get 15 minutes, we would fly in people to meet with them in their home districts. We got much longer, detailed meetings that way.

Q. Did the formation of Citigroup a year ago give the legislative process a big push?

A. Citigroup obviously was very involved in the lobbying because of its concern about keeping Travelers, but policymakers' reaction to the merger was, "Something like that was bound to happen." For several years previous to that merger, bank holding companies had been buying securities companies. Nobody had bought anything as big as Salomon Brothers, it's true, but they'd bought Alex. Brown, Wheat First, and Montgomery Securities. The one difference with Citigroup was the insurance company—but everybody knew it was coming.





THE TEAM THAT COULD. Some of ABA's Government Relations staff savor their victory (l to r): Sally Miller, Peter Blocklin, Kristin Butterfield, Floyd Stoner, Kerry Early, Dionne Davies, Ken Clayton, Ed Yingling, Sharon Raymond, Joe Pigg, Bess Kozlow, Judith Knight, Debbie Shannon, Bjorn Reed, Rebecca Musil.

Q. How did Wal-Mart end up on the wrong side of the unitary thrift grandfather date?

A. It's almost unprecedented for a grandfather date not to constantly creep forward. Usually it ends up being the date of enactment. What happened on the unitary vote was that we were considered the underdog. We were barely ahead in the Senate and in the House we were significantly behind if you looked at how people had voted in committee. So the other side thought they had the better hand. There was not much effort to move the grandfather date, because they just plain thought they were going to win and wouldn't need a grandfather date. Up until the vote was cast, I thought our chances were only 50-50.

The vote ended up being 17-11 among the House conferees. We don't know what it was in the Senate—we suspect it was 11-9. The way it works is the conferees vote separately—you have to win both the House and Senate. If we lost either one, we would have gotten the language in the committee print, which was very weak. There were a couple of Democrats, like Maxine Waters [Rep. from California], who had never voted against the unitaries and all of a sudden did. That was one of the few areas where the debate made a difference.

Even then there were some negotiations to see if people wanted to be grandfathered in exchange for a vote, which sometimes happens. But they all turned it down because they thought they would

win. They were wrong.

Q. Does this end the Wal-Mart threat?

A. It would be very hard for the unitaries to come back and try move that date at this point. Leach wouldn't allow it.

At some point in the future I think the commerce and banking issue will return, but I doubt that Congress would want to reconsider it now. But if we hadn't stopped it here, we never would have stopped it because the horses were getting out of the barn. Now the lobby for the unitary issue will shrink over time and I don't see the unitary issue coming back any time soon.

Q. What's your take on the privacy provisions in the law?

A. Privacy was a huge fight and it's going to cause some new regulations, but there's a strong argument that it could have been a lot worse and *would* have been worse if it had moved separately. Given the circumstances of privacy, this is probably the best possible result. It is a very meaningful privacy provision but we were able to protect basic bank marketing practice.

Looking at the future, though, privacy is just a huge, huge issue that the industry is going to have to continue to address.

Q. How soon do you expect it to come up again in Congress?

A. It could come up any day, literally. Any time there is anything remotely resembling a banking bill on the Sen-

ate floor, it could come up.

Q. Did you have some moments when you thought you were going to lose the bill again over CRA?

A. It could have happened in the last few days. We had a couple of long discussions with Gramm at the beginning of the year and said, "We're going to work very closely with you on everything, with one exception, the unitary issue. And we told him that we would work with him on what he was trying to do on CRA. And so we always thought that we could get something positive on CRA and that in the end the differences between the two sides could be worked out. I must say, though, that right up until they went into the back room at 8:00 p.m. on Oct. 21, there was a real possibility the thing could have blown up over CRA. Part of it was that the CRA lobby was putting tremendous pressure on the White House. We just hoped that there were so many people that really wanted this bill, including Democrats like [New York Sen. Charles] Shumer and [Connecticut Sen. Christopher] Dodd and [Sen. John] Edwards of North Carolina, that somehow they'd find a way to close the gap.

It was a close call.

Q. Do you have a sense of where Gramm will go next with CRA?

A. You'll see oversight hearings and that type of thing, but how much he can legislate at this point because of the Senate rules remains to be seen. Clearly the Clinton Administration would veto

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anything that went very far with CRA.

One of the things that came out of the legislative process, by the way, is people recognize now just how big the CRA lobby is.

Q. Why is Gramm so outspoken on CRA?

A. It's two things. One, he has a basic philosophical problem with CRA. From my conversations with him, he looks at it as akin to a government-imposed mandate on the private sector.

In terms of implementation, he has a big problem with CRA because he sees it as the government in effect handing certain community groups a big stick to force banks to work with them.

Q. Jim Leach's chairmanship may be retired; how will banking history write him up?

A. Trent Lott said on the floor that he thought that when people look back on this Congress, financial modernization would be the one bill that was most cited, and I think that's probably true.

We had already chipped away a lot of the restrictions, but from a historic point of view the new law will be right up there with the National Bank Act, the Federal Reserve Act, the Glass-Steagall Act, and the creation of FDIC insurance. Leach deserves tremendous credit, because he just stuck with it. He really worked very hard on this year after year. He told me at the end he hadn't slept in a week.

And another thing: Leach has always been a strong defender of community banks. We always thought this would be a good bill for community banks. If you look at the Home Loan Bank provisions, the CRA provisions, the unitary thrift provision, and certainly the new products and services, it came out to be *really* good for community banks.

Q. How much of a role did the House Commerce Committee play in the process?

A. As you know, we were not pleased with the bill that came out of the Commerce Committee although it was pretty much as we had expected. But in [Committee Chairman Thomas] Bliley's defense, while the banking committees were focused on modernization, he had a huge utility deregulation bill and an elec-

tronic signature bill pending. He is spread thinner than any other House chairman by far. Also, the Republicans on the Commerce Committee really were very helpful.

With the committee Democrats, however, we lost. But just to show you how in our business you cannot afford to write anybody off, [Rep. John] Dingell and [Rep. Edward] Markey who were against us on almost every issue were critical on the unitary issue. Markey gave a tremendous speech on unitaries, which helped us win.

Q. Was the "op-sub" disagreement a turf issue or did the Treasury and the Federal Reserve really think their approaches were better?

A. It was deeper than a turf issue, at least in the sense of somebody trying to protect their kingdom versus somebody else's kingdom. Alan Greenspan and Robert Rubin are not the kind of people who get into classic Washington turf fights.

I think it *was* turf in the sense that there was a fundamental disagreement about the way financial institutions ought to be regulated. The Administration's view is that on a lot of major economic policy decisions, Treasury and the White House really don't have much say—the Fed is independent, the SEC is independent, the CFTC is independent. If you're the Treasury Secretary and see these people going off and making decisions, you say, "Whoa, these are major things that we get held accountable for and yet we can't influence them." The only direct pipeline the Administration has is through the national banking system, and they didn't want to lose that.

The Fed's point of view is that if you went to the full extreme and collapsed all these holding companies into universal banks, the Fed would be cut out of regulatory process.

The truth is both views were probably exaggerated, but they were looking at how the system could evolve in 20 years. So I think both of them thought it was very important.

Q. So much of the debate over financial modernization reflected the old divisions between banking, insur-

ance, securities. Now that the law has passed, will banking keep its identity?

A. Ten years ago you would have said it's unclear who is going to be the big dog in this fight. But the experts seem to be saying that it's the banking industry, in large part because of its market capitalization. There will be exceptions, but in general what you're going to see are banking centered institutions buying securities firms and buying insurance firms.

Q. Do you see much impact on the dual banking system from the new law?

A. Time will tell on that. There's nothing that jumps out at me and says it's going to tilt one way or another. I think the interstate banking act probably was the bigger threat.

Q. In terms of future lobbying challenges, the three industries—banking, securities, insurance—mostly butted heads in the past; will their interests be more common now?

A. It's an important point going forward. We have taken the core part of the Alliance for Financial Modernization—that is, the ABA, the Securities Industry Association, the Investment Company Institute, the American Insurance Association, and the American Council of Life Insurance—and formalized it as the Financial Services Coordinating Council. On issues like privacy and e-commerce that cut across these trade groups, we will work together and we will be stronger than in the past. We actually will save the industry money because we all used to go out and hire five different consultants and do different economic analyses; now we'll coordinate it. I think it will make us politically stronger.

Also, having financial modernization bills pending has drained tons of political resources—not just in terms of pushing the bill, but once the train starts moving, everybody who has something to take out of our hide comes out to try and stick it on the bill. So it's just been a huge drain of political resources.

Having this bill dealt with will enable us to deal with other items on our legislative agenda with much more force than we have been able to in the past. *BJ*