

## Preface

“The appropriations process one way or another affects everything the government does,” commented J. Keith Kennedy on his unprecedented three tours of duty as staff director and chief clerk for the Senate Appropriations Committee. The committee handles all federal spending, an annual function that has made it one of the largest, most powerful and prestigious of Senate committees. When Kennedy first became staff director in 1981 there were 79 members of the committee’s staff; and when he retired in 2006, the staff had risen to 125. The complex system of appropriating, shared by the Senate and House, and subject to presidential veto, stimulated much controversy during the 1980s and 1990s, from massive federal deficits, to a temporary shut down of the federal government, to an increasing tendency of legislators to “earmark” appropriations for specific projects. Kennedy’s oral history offers his unique perspective on this process and the sparring between the legislative and executive branches.

Born in Charlotte, North Carolina, on April 29, 1948, Keith Kennedy attended public schools in North Carolina and Minnesota. He received a B.A. in 1970 and a Master of Divinity degree in 1974, both from Duke University. In 1972 a Duke internship program brought him to Washington, where he interned for Oregon Republican Senator Mark Hatfield. That experience led to his appointment as a legislative assistant to Senator Hatfield from 1973 to 1977. Kennedy then moved to the professional staff of the Senate Select Committee on Indian Affairs, from 1977 to 1979, and of the Subcommittee on Energy and Water of the Senate Appropriations Committee, from 1979 to 1981.

Ronald Reagan’s election in 1980 carried Republicans into the majority in the Senate for the first time in more than a quarter century. Senator Hatfield became chairman of the Appropriations Committee, and Keith Kennedy served as the committee’s staff director and chief clerk. Republicans lost the majority in the election of 1986, after which Kennedy became minority staff director until 1995, and majority staff director once again until 1997.

“I would have to have volumes to describe the history, the experiences we have shared together,” Senator Hatfield said of Keith Kennedy when they both retired from Senate service in 1997. Kennedy became a senior public policy advisor at Baker, Donelson, Bearman and Caldwell, at the invitation of former Senate majority leader Howard Baker. Then in 2003, he returned to the Senate as Deputy to Sergeant at Arms William H. Pickle,

serving in effect as chief operating officer of the Senate's largest staff organization, supervising more than 800 employees whose responsibilities ranged from providing security for senators, staff, and visitors to the Capitol, to providing information technology and telecommunications service in Washington and in more than four hundred senatorial state offices.

Before returning to Baker Donelson as senior managing partner, Kennedy from 2005 until 2006 again served as majority staff director of the Senate Appropriations Committee, this time under chairman Thad Cochran, a Republican from Mississippi. “Our staff members are the very best,” Chairman Cochran asserted in 2006. “We are very fortunate in the Senate to have the benefit of the services of Keith Kennedy, who is staff director of the Appropriations Committee. The committee’s ranking Democrat on the Appropriations Committee, Senator Robert C. Byrd, seconded this tribute. “There is a man, Keith Kennedy,” said Senator Byrd. “He knows what he is doing. He knows this bill up and down and sideways. Keith Kennedy. I am grateful that the chair has chosen him.”

*About the Interviewer:* Donald A. Ritchie is associate historian of the Senate Historical Office. A graduate of the City College of New York, he received his Ph.D. in history from the University of Maryland. His books include *James M. Landis: Dean of the Regulators* (Harvard University Press, 1980), *Press Gallery: Congress and the Washington Correspondents* (Harvard University Press, 1991), *The Oxford Guide to the United States Government* (Oxford University Press, 2001), and *Reporting from Washington: The History of the Washington Press Corps* (Oxford University Press, 2005). He served as president of the Oral History Association and of Oral History in the Mid-Atlantic Region (OHMAR), and received OHMAR's Forrest C. Pogue Award for distinguished contributions to the field of oral history.

**MEETING MARK HATFIELD**

**Interview #1**

**Tuesday, August 5, 2003**

**RITCHIE:** The first thing I wanted to ask you is you're listed in the directory as J. Keith Kennedy. What does the J stand for?

**KENNEDY:** James

**RITCHIE:** When did you start using Keith as a name?

**KENNEDY:** Well, the James came from a maternal grandfather. My mother's grandfather was named James Coleman. The Keith was the name of my father's oldest brother. The maternal grandfather was long dead. The Keith was still very much alive. So I've always been called Keith.

**RITCHIE:** And the family started calling you Keith right away?

**KENNEDY:** Right.

**RITCHIE:** I know you were born in Charlotte but did you grow up there as well?

**KENNEDY:** Grew up in Charlotte and lived there for about a year and moved to Greensboro. Lived there for a couple of years, moved back to Charlotte, and stayed there until 1962. That was the year my brother graduated from high school, I finished the eighth grade, and we moved to a small town in southern Minnesota. My father worked for an insurance company that was headquartered there. So I spent my high school years in a very different place than Charlotte, North Carolina. It was a real Garrison Keillor sort of small town, fourteen thousand people.

**RITCHIE:** What's it like for a Southerner to land in Minnesota?

**KENNEDY:** It was fun. It was very different, but I got, I think, a remarkably good public school education and made fast friends that I still keep up with.

**RITCHIE:** Well that was in the '60s when the South was in the news because of the civil rights movement. Did that have any impact, moving in '62 from the South to the North?

**KENNEDY:** Well, it was more being in southern Minnesota and watching what was going on back in the Southeast of the United States while we were there. When we left in '62, not that much had yet begun to happen. North Carolina—if memory serves me right, the sit-ins at the lunch counter at Woolworth's, in Greensboro was '63 I think. Was it earlier than that?

**RITCHIE:** I thought it was '61 but I'll have to check.

**KENNEDY:** You're probably right, but in any event, it was, it was sort of interesting to be removed from it but yet still very much a part of it, of course, from Southern heritage and hearing comments and observations of folks in Minnesota about what was going on.

**RITCHIE:** You decided to go back to the South to attend Duke. How did you make that decision?

**KENNEDY:** Oh, I've always been a Duke basketball fan, even back then. I used to listen to Duke basketball on the radio in Charlotte. We were regular church-going Methodists and Duke has a very close association with the Methodist church, and every summer there were students from Duke Divinity School who would pop up in our church for the summer. I went there as a second grader for some treatments at Duke hospital. And my brother preceded me. He was at Duke. I applied to several different schools, but Duke is the one I went to.

**RITCHIE:** So when you went to Duke did you have any career aspirations?

**KENNEDY:** No, nothing real specific when I started. I thought about law. I thought about teaching, and then round about—actually I found some old letters that I'd written back home when I was a Junior. Starting about my Junior year, I started thinking about going to Divinity School. Maybe because, I don't know, I started to think that will all the rage in political and economic debates of the day there were more fundamental

questions if you will, and a place to think and study and talk about them was in Divinity School.

**RITCHIE:** What was the atmosphere of campus life at Duke in the '60s?

**KENNEDY:** Well it was you know, it was the '60s. We had our share of demonstrations, some of which I participated in, some of which I didn't. In April of '68, after Martin Luther King was killed, there was a campus-wide demonstration. We all marched out to the president's house and occupied his house for a night. He invited us in, to be truthful, and the next day we all marched back. There were several hundred of us at first and then we all marched back to the main campus and camped out on the main quad there, and over the days it got to be maybe as many as a couple thousand students. It lasted for about four or five days. And you know the march on Washington in '70, when everybody trekked up here. But having said that, it was still Duke and North Carolina and it wasn't as yeasty as Berkeley or some other places around the country.

**RITCHIE:** How would you describe your political leanings in those days? Were you becoming aware of the political process and what was happening?

**KENNEDY:** Oh certainly. I remember listening to the 1956 conventions on radio and course I was very attentive to the John Kennedy elections in 1960. I figured he was some sort of distant cousin. And then of course his assassination captured everyone's attention. Lyndon Johnson's "We shall overcome" speech, and then of course the Vietnam war. One definitely paid attention to politics and what was going on in the world.

**RITCHIE:** I was in college at the same time and at first Vietnam was sort of an abstract, something that was happening out there, but the closer we got to graduation it became more of a reality because of the draft. I guess the draft was still an operation while you were there.

**KENNEDY:** Absolutely! I well remember the night of the lottery drawing. My number was 193. I was a Senior.

**RITCHIE:** It was one of those things that whether or not you were politically aware, you had to notice that world events could affect your life.

**KENNEDY:** It focused the mind.

**RITCHIE:** So then you started Divinity School in 1970?

**KENNEDY:** Right, September of '70 and spent two years. At the end of the second year, Duke and two other seminaries collaborated on an internship program that was specifically planned and intended to take folks who had completed two years of the three-year program and send them off some place else, put them out in the real world, if you will, and see if anything they were learning and absorbing in seminary made sense out there in that real world. A friend of mine that was a year ahead of me at Divinity School had participated in this program in '72. He worked for Adlai Stevenson. Although he only did it for six months instead of a full year, he came back saying it's a terrific deal. So, I applied for it and was accepted.

The program was run in Washington D.C., Richmond and Durham, North Carolina. I wanted to come to Washington. The program was run by John Fletcher who was a professor at Wesley Theological out at American University. We had a weekly seminar plus an internship in a congressional office. This being 1972, I told John Fletcher—John would call offices and say, “We’ve got this program, we’ve got this candidate, can he come interview for a position in your office?” He would make the appointments, and I told him, “No Republicans.” Over the course of the spring of '72 I would periodically come to Washington go around and interview at offices. I went to Bill Proxmire’s office—there is a story about that. I went to Gaylord Nelson’s office, Adlai Stevenson’s office. I went to the office of Richardson Preyer who was a congressman from the Greensboro area that I knew of and about. I went to Speaker [Carl] Albert’s office and I was getting absolutely nowhere.

One day Fletcher had called me down in Durham and said, “You’ve got an appointment in the office of Mark Hatfield.” I said, “But he’s a Republican right?” He says, “You have an appointment with Mark Hatfield go and see him.” So I came up here and I went in and I interviewed with Senator Hatfield’s administrative assistant at the time with a fellow named Sam Mallicoat. We had about a twenty minute conversation

and he said, "When can you come back and see the Senator?" And some days later I came back up and sat down with Senator Hatfield. As I came to find out, I had a typical Mark Hatfield job interview, in that he never said a word about the work that I would be doing. He asked me about where I had grown up, where I had gone to school, my family, what I was interested in at Divinity School. After some twenty, twenty five minutes, he showed me to the door and said, "Talk to Sam about when you can start."

So in September of '72 I came up here. Hatfield's office paid me \$200 a month. The internship program paid me \$200 a month. I had a efficiency apartment in the 300 block of East Capitol that cost me \$115 a month. It was great. I did that as an intern from Sept '72 until August of '73, and had the weekly seminar for which I got nine hours I think it was for extra credit, and went back to Duke in September '73 with something like ten hours left to get my Masters' degree. So I did one more semester, and got that degree, and came back to work for Mark Hatfield in January of '74.

**RITCHIE:** Hatfield had been a minister before he went into politics right?

**KENNEDY:** He was never an ordained minister. He was a lay preacher in the Baptist church. He occasionally would get up and give a sermon.

**RITCHIE:** So would that have been an indication as to why he was interested in a divinity student in his office?

**KENNEDY:** Well, yeah, I think there was a certain resonance there. That and his Legislative Director at the time was a fellow by the name of Wes Michaelson, who had come to the Hatfield office out of Princeton Seminary. My recollection is that Wes came after a couple of years at Princeton and didn't finish his degree.

**RITCHIE:** What did you do as an intern at Hatfield's office?

**KENNEDY:** I was a junior LA really. In the Hatfield office, and this was the case throughout his entire career in the Senate, we did not have this system that lots of other offices used with their Legislative Assistants and Legislative Correspondents. Legislative Assistants answered the mail. So you not only researched issues and prepared statements and speeches on issues, made recommendations to him on legislation to sponsor and

cosponsor, and how to vote, but you also answered any constituent mail that came into the office on those issue areas. So, I had some handful of not-major issues and that's what I did. I wrote up memos for him and on various things going on and made recommendations to him on how I'd thought he'd ought to vote on things.

I mean these were very heady times. I mean, the Watergate hearings are going on. Every day, everybody in the office, just like every other office in the Senate I suspect was just riveted to the television. I knew people from Duke who were working with Sam Ervin, so I was getting sort of backstage stories about what was going on, too. It was a marvelous time. Marty Gold who's now with Senator [Bill] Frist, started in Hatfield's office two weeks after I did. Every morning he and I had *long* discussions about the previous days, events.

**RITCHIE:** Well it's interesting that you were in a Republican office at the time—although it was a moderate Republican's office—but Senator Hatfield had been fairly close to [Richard] Nixon.

**KENNEDY:** Oh, indeed.

**RITCHIE:** Almost was one of his vice-presidential running mates.

**KENNEDY:** In '68 he was actively considering to be a vice-presidential nominee. In fact, that is how Marty Gold first met Mark Hatfield, because Marty was at that convention in Miami in '68.

**RITCHIE:** Was there some sense of conflict involved in—

**KENNEDY:** Well, no. There were many of us in the Hatfield office who were probably closer to the Democrats than the Republicans. Indeed, some would say Mark Hatfield himself was closer to the Democrats than the Republicans. I forget when he did this, probably around '74 or so, but George Will wrote a column about Mark Hatfield and some of the ideas that he was espousing at the time for example, something that Hatfield called "simpliform" and today we would call a flat tax. But anyway, George Will wrote a column in which he starts off with one of his unforgettable lines. He said, "Mark Hatfield fancies himself a liberal Republican. Being a liberal Republican is like being a

high church Unitarian. It is possible, but it is pointless.”

In those days there was a sturdy band of folks who proudly characterized themselves as liberal Republicans. The Nelson Rockefellers of the world: Cliff Case, Ed Brooke certainly, Mark Hatfield, Chuck Percy, when he first came to the Senate was viewed that way, and certainly Bob Stafford, Lowell Weicker. There was a fair crowd of them. [Charles] Mac Mathias. I felt very comfortable in that office, and over time more and more so. Interestingly, Mark Hatfield never asked was I a Republican or Democrat. He never asked anybody that he hired what their party affiliation was.

**RITCHIE:** He had also gotten an enormous amount of publicity at that point because of his stand against the Vietnam war, the Hatfield-McGovern Amendment in particular. Did that affect the office and the type of mail you were getting?

**KENNEDY:** Oh absolutely! And clearly that was one of the attractions for me to work for him. I'd said “no Republicans,” but this was a different kind of Republican. There was a certain celebrity attached to the office. There was a certain “we’re fighting the good fight” kind of attitude. I came to the office after most of that was over, because most of that was ‘70, ‘71. But there were great war stories of having to ask the Rules Committee for use of an old hearing room over in the Russell building because there was just so much mail that had to be dealt with that it couldn’t be handled in a regular office. Stories of people like Judy Collins coming to the office, and how this was a big deal. It was a lot of fun I mean hey, were talking about people who were in their twenties. Me, I was twenty-four, twenty-five. The Leg. Director was just maybe three years older than I. It was real vibrant, interesting place.

**RITCHIE:** Well then you went back to Duke and finished your degree in Divinity. What brought you back to Washington?

**KENNEDY:** When I left in August of ‘73 to go back to Duke, the then Administrative Assistant, Gerry Frank, who would come back to run the Washington office after the ‘72 reelection, said to me, “Okay, you’re going to go back and finish your degree in four months. We’ll have a job waiting here for you if you want to come back.” So I went back to Duke with the thought that I had to make a choice between three career paths: return to Washington; be ordained in the Methodist church; or pursue a doctoral

program in church history, which was urged upon me by one of my professors. At the end of four months, in December of '73, I had come to a decision. And I wanted to come back to Washington. It had the most appeal.

Being an ordained minister in the Methodist church in North Carolina was just being in a fish bowl that I didn't want to be in. It had more to do about the social aspects of religion than the theological aspects of religion. I was too caught up in the intellectual exercise of the theological stuff. Frankly, I suppose I felt that I was just sort of above all of that kind of silly stuff. Typical young kid arrogance. And the doctoral degree was just, struck me as too much minutia, too much academic rigamarole. The Washington opportunity was sort of a known quantity that I knew was exciting and interesting. So I came back.

**RITCHIE:** Most people I speak to were shaped by having gone to law school, and you can see how it plays out in their careers later on. How did getting a degree in divinity influence your thinking or your approach to life? Did it shape you in any way that if you hadn't gone to Divinity School you might have been different?

**KENNEDY:** Well, I'm sure. All of us would be different if we had done different things. I no longer can attach any specificity to it. It's been a good while, but I do know particularly my second year was intellectually—and dare I say spiritually—the most rewarding year of my academic life. As I say, I can't really attach any specificity to it, but it I do think without making too much of it that it just grounded me and gave me a sense of what's truly important—not that I always held to that. But that's why I wanted to go to Divinity School, and I think it helped.

**RITCHIE:** One problem with American education these days is that so few students read much philosophy. It strikes me that at an early point in our lives we all need some philosophy to give us some direction. Did you have any particular professors who influenced you either as an undergraduate or in Divinity School?

**KENNEDY:** Oh yes, there was an American history professor in undergraduate school by the name of Richard Watson. There was a political science professor by the name of Hugh Hall, who I got to know really more as a dean. In Divinity School the principal influences were Tom Langford, who not when I first started but soon after I

started was the dean of the Divinity School, who taught a course that I took in my last semester. A fellow by the name of Harmon Smith who taught moral theology, and was quite a character. And Stuart Henry, who was the professor of church history. Harmon is the only one of those three that's still living. Stuart Henry was the fellow who wanted me to pursue a doctorate in church history.

This is way far afield from Senate experiences, but I love to tell the story. My second year and my second semester I took an independent study with Dr. Henry, and he wanted me to read and get to know Richard Niebuhr, the brother of Reinhold Niebuhr. Not nearly as well published or celebrated, but Dr. Henry thought was much more intriguing fellow. But before he wanted me to read Richard Niebuhr, he wanted me to read a whole bunch of other stuff. So I read two or three books by Paul Tillich, and then I read about six books by Reinhold Niebuhr, and then finally got to Richard. By this time it's mid to late April, early May. I was taking five courses that semester. It was the heaviest load I held in the three years I was there, and I was loving all of it. I was having a great time. But I was very conscious of the fact that I needed to produce something out of this independent study. One lovely spring afternoon—we met in his office once a week in the afternoon and just talked about what I'd been reading—and I said, “You know Dr. Henry, we need to be talking about what sort of paper you're expecting from me.” He said, “Oh, Keith, I wouldn't worry about that. We're having these good conversations once a week. We'll just keep doing that. You don't have to write a paper.” Just blew me away, just lifted an enormous burden.

When I returned to Divinity school in September of '73, I went to Stuart Henry and entered and said, “Look, Dr. Henry, I only need ten hours to finish my degree. I really don't want to take four courses, twelve hours. How about if I take three courses and then I do another independent study with you and get an hour's worth of credit?” He said, “That would be fine. Why don't you read every Pulitzer Prize-winning play?” And he stops and he says, “When were you born?” 1948 says I. “Read every Pulitzer Prize-winning play since 1948.” Because he was a huge fan of the theater. He had never been married, had once been in the circus. He was a trapeze artist. He loved theater, and every summer—every year, not necessarily every summer—he would go to New York and spend two weeks on Broadway just going to plays. So I did that. I went out and read every Pulitzer prize-winning play from 1948 onwards. I would read one a week and go to see him and we'd talk about it. Come December, I breezed into his office and said, “So,

we're having such fun having these weekly conversations, I probably don't need to write you a paper do I?" And he said, "Oh yes, you do." Much chagrined, I dutifully went off and wrote a paper. But he was great.

I mentioned this fellow Hugh Hall, poli-sci professor. I once took an exam in his class and I had not read some particular piece of the assigned reading, but a classmate of mine had. As everybody, we kind of just swapped notes. I read his notes on stuff and talked to him about it. So I took the exam and sure enough there was a question in there about some of this stuff, so I answered it. Dr. Hall called me in and said, "You didn't read that book did you?" I said, "No, I didn't." He said, "Go read it." So I went off and read it, came back. "Did you read it?" I said, "Yes, sir." He said fine and he gave me the exam. I had gotten an A on it, but he knew I hadn't done the reading, and reminded me that I was supposed to. It taught me something about integrity that I really appreciated. Thank you for jogging my memory, I hadn't thought about that in a long time.

The story that I wanted to tell you, when I mentioned about going to Bill Proxmire's office, was when I went to Proxmire's office to interview for an intern position in his office, I was interviewed by his Legislative Director, a fellow by the name Tom Van der Voort. That was in '72. In 1981, when Mark Hatfield was kind enough to make me staff director of Appropriations, Bill Proxmire was the ranking Democrat on the Committee on Appropriations, and Tom Van der Voort was the minority staff director.

**RITCHIE:** But you didn't get the job with Proxmire's office.

**KENNEDY:** I used to remind Tom of that periodically, too.

**RITCHIE:** When you decided to come back to Hatfield's office, what type of work were you doing when you got back?

**KENNEDY:** Same stuff, Legislative Assistant work. In the Hatfield office, as people came and went—although there wasn't, there was not a lot of turnover in the Hatfield office, at least that's my recollection. There may have been, but it seems like it was a fairly stable group of people that stayed with him for chunks of time. But as people left or got promoted or got a committee position, there was sort of a renegotiation of

issues, what L. A.'s would handle, what issues. Typically, the more senior you got, the better issues you got, or at least you had you pick. Junior people got stuff that nobody else wanted to do. So over time I got into different issues. I used to do agriculture. I used to do "the economy." Defense issues after a while—in fact that leads me to another story.

In those days we had what we called roboletters. A piece of equipment known as the robomachine mass produced letters. A very primitive piece of equipment compared to what we do now but nonetheless the idea was the same. If there was a hot issue we would get thousands of letters in and you just had a standard reply. At the time, I want to say this was in maybe '77, because my recollection was that Jimmy Carter was the president. There was much debate going on about whether to build the B-1 Bomber. And there was some debate going on about whether to create a Consumer Protection Agency, CPA. Nixon had created EPA, and now Ralph Nader and others were advocating the establishment of CPA. So I had two brown folders on my desk. In one of them I would put all the letters on the B-1 Bomber for them to get that roboletter, and the other was the CPA.

Well, one day Senator Hatfield gets a letter from L.B. Day, and he was a very prominent and vocal union leader out in the state of Oregon. He wrote in about the Consumer Protection Agency. I forget now on which side of the issue he was on, but I just looked at letters, saw that's what it was and stuck it in the folder. But I put it in the wrong folder. I stuck it in the B-1 Bomber folder. Some days go by and this scorching letter comes back in to the office from L.B. Day. It said, "I know what your position is on the B-1 Bomber, you idiot! I didn't write you on the B-1 Bomber! You and you staff just dadadadada."

The AA, the aforementioned Gerry Frank, was just compulsive about mail. He just drove us: you've got to get it out within forty-eight hours; it's got to be right; very attentive to that. I was scared to death when this letter came back again and I ran off and found you know some of the fancy gold leaf stationery and dictated this just cozy, smarmy letter back to L.B. Day, oh, I couldn't be more sorry about this mistake. I got it back in the secretarial pool. Well, Gerry had a habit of going back to the mail room periodically and going through the responses that had been dictating, the mail that is in the folders for the stenographers to type a response to, and he found this L.B. Day letter of

protest. He marched back to my little cubicle and showed this to me and wanted to know what this was all about. I spluttered some explanation, and he marched off into Mark Hatfield's office and I sat there thinking, "Well, I might as well pack up."

My friend Tom Imeson, who was another LA, was back in Senator Hatfield's office at the time when Gerry came storming in and said, "Why, this is just outrageous! You've got to write a note to this guy right away." He slapped a piece of paper down on the Hatfield desk and gave him a pen a virtually dictated to Senator Hatfield. Dutifully enough, Senator Hatfield wrote out this note and signed it "Sincerely, Mark. PS"—I won't use the precise terminology—"go to hell." And he handed it to Gerry, who just exploded and said, "You can't do that!" They went through that routine two or three times. Imeson came back and told me the story. Of course, I was greatly relieved but it spoke volumes, not just to me but to all of us beleaguered LA's back there about Mark Hatfield. Yes, he wanted us to be doing the right thing, and do a good job, and do it in a timely manner, but he wasn't going to let anybody be nasty to us. That was a great moment.

**RITCHIE:** That raises a question: he was a Senator from Oregon and you lived in North Carolina and Minnesota. Had you ever been to Oregon by then?

**KENNEDY:** Never, no.

**RITCHIE:** So what were the problems at working for a Senator from a state that you're really not grounded in?

**KENNEDY:** Well, good question. Most of what I did was really national issues that didn't have a particular order and focus, with the possible exception of agriculture, and there I did have to get a little schooling. It's important that the National Weather Service has a frost forecast down in the Southern Willamette Valley because we grow a lot of pears down there.

The first trip I took to Oregon actually was with my agriculture hat on, because one of the things that I specifically needed to go and see was field burning in the Willamette Valley. The Willamette Valley is a very fertile place and a lot of stuff gets grown there, but one of the premier agricultural products of the Willamette Valley is grass seed. I venture to say ninety percent of the grass seed that's produced in this

country comes out of the Willamette Valley. Once they've harvested the seed, they then burn the fields to sterilize them, before they replant, so they can be sure that the seed that your getting, as it says on the back of every grass seed bag, "ninety-nine percent weed free." Well, that's just fine but that generates a whole heck a lot of smoke, and a lot of this activity occurs down in Eugene. Eugene is a university town and they are not always sympathetic to the farmers. When all this smoke got generated, people would get kind of antsy. So I went out there to get a first hand look at all this stuff.

But generally speaking, there were other people in the office who worried about timber. There were other people in the office who worried about the Columbia River and the individual ports down the Oregon coast, those kinds of Oregon-specific things. I was dealing with defense issues, and global hunger, and the economy, and big stuff that did not necessarily have specific Oregon hook. So, it was never really a problem.

**RITCHIE:** Was it a very large office in those days? That was before this building opened so staffs were a bit more constrained then they were today.

**KENNEDY:** Golly, Don, I suppose maybe it was about thirty people all told. I could sit and try to think about it. We occupied one, two, three, four, five staff rooms and the Senator's office in Russell. Back then there were four or five typists; there were six LA's. Thirty was probably too many; it was probably more like twenty-five.

**RITCHIE:** Small enough that you really knew what was going on most of the time.

**KENNEDY:** Oh yeah, all of us all on one floor, all in adjoining rooms.

**RITCHIE:** Did you have much access to the senator in those days?

**KENNEDY:** Oh yeah, very open, ready access, even in my first year as a intern. In that first year, I got all excited, in no small part because my friends who were working for Sam Ervin, who at the time was chairman of the Subcommittee on Constitutional Rights of the Senate Judiciary Committee. There was a big debate going on about whether or not reporters could be compelled to testify and reveal sources of information. Somehow or other I convinced Mark Hatfield that he ought to join in on this fray and

introduce legislation, a federal statute giving reporters a shield so called against testimony, just like lawyers or doctors or priests. I wrote up this Jeffersonian speech. That was my first time on the Senate floor. Hatfield went to introduce the bill and give the speech, and he got me on the Senate floor. When he was done, Mike Mansfield got up and said it was the best speech he heard on the subject to date. I was just sky high that day. But he was very accessible . It was not at all a hierarchical kind of office.

**RITCHIE:** What was the relationship between that office and [Robert] Packwood's office, the other senator from Oregon?

**KENNEDY:** It was never really very good. I mean the staff interchange on a social level was fine, and the relationship between the two principals was of course cordial. But they were just never in sync, really. They were two very different people. And this is not uncommon, as I'm sure you know, that senators from the same party, from the same state, often do not get along. It's like neither one of them can understand how it is that the same people that elected them could have elected the other guy.

**RITCHIE:** At least if you are from a different party from the other senator you don't show up at same meetings, you don't go to the same people for campaign contributions.

**KENNEDY:** Right! That was the other guys that elected him. No wonder he's that way! Now this topic came up in a seminar that the Dole Institute had a couple years ago. It just seems to be historically the case.

**RITCHIE:** Sure, two of the previous senators from Oregon, Wayne Morse and Richard Neuberger, had virtually identical voting patterns but hated each other with a passion.

**KENNEDY:** One of my early assignments in '72 was to do opposition research, if you will. I spent a good bit of time looking up—as a matter of fact when I would go to the Republican Policy Committee and get old *Congressional Records* and read Senate floor debates, which of course is not the place to do opposition research—but '57 Civil Rights Act that [Robert] Caro writes about in—and there had always been a suggestion, undoubtedly unfounded, and hotly disputed by Wayne Morse, that somehow there was a

connection between his vote on the Civil Rights Act and his vote on the Hell's Canyon Dam. Caro writes about that a little bit.

**RITCHIE:** A couple of western Senators seemed to be tied up with that.

**KENNEDY:** Right.

**RITCHIE:** Did you ever get involved in any of Hatfield's campaigns?

**KENNEDY:** No. Well, I shouldn't say that. When you say involved I didn't, I didn't take time off from the Senate and go out there and work directly on the ground and campaign. That first one in '72-'72 and '90 were his two hardest. In '72 he was running against Wayne Morse. Packwood had defeated Morse, and Morse was trying to make a comeback. Then '78 and '84 were fairly easy reelections. '90 was a real tough one because it's only because it sort of took him by surprise. This fellow who had never held any public office whatsoever popped up, suddenly got a lot of traction. It was just mainly attributable to a kind of general dissatisfaction. Oregon was just in kind of a sour mood. Folks back here were genuinely concerned, and he did things that he hadn't gotten much out of before. He bought a bunch of TV time and he ran ads. In the end it turned out just fine, but it got everybody's attention.

**RITCHIE:** It seems to be that Western states also have the situation where their population has grown so much that in the six-year intervals between elections a lot of people don't know who their senator is.

**KENNEDY:** Well, that's true in the state of Oregon. Mark Hatfield had spent most of his adult life in electoral politics in Oregon, in the legislature, as secretary of the state, and then two times as governor '58 to '62 and '62 to '66. But by the time you get to 1990, Oregon had changed a whole heck of a lot. It was a much bigger, much different place then it had been back when he first started building that base as governor. So yeah, there were a lot of new people.

**RITCHIE:** You have to reinvent yourself every time you run for reelection, to remind people who you are.

**KENNEDY:** Of course, by 1990 he had been chairman or ranking Republican on the Appropriations Committee for nine years. He'd been on Appropriations for—I think he got on Appropriations in '71—so he'd been on the committee for a long time and been able to do a lot of stuff for the state but virtue of that position. So he had a lot to remind people about, and he was able to do it.

**RITCHIE:** Well in '77 you went to a committee staff. You went to Interior, am I right on that?

**KENNEDY:** No, I went to the Select Committee on Indian Affairs.

**RITCHIE:** Indian Affairs, okay.

**KENNEDY:** Senator Hatfield had been a member of the American Indian Policy Review Committee which was sort of an ad hoc, bicameral committee that got thrown together. My recollection is that this was in the wake of Dee Brown's publishing *Bury My Heart at Wounded Knee*, and Native American issues had bubbled up for the first time in a while, really since the '50s. Oregon has a significant Native American presence, both federally recognized tribes with reservations, federally recognized tribes without reservations, and tribes that once had been federally recognized and had been derecognized in the '50s. This was also in the context of various court rulings. I don't think it had gotten to the Supreme Court yet on Native American fishing rights and how treaty obligations between tribes and federal government trumped state fishing regulations, which pitted the tribes against the non-Indians interest.

Anyway in the wake of that commission and its recommendations, the Senate created the Select Committee on Indian Affairs, which survives to this day. Like all select committees it was originally created for two years and it just kept going. There were five members. Jim Abourezk was the chairman, Senator [Daniel] Inouye was on it ,and remains on it to this day. I forget the other Democrats. The two Republicans were Dewey Bartlett and Mark Hatfield. Mark Hatfield was the junior of the two. Bartlett was the ranking. But Hatfield got to appoint one staffer and he sent me over there. The minority staff on the Select Committee on Indian Affairs was just Outer Siberia. It was awful. It was August of '77 is my recollection. It was great to have a committee job; it was a little more money. I think it was the princely sum of twenty-four thousand dollars.

And it was no constituent mail, which was the Holy Grail of anybody in a personal office, to get away from the mail. But it was just mind-numbingly boring. The committee did very little and the minority staff of the committee did much less than very little.

**RITCHIE:** This was just after minority staff really got on under way in the mid 70's when the senators first got the chance to appoint people, and hadn't quite figured out how to deal with them.

**KENNEDY:** That's right. The minority staff hadn't figured out it had to be a minority staff. It was sort of like: Okay, they're in the majority. They've got the votes, they do the work I can occasionally make a suggestion but they can ignore me. Nobody had really gotten used to kicking up a fuss if they really wanted to.

**RITCHIE:** And you were physically separated from the majority offices?

**KENNEDY:** There were four of us on the minority staff: two professionals and two secretaries. We sat in one room, originally from the far northeast corner on the sixth floor of Dirksen, which was just as far away as you could get on the action. After some time there, we were moved even further away to what was then known as the Immigration Building, when the Immigration Service moved out of that and before the Capitol Police took it over.

**RITCHIE:** I had an office in that building. We used to call it steerage.

**KENNEDY:** Yes, people forgot that you existed. So that was not a real happy time. I was just thoroughly delighted when my friend Tom Imeson, who I mentioned earlier L.B. Day episode, Senator Hatfield appointed him to the minority staff to the Appropriations Committee on Energy and Water subcommittee—Public Works subcommittee in those days—and by the late fall of '79, Tom had decided that he wanted to go home to Oregon, and he did. He and his wife and two boys went home to Oregon, and he ran the Hatfield office in Portland for many years. And Senator Hatfield then moved me over to Appropriations. I felt like I had died and gone to Heaven. Everybody knew that was as good as it gets.

**RITCHIE:** Before we get into Appropriations, what's the relationship between a

senator's staff on a committee and the senator's own office? You had come out of Hatfield's office and you were Hatfield's person, but you were operating in a physically separate environment. Did you continue to have regular contact with Hatfield's office or were you pretty much an independent operator?

**KENNEDY:** Oh, no, I had regular contact with him. I wanted to, because at that time on the Indian Committee I felt so far removed from anything that was going on that I stayed in regular touch with the Hatfield people back in the personal office. And by then he had people on the Senate Rules Committee, and on Senate Energy. So, yes, was very much at regular continuous contact.

**RITCHIE:** And was he particularly active in the Indian Committee? Did you keep abreast on everything?

**KENNEDY:** Well, he always came to the hearings. He certainly came to the infrequent mark-ups. But the committee itself wasn't all that active. I can't really recall now how much in the way of hearings and the like we did, but it seemed to me that we weren't all that busy.

**RITCHIE:** I knew someone who worked for Clifford Case as a minority staff member on a committee that Case wasn't particularly interested in and Case would see him coming down the hall and turn the other way because he didn't want to have to deal with him.

**KENNEDY:** [laughs] No, but I gave Hatfield regular memos of what was going on kind of stuff and he would dutifully show up and do what he needed to do. There was a time when it sort of caught the attention of a lot of people, the Umatilla Indian Reservation out in Eastern Oregon is one of the several reservations throughout the country where, again this was in the '50s is my recollection, individual tribal members were authorized to "sell" their allotments. Even though the reservation was universally held by every member of the tribe, at some point a scheme was concocted so that individual members of the tribe could sell parcels of land. A lot of them did so because they were all desperately poor. So you had a whole lot of non-Indian folks living within the borders of the reservation, but their piece was no longer tribal land. There arose, and there continue to arise, issues of legal jurisdiction and to tribal police jurisdiction over

non-tribal members.

Senator Hatfield introduced some legislation that asserted tribal jurisdiction. Things really hit the fan out there in eastern Oregon, specifically in the town of Pendleton, and we had to have a field hearing. Gerry Frank, the AA, dispatched what he felt to be cooler heads than mine to go out there and sit with these folks and try to calm them down. So yes, he did pay attention to these things. Over the years Senator Hatfield did a number of very good things for Native American tribes in Oregon. He and Les AuCoin, a Congressman from Oregon at the time, worked together on legislation to restore federal recognition for several smaller tribes over in western Oregon, in the valley and the coastal tribes on the west side of the Cascades. Those were not easy things to do because there was a lot of hostility to Native Americans at the time. Reclaiming federal recognition and carving out a chunk of land that could be called their reservation was a fairly big deal.

**RITCHIE:** Well, there's clearly a lot of history involved in everything that you were dealing with Indians. How did you prepare yourself to do a job like that? Do you recall what you did when you moved to that committee?

**KENNEDY:** Oh, good question. I did a fair amount of reading. I read *Bury My Heart at Wounded Knee*, and I read other polemics about that situation. And the people I was working with on the committee, particularly people on the majority staff committee, were folks who had been involved in Native American issues for a long time. I learned a lot from them. Pat Zell, the woman who is Senator Inouye's chief counsel on the committee now was then a member with the majority staff of the committee. I learned a lot from her.

**RITCHIE:** The chairman was Senator Abourezk, who had a reputation for being irascible. What was he like to work with?

**KENNEDY:** Oh, he was fun. He was a lot of fun. I wouldn't think of him as irascible, really, but he was unconventional. He didn't fit nicely into the Senate mold. Once upon a time I had a wonderful picture of Jim Abourezk sitting in a green army uniform with Fidel Castro, also in a green army uniform, both of them puffing on enormous cigars. Abourezk was a member of the Judiciary Committee and interestingly

enough had a good relationship with the then chairman Jim Eastland, maybe it all revolved around good Cuban cigars, I don't know. But when Abourezk left, and my recollection was that he was only here one term, he decided he wasn't going to run again. Wasn't going to bother with it. He had a big reception down in the big hearing room in Dirksen. He stood by the front door shaking everybody's hands and he had a big lapel button on that read: "I'm getting the hell out of this chickenshit place". I could not believe that a United States Senator standing at the door of the hearing room sported that lapel button. We should probably wrap it up.

**RITCHIE:** All right, this is a good spot. We can pick it up and talk about the Appropriations Committee the next time. This is kind of fascinating for me since my own experiences here start about the same time, so it's very good to hear it from your perspective. I came here in 1976 but I was a graduate student living on Capitol Hill in the '70s, and went to the Watergate hearings and all that stuff. It was a heck of a time.

**KENNEDY:** It was fabulous.

**RITCHIE:** Now I look around here and most of the staff weren't even born then.

**KENNEDY:** Yes, but it's helpful to sit and reflect on all these things because it reminds me that I too was once twenty-four years old doing what these kids do.

**End of the First Interview**

## THE SENATE APPROPRIATIONS COMMITTEE

### Interview #2

Tuesday, August 12, 2003

**RITCHIE:** We stopped last week when you had gone to work for the Appropriations Committee in 1979. I wondered if you tell me about how you got on the Appropriations Committee staff and what your initial responsibilities were, when you were with the Energy and Water Development subcommittee?

**KENNEDY:** Well, Senator Hatfield was the senior Republican on the subcommittee. In fact, he became the senior Republican on that subcommittee upon his appointment to the committee. I'm not sure how that happened, frankly—oh, I have an idea how that happened: there were fewer Republicans on the committee than there were subcommittees, so people moved up quickly in the ranks.

When he first got on the committee, Senator [John] Stennis was the chairman of that subcommittee. Then when Senator [John] McClellan died and Warren Magnuson became chairman, Magnuson kept the chair of the Labor-HEW subcommittee and Stennis left Energy and Water to chair Defense, since he was also chairman of the authorizing committee, and J. Bennett Johnston became chairman of Energy and Water. The two of them, Johnston and Hatfield, served as chairman or ranking, respectively, for something like eighteen years, I think, up until Senator Hatfield in the 104<sup>th</sup> Congress, to help resolve a little internal squabble, elected to surrender Energy and Water and chair Transportation. But we'll get to that later.

In any event, Senator Hatfield was the senior Republican on the subcommittee and as such, in consultation with the ranking Republican on the full committee, Milton Young, he was able to recommend for appointment a staff person. He was first able to do that I want to say sometime probably around '74 or '75. The job was held by a guy by the name of Dave Lohman. In '78, David elected to go home to Oregon and another Hatfield staff person, Tom Imeson, who had been on the Energy Committee, moved downstairs to the Appropriations Committee. He held the job for only about four months when he too decided, as I mentioned last week, to go home to Oregon. And then I was just sort of next in line, I guess.

Senator Hatfield asked me if I would do that and of course I accepted with alacrity. I came over to the subcommittee in January of '79. Of course, the Republicans were in the minority and as such we were not, as minority staff, actively engaged in writing the bill or writing the report. What we did do was pursue and represent the interests of the Republican members of the subcommittee, review all the agency justifications and prepare questions for hearings for both Senator Hatfield and any other Republican member that might want to use them. Typically, the other Republican members of the subcommittee had staff in their own personal offices who would do this stuff for them, but we always had backstop questions in case they needed them.

The Democratic majority clerk of the subcommittee was Proctor Jones, who is certainly somebody I would recommend you get in here for an oral history if you can because Proctor has a lot of experience and a world of stories. Proctor was a great favorite of Senator Stennis'. He had come to the Senate with Richard Russell as a very young man and I guess Proctor was in the Senate at least thirty years. Anyway, he was and is a very intelligent and very colorful guy, from whom I've learned an awful lot. I was blessed with some really outstanding people to work with: Proctor Jones and his longtime assistant David Gwaltney over here in the Senate, and in the House the clerk of the subcommittee of the House was a fellow by the name of Hunter Spillan, who at the time had been on the House Appropriations Committee I would say twenty-five years if not longer. Between the two of them they conducted something of a hazing. Rookies had to go through a certain time of trial and testing to see if you were up to it, whether you were committee material, and whether you were one of them or not. But I seem to have weathered that all right and I learned a terrific amount of committee lore and committee procedure, and the right way to do things, from those two guys.

Appropriations at the time was very much a there's-a-right-way-to-do-it kind of committee. They were very attentive to proper procedure. One of the very first things that I was told to sit down and learn about was Rule 16. You need to know what the proper procedure is when you take these bills to the floor.

The subcommittee itself was very interesting, both in the personalities of its members and the subject matter that it considered. As I said, Mark Hatfield and Bennett Johnston were chair or ranking for a long, long time together and they worked very well together. Senator Stennis was still on the subcommittee. We had folks like Jim McClure

and Henry Bellmon on the Republican side. As the Appropriations Committee continues to be, it was very much a bipartisan operation. I've always said it's very difficult to get into ideological partisan arguments about whether you ought to spend nine million dollars or eleven million dollars. You pretty quickly say: "Ten sounds like a good compromise," and you move on.

The jurisdiction of the subcommittee was very interesting because it ranged from very significant national security issues in the Department of Energy having to do with the manufacture of nuclear weapons to perhaps more mundane but also perhaps more important to the member issues like the annual dredging of a particular port in order to maintain a sufficient depth for commerce to go in and out, which might be only an annual expenditure of a quarter of a million dollars but was real significant to the local community.

The subcommittee deals with hundreds of little projects like that. This practice has discontinued, but in those days we would set aside about six days for hearings every year for public witnesses, local folks interested in these projects were invited to come and testify before the subcommittee. It was often tedious but it was also delightful, because literally people came from all over the country. I remember Richard Petty came once and talked about Randleman Lake down in North Carolina, and why it was important. We'd have folks in from Oregon, there would be folks coming in from Louisiana, from all over the country to talk about principally Corps of Engineers projects. I got a good appreciation of the practical effect of the expenditure of federal dollars. So much of what the Appropriations Committee does it's really kind of hard to get your hands around, these big, massive federal programs that consume vast amount of money, but it's hard to get good definition on what the outcome is. But these were very specific. You could go on field trips and go see these things. The money was spent and this is the result. That was gratifying.

**RITCHIE:** Why did they discontinue those public hearings?

**KENNEDY:** I guess the members felt that it got to be too time-consuming. Senator Johnston had just sat through enough of them, I guess, and decided we don't really need to do this any more. So they kind of faded away.

**RITCHIE:** What kind of issues was Senator Hatfield interested in on that subcommittee?

**KENNEDY:** Well, of course he was vitally interested in what happened along the Columbia River and down the coast of Oregon. There were some major construction projects going on at that time. A second powerhouse was being built at Bonneville Dam, a couple of hundred million dollars worth of work. A third powerhouse was being built at Grand Coulee, which though way upstream in the state of Washington was still part of the Columbia River system, part of Bonneville power and very much of interest to him. At some point there was a new lock, I believe at Bonneville, for passage of barge traffic up and down the Columbia. Along the coast, all down the Oregon coast there are a number of small seaport communities where you have rivers coming out of the Cascades flowing west down to the Pacific. There are all these little basically fishing communities and they've all got port entrances that have to be dredged in order for the traffic to continue. That was an annual effort to get that done. From time to time there were construction projects to worry about there, to build jetties out from the mouth of the river into the ocean to try to maintain that channel, and various disputes with the Corps of Engineers from time to time about the best way to go about that. And there were some interior Corps of Engineers flood control projects which involved dam construction. One of which was on the Jimmy Carter hit list in 1978 when he vetoed the Energy and Water bill and they had to revisit all of that stuff and write a new bill to survive his scrutiny again later.

Those were his local, parochial interests, if you will. Also he was very interested in what the Department of Energy was doing in a positive way when it came to renewable energy, and a not-so-positive way when it came to nuclear energy. Of course, Bennett Johnston was very pro-nuclear energy, so the two of them kind of balanced each other out over the years, they more or less struck a middle ground.

**RITCHIE:** I wondered about that. You've got a senator from Louisiana who's interested obviously in the Mississippi River and in off-shore oil; and then you have a senator from Oregon. Did they defer to each other and say: "In your neck of the woods I'll listen to you if you'll go along with me in my neck of the woods?"

**KENNEDY:** Yes, pretty much everybody on the subcommittee did that. That's not just logrolling. I think because Mark Hatfield worried about the Columbia River he had an appreciation for Bennett Johnson worrying about the Mississippi, and vice versa. They understood that for the economies of the regions they represented, you had to worry about the flow of those rivers and how they were used. Like I say, I think that was true of everyone that got on the subcommittee. They had some appreciation. So, when the two of them took the Energy and Water bill to the floor, I mean it was pretty formidable. Everybody was together. The bill would pass 88 to 12, year in and year out. There would be the various battles on major contentious projects every now and then, the Tenn-Tom, the Tennessee-Tombigbee project down in Mississippi and Alabama, which Senator Stennis was very staunch in defending.

I think one of the reasons why Mark Hatfield and John Stennis were so close was that Hatfield always stood with him on that and Stennis appreciated that. Another reason, of course, and I'm sure you've heard this story. When Senator Stennis was shot outside his house and Mark Hatfield heard about this, he went to the hospital and spent the evening in the hospital fielding calls from people and just sort of stood vigil there with John Stennis.

Anyway, Tennessee-Tombigbee was a contentious project. Another one was the Tellico Dam project on the Tellico River in Tennessee, which was a TVA project—TVA was also in the jurisdiction of the subcommittee. Of course, that was primarily advocated and defended by the senators from Tennessee, principally Jim Sasser, who was on the Appropriations Committee and on the Energy and Water subcommittee. The contention there was that the construction of that dam would endanger the habitat of a little fish called the snail darter. At the time, I was sharing an office with a fellow who did the Agriculture appropriations bill for the then ranking Republican, Senator Bellmon from Oklahoma. The folks in the Midwest had a particular problem with something called a range caterpillar. It was some sort of pest that was eating the wheat and whatever. My colleague, Stephen Kohashi, had a series of vials with formaldehyde in them and each one containing a range caterpillar at some stage of its development.

I want to say this was 1980, because I don't think I would have the temerity to do this in my first year on the committee, but in 1980 when we got ready to go to the floor with the Energy and Water bill and we knew there was going to be another debate on

Tellico, I took one of this vials and put a label on it that said "snail darter." I took it with me to the floor and sure enough we got to the Tellico Dam debate and people were getting up and talking about this snail darter, and I pulled this thing out and handed it to Hatfield. At first, he bit and said, "Really, that's a snail darter?" Eventually I told him the story and he thought that was pretty funny, so throughout the course of the debate various people would wander in and out and Hatfield would wave them over and say, "Look at this. We're going through all of this and look at this fish. Can you believe we're going to all this trouble over this?" They would all say, "That's the ugliest damn thing!" I still have that thing. It's in my desk drawer over at the Capitol. So there was the occasional fun to be had.

**RITCHIE:** You mentioned how Senator Stennis became the chairman of the Defense appropriating subcommittee and he was also the chairman of the Armed Services Committee. You didn't have the chairman of the Energy Committee on your subcommittee. What was the relationship between an Appropriations subcommittee and the authorizing committee like the Energy Committee or the Environment and Public Works Committee?

**KENNEDY:** It was fairly distant, frankly. Well, first of all, as you well know, appropriations is an annual process and the authorization process is not. The Armed Services authorization has become an annual process, but in those days I don't know that it was. It didn't make much difference because Stennis ran one and then he ran the other, so they were in harmony. There certainly was not an annual authorization for the Department of Energy. There were, as there continue to be today, periodic authorizations for the Corps of Engineers and the Bureau of Reclamation. We certainly paid attention to those, if only because of Rule 16, and if only because it gave us a way to say no. If members came with project requests that weren't authorized, we could say, "We're sorry, we can't do that. We're not going to appropriate for something that hasn't been authorized." As far as I can tell, that continues to be the case today, at least when it comes to the water portion of Energy and Water. The only projects they fund are projects that are authorized.

**RITCHIE:** Could you explain a little bit more about Rule 16 and just how it defines that?

**KENNEDY:** Well, I might have to find a rule book around here and refresh my memory, but Rule 16 refers to amendments that are offered to appropriations bills. The rules of the Senate apply to what happens on the floor, so we're talking about when the appropriations bill is on the floor, an amendment that proposes to spend money on something, it should only propose to spend money on something that is authorized by statute, is pursuant to a treaty, is pursuant to a resolution of the Senate having passed in that session of the Senate, is for a purpose requested by the president, that is to say part of his budget request, or it's an amendment moved by the committee itself. So if someone were to come on the floor with an amendment that was not embraced by one of those criteria, then a member could raise a point of order against that appropriation. And from time to time that did happen.

**RITCHIE:** In other words, senators who were not members of the Appropriations Committee and had not been successful in persuading the committee to adopt their provision try then to bring it up on the floor?

**KENNEDY:** Right.

**RITCHIE:** That raises another question about members who aren't on the committee. Obviously the senators who are on the committee look after the interests in their states. How do senators who aren't serving on the Appropriations Committee look after energy and water issues or public works issues that might affect their states?

**KENNEDY:** Well, it's certainly harder, but not impossible. I think it has gotten much harder in recent years. When I first got on the committee, in '79 and '80, the congressional budget process was a very new process. The Budget Act had only been enacted in '74 and the mechanisms only really got started in '75. There were not all the various points of order that are now obtained. And frankly there seemed to be more money to go around. Nowadays, of course, each subcommittee is given an allocation. The budget resolution passes and there's a 302A allocation, an aggregate amount of money that is given to the Appropriations Committee. This is how much in the aggregate Congress has decided the Appropriations Committee will be allowed to spend. Then the committee divides that up amongst its thirteen subcommittees [later reduced to twelve]. It's an allocation of both budget authority and outlays. Any bill reported from the committee that exceeds either the budget authority or outlay allocation is subject, since

1985, since enactment of Gramm-Rudman, it's subject to a 60-vote point of order. Anyone offering an amendment on the floor that would cause that allocation to be exceeded, that amendment is subject to a 60-vote point of order.

It's interesting that Gramm-Rudman was intended to greatly restrain discretionary spending. Gramm-Rudman and the whole process of sequestration is pretty much now ancient history, but what survives is a point of order that greatly empowered the Appropriations Committee to the detriment of the rest of the membership, because now any subcommittee chairman worth his salt is going to write a bill in subcommittee that spends every penny of that allocation. From then on in the process, anybody that wants to add anything has to subtract something. No longer can a senator just come forward and defend and advocate his purpose just on its merit, he also has to find something that the committee has already approved that they are now willing to reverse, and to say, "Well, you're right, yours is better than this." Well, that's not likely to happen, so if you're not a member of the Appropriations Committee and you come to the floor with something, you're going to be offering amendments that say "within available funds," which means who knows if you're going to actually see the expenditure of dollars for that particular purpose.

I think that pre-'85 it was easier for senators who were not on the committee to get attention to their interests. Since the point of order was enacted, and certainly in times of severe fiscal constraint, it's very difficult for someone who is not on the committee. If they can't get in on the ground floor, it's going to be very hard for them down the road.

**RITCHIE:** Now what's the relationship of a subcommittee like Energy and Water Appropriations subcommittee and the equivalent subcommittee on the House side?

**KENNEDY:** Typically, it's very good. Mind you, I've been away from the process for a long time, and lots of things have happened in those ensuing years, but as I said earlier when I first got started I was very fortunate in dealing with our counterparts in the House, because the folks that I dealt with very much believed in the process. If they came to believe that you too believed in the process then you got along swimmingly.

One of the very first things that I learned from those old hands in the House was the importance of the calendar. Every year in the front office of House Appropriations they put up a big handmade calendar that laid out the legislative days that are available. In early spring they'll start putting on the calendar: "In June we're going to do this. These are the bills that we'll move through committee." And it worked that way in those days. You could count on the fact that in June and July the Senate would be considering appropriations bills. When you came back in September you might have one or two to wrap up but the end was in sight.

I would also say that there was no real partisanship between the two chambers. In those days, when I first started, both houses had Democratic majorities, but it never seemed to bother the House Appropriations guys that I was there representing the Republican members of the Senate subcommittee. That just sort of never came up. In 1981, when the Republicans got control of the Senate for the first time in a while and Senator Hatfield was kind enough to ask me to be staff director, very early on I made it a point of going to the House full committee and spending time with those folks. There was never in the six years that I was first staff director, and all that time the House had a Democratic majority, there was never any partisan issue that came up between Mark Hatfield as chairman and Jamie Whitten as chairman in the House or between me and my counterpart, Keith Mainland in House Appropriations.

**RITCHIE:** The House has always interpreted the Constitution to say that it should start appropriations bills first, which has been something of a sore point with the Senate, since the Constitution mentions revenue not appropriations. What practical impact has that had on appropriations bills, if the House starts the process?

**KENNEDY:** The disadvantage is if the House is slow, the Senate is slow. If you do it by regular order. In those days, in the late '70s, early '80s, that was not an issue. The House moved bills and they came to the Senate in a timely manner, the Senate worked its will and we went to conference. They did it differently in those days, too, than they do now. In the late '70s, early '80s, when I was first on the committee, when a bill came from the House to the Senate, we would amend the bill seriatim. That is to say, it wouldn't be one great big substitute amendment. We would only amend that with which we did not agree. If the House sent over a certain number for some particular aspect of the Department of Energy, we thought that was just fine and we left it alone. The beauty

of that was—the practical effect of that was—when you went to conference it was not a conferenceable item. The two houses had agreed. You didn't have to reopen it.

It also made for interesting floor procedure in the Senate, because when the bill would be reported from committee with a whole series of individual committee amendments—and sometimes they could number up into the hundreds—those committee amendments were the pending business and no other amendments could be dealt with outside of unanimous consent, until those had been adopted. And Bennett Johnston loved to do this. He would go to the floor, get the bill up, ask unanimous consent that the committee amendments be considered and agreed to en bloc and be considered as original text for the purpose of further amendment, so that those amendments could be subject to two further amendments, with the exception of the committee amendments appearing on page so-and-so, line so-and-so. He did that many times just so he could have a traffic cop, if you will. So that if a member came with an amendment that he the chairman didn't necessarily agree with, that member couldn't get his amendment offered and pending unless and until this committee amendment had been adopted. If Bennett Johnston didn't want that adopted, it didn't get adopted. He could sort of stave things off. He would agree to set the committee amendment aside for some amendments and not agree with others.

I think this eventually caught up with him, though, because other senators started, when bills would come to the floor they would call into the cloakroom and they would insist that such-and-such a committee amendment not be embraced under this considered and agreed to en bloc thing. And there were times when we couldn't get that en bloc consideration, and we would just start going through them one at a time. "Okay, the question is on the first pending committee amendment."

But that's no longer done. Now the Senate committee will report a House passed appropriations bill with an amendment in the nature of a substitute. So you just have one great big block of text. An interesting thing, to me, about that is that invariably when that is done there is going to be a violation of Rule 16, because another aspect of Rule 16 says you can't legislate in an appropriations bill. Strictly speaking, a rescission is legislation because it's amending something that's already been enacted into law. And minor little word changes, strictly speaking, are legislative in nature. So with practically every appropriations bill that's reported to the Senate now, somebody could stand up and make

a point of order and the whole substitute would fall. Nobody does that because it's kind of nuclear war to do that, but it's there.

**RITCHIE:** It's potential.

**KENNEDY:** It's potential, and it also means that when you get to conference, everything is still in play. I mean, you've got to worry about questions of scope and Rule 28, but as I said earlier, under the serial amendments if the Senate didn't change something then it's not in conference. But now, everything is in play all the way through the process. It seems to me that adds to the burden. There are some practical benefits to doing it with a substitute, but there's some down sides too.

**RITCHIE:** Political scientists, looking back at 1970s and earlier, used to call the Senate Appropriations Committee an "appeals court."

**KENNEDY:** Oh, yeah.

**RITCHIE:** Was that a regular process, that people who were unsatisfied with what the House Appropriations Committee did came over to the Senate to try to rectify that?

**KENNEDY:** Absolutely. In fact, when I first came on the committee we used to have what Proctor Jones called "reclama" hearings. We would actually have a hearing after the House had passed its bill to hear from agencies funded by the bill as to what they liked or didn't like about what the House had done. Now, that's a practice that went away *long* ago, but most definitely people would flock to the committee after House action, expressing jubilation or outrage as to what the House had done. They would appeal to the committee to fix it, and the committee was often happy to do so, because tweaking the House bill offered opportunities for negotiation in conference.

**RITCHIE:** Was there sometimes a tendency for one house to cut because they knew the other house would expand, and vice versa, and you would split the difference when you got to conference?

**KENNEDY:** Certainly. Absolutely. And periodically there are fundamental policy differences. It doesn't happen often, but periodically it does happen. Not just on legislative riders on abortion language, but on actual funding levels. There's a long-running disagreement between the House and Senate Energy and Water subcommittees about funding for the Department of Energy's Yucca Mountain nuclear waste storage facility in Nevada. Of course, in recent years, the senior Democrat on the Energy and Water subcommittee in the Senate has been Harry Reid. Senator Harry Reid and his Nevada colleagues, current and prior, were very much opposed to a national nuclear waste storage site in their backyard. They have fought it for years. In recent years, the House subcommittee chairman, most recently that is Mr. [David] Hobson, fully funds and fully supports what now President [George W.] Bush proposes in funding Yucca Mountain. That has made for a tougher negotiation on Energy and Water than has been customary. And it leads to a little bit of fight in the Senate subcommittee itself, because Senator [Pete] Domenici is very much in favor of Yucca Mountain.

**RITCHIE:** The House Appropriations Committee is a lot bigger, there are 59 House members and the Senate committee has 29 senators. Do the numbers affect conference committee meetings at all?

**KENNEDY:** Um, no. I mean, there are times when it feels like it's awfully cumbersome, I guess, but the subcommittee memberships are not that disparate. The House has bigger subcommittees, but the numbers don't seem to be as overwhelming. There are appropriations measures which are "full committee" bills, supplementals and continuing resolutions, and certainly when you get to these omnibus deals. And typically in the Senate, when it's a full committee measure, the chairman of the committee asks the presiding officer to appoint all the members of the Senate Appropriations Committee to the conference. The House does not do that. They'll appoint the chairs of all the subcommittees involved and then a number of minority members in keeping with the overall ratio of the committee. So they won't even have all the ranking minority members of the affected subcommittees. You'll have a conference with 50 to 52 people, which is manageable.

**RITCHIE:** Since House members tend to have fewer committee assignments, are they more grounded sometimes in the subject matter?

**KENNEDY:** Oh, absolutely.

**RITCHIE:** Is that a problem in conference?

**KENNEDY:** It can be. In my experience, the House Appropriations Committee was very disciplined about every member, every conferee, showing up for every moment of the conference. I'm sure that they are aware that there's an element of intimidation involved in this. You walk into the George Mahon room over there on the House side of the Capitol, first floor, where typically we had a lot of conferences, and you've got sixteen members of House Energy and Water sitting across the table, and it's just Bennett Johnston and Mark Hatfield on the Senate side. Other senators breeze in and out when they feel like it, or when they're called to say, "Your issue is on the table."

Yeah, from time to time there will be a House chairman or ranking minority member who will just be formidable in their knowledge of the particulars of their bill. Sid Yates from Illinois, as chairman of the House Interior Appropriations subcommittee was very much that way. We called him, with some degree of affection, "Iron Pants," because he could just sit there all day long. He met his match, interestingly, in Jim McClure. When Senator McClure was chairman from '81 to '87 the two of them had legendary meetings. McClure prided himself in learning the details of that bill, and he really did. Before the bill went to committee mark up, he would just lock himself up in the office with the subcommittee staff for a couple of days, really, and go through every line of the bill and report, which is very rare for senators to get to that level of detail. But McClure did it and he and Yates would sit there for days and argue back and forth with one another to the great exasperation of all kinds of people, up to and including Mark Hatfield. "Can't you move on?" Because an Energy and Water conference never ran that way.

But, yes, this is an old adage in political science literature, that House members have fewer assignments and tend to be more focused, and I think it's true. An example that is telling to me—I don't know that it would be to a general audience—but when Senator John East died, Representative Jim Broyhill, a Republican from western North Carolina, got appointed to his seat. I remember sitting down in the managers' row in the Senate chamber during consideration of an appropriations bill, and Senator Broyhill who had not—well, I don't remember, I don't think he had served on House Appropriations, but

he may have—Broyhill came over to the managers’ desk and asked for a report so that he could look at the tables that are always printed. In the back of an Appropriations Committee report there is printed something called the “Comparative Statement of Budget Authority,” which is a computer print-out that lists by line everything that is in the bill: what the request was; what the House passed; what the committee recommended; and what the last year’s amount was. Broyhill came over and asked for a report so he could look at it, and he said this: “I want to look at the CSBA.”—the Comparative Statement of Budget Authority. I and the staff person that was sitting there with me thought, “Oh, boy, we’re in trouble! Here’s somebody who knows not only where to look but what to ask for.” To me that was illustrative that the House guys get down into the weeds more than the senators do.

**RITCHIE:** Now, when you mentioned that Senator Hatfield and Senator Johnston might be the only senators there at a conference, I presume they had the proxies for all the other senators on their subcommittee.

**KENNEDY:** Oh, yes indeed.

**RITCHIE:** So that gave them equal weight with the House, if the Senate can stick together on issues.

**KENNEDY:** Oh, yeah. Absolutely. In fact, they rarely had to exercise proxies in conference. They would just say, “This is the Senate’s position. We’re not yielding.”

**RITCHIE:** Are there issues in which they might say, “There’s no chance that this would pass if we go back to the Senate with something like that”?

**KENNEDY:** That rarely occurred. In fact, in my tenure that never occurred, because in my tenure you didn’t have these intractable policy differences between the two houses. It’s an extension of what I said earlier, you can’t get into ideological fights about whether you should spend X or Y. It’s just not political fundamentalism.

Actually, in those days there was a mechanism for resolving difficult issues—something short of intractable differences. When we were using the process of numbered amendments, from time to time the conferees would be in what was called

“true disagreement.” The House simply would not agree with the Senate, or vice versa, on a particular Senate amendment, either that Senate amendment might have been that we had stricken some House language that they really liked, and in those situations the conferees could agree to report that particular amendment in true disagreement. What that meant was the House managers would take the conference report back to the House floor and the first action would be to adopt the conference report, and then you had to deal with any amendments remaining in disagreement. That process then enabled the House, and subsequently the Senate, to take a separate vote as a body on this one issue. That amendment remaining in disagreement was also subject to further amendment, also giving each body an opportunity to say: “Well, maybe if we modify this a little bit those guys will agree.”

I might say that this process was not followed solely on matters where there was true disagreement, there was also matters that were reported in technical disagreement. That is to say, from time to time the conferees would agree on actually a higher number than either body had passed, or a lower number than either body had passed, and therefore that agreement was technically outside of the scope of conference. In those days, the House Rules Committee was very vigilant in enforcing the rules of the House as it pertained to appropriations bills. So if a matter such as that out of scope were to be included in the body of the conference report, then the Rules Committee would not have reported a rule protecting that from a point of order on the House floor, and therefore the conference report would have been subject to a point of order on the House floor. We referred to those matters as amendments in technical disagreement. That is to say, the conferees themselves were not in dispute that that was what the number ought to be, it was that it was technically subject to a point of order in the House. So rather than endanger the entire conference report, they reported that amendment in technical disagreement, and after adopting the conference report the managers on the part of the House would make a separate motion to move to concur in this amendment, and it would pass. If somebody wanted to make a point of order, they could, but nobody did. But the point is you're protecting the corpus.

Now that practice has gone away, in part because the Senate no longer does numbered amendments, separate amendments, it's one big substitute. Another reason why it went away was that senators in particular got frustrated that oftentimes major appropriations bills would have dozens of these amendments remaining in disagreement,

technical disagreement though they may be. When the conference report with these amendments trailing along came over from the House, you adopted the conference report and then you had to deal with all these amendments remaining in disagreement. Just like any other series of amendments, you could adopt them en bloc if you could get unanimous consent; if not you had to deal with them individually. And all of them were subject to further amendment. Some clever senators figured out, “Well, if they’re still subject to further amendment, I can continue the argument. We’ll just amend again.”

**RITCHIE:** Then would it have to go back to the House, if the Senate amended it?

**KENNEDY:** Right. I need to correct myself here: Not all amendments in disagreement still came to the Senate. It was only amendments in disagreement that were further amended by the House. So they had a big pile of them to deal with, and we got a smaller pile to deal with.

There’s a practice in appropriations called “read out.” After the members conclude the conference, the clerks of the subcommittees, both majority and minority, will sit there at the table and they will go through the bill and annotate the disposition of all issues. When we were doing individual amendments, we would annotate the disposition of each amendment. It was this priestly like activity, it really was. It was this ritual of the committee. One of the clerks of the other would just read aloud to all of those in the room “Amendment number one.” The disposition of the amendment was either H.R., House Recedes, or S.R., Senate Recedes. HWA, which was House recedes with an amendment, that is to say that’s a classic split the difference between the two. Disagree, which would have been the rare instance of true disagreement. Disagree, Recede, and Concur, in that the conferees agree but there’s a technical problem, and the House managers will recommend that the House recede and concur with the Senate amendment, which technically is in violation of the House rules, which is why we reported it. And finally, Disagree, Recede and Concur with an Amendment, which was a DRCWA.

So we’d go through the bill, write all this down. The staffs would go back to their respective offices and write. The Senate charge was to write in essence the bill language of what had been agreed to, and the House charge was to write in essence the report language, which when you get to the conference stage is the statement of managers. After

some period of time, however long that took, then you get back in the room and literally read every word aloud of both bill and report. There was a process of making dots. You'd have these conference documents in front of you. You've passed out six copies of bill language and six copies of report language for individuals to read and follow along. There's a designated reader and he'll say, "Amendment number one, H.R." Everybody makes a little dot. The forms are printed up so that in these various categories you put Amendment number one in the category of H.R.'s. With the number two pencil you would make a little dot over the number of the amendment listed in that form.

After the first reading of the entire legislation, you would count dots. How many H.R.'s? And be sure that everybody has got the same number of H.R.'s, and the same number of S.R.'s, and the same number of HWA's. It sounds utterly ridiculous, and it was grindingly tedious, but every one of the old school folks just lived and died by that process. You could get your head taken off in that read out if you started goofing off. This was deadly serious business. My House mentors would always say, "When you get right down to it, a conference report on an appropriations bill is instruction to the printer. Here's your basic text, and here are the amendments thereto, and we're telling him where to put those amendments and what those amendments are. If you screw up in these instructions, that could be a billion-dollar mistake. So let's be careful." And people were extraordinarily respectful of that.

It was something that the members never participated in. In fact, I remember read outs—again over in the Mahon room of House Appropriations—where the door would open and some member would stick his head in. We'd just stop and the House clerk would look at them like: "When you leave, we can resume business." It was fun stuff, which no one outside the fraternity, I think, can really appreciate, but it was a great exercise in trying to be attentive to detail and being sure you've got it right. The senators often got extraordinarily impatient with this, because until we finished this process you couldn't file. "When are you going to file?" "Well, we've got to do read out." "What is read out?" "Well, actually, we read every word of the bill and the report." "Why do you do that?" But eventually I think they all became respectful of it. I have no idea what happens in that process now. They don't do dots anymore. I know that.

**RITCHIE:** You keep mentioning the Mahon room, and there was a story a decade earlier when all of the conferences were always held on the Senate side, because

the Senate was the last body to act on every appropriations bill. There was a point when the chairmen of the Senate and House Appropriations committees got into a fight as to where to hold the conference committees. By the time you came along, were they alternating back and forth between the House and Senate?

**KENNEDY:** Yes. We'd either use the Mahon room or we'd use S-128 [Senate Appropriations Committee room]. The story I had heard was that conferences used to be held in the Old Senate Chamber—that's as far as the House would come.

**RITCHIE:** Then they refused to go even that far.

**KENNEDY:** And of course the conferences were *always* in the Capitol. We didn't go to the office buildings. They were always in some room in the Capitol.

**RITCHIE:** One of the reasons why the Senate was holding out wasn't just to be snooty about it, but they wanted the opportunity to perhaps begin some appropriations bills and not have to wait for the House to act. Did they ever resolve that? Does the Senate ever begin work on appropriations at times before the House acts?

**KENNEDY:** Oh, certainly. In my first tenure as staff director, it's my recollection that Senate actually passed a Senate-originated appropriations bill. It was the Foreign Assistance/Foreign Operations appropriations bill. I think we actually passed one. Of course, the House didn't even let the Senate messenger in the door. Now, from the mid-'90s onward, under Senator [Ted] Stevens' chairmanship and then I do believe Senator [Robert C.] Byrd did it as well when he was chair again briefly there in 2001-2002, the Senate committee reports original bills, S numbered bills. It has taken them all the way to third reading, and then just holds them at the desk awaiting arrival of the House measure and then makes it a substitute therefore.

Certainly the case can be made that that expedites the process, because typically if you wait for the House bill to have subcommittee and then full committee and then two-day rule if you have a written report for consideration on the floor, that's a week to ten days before you can get all that done. But reporting an original bill denies you the opportunity, unless you have real good intelligence about what the House is going to do, it denies you the opportunity to fiddle with what the House has done, to set up negotiating

strategies. It certainly denies you the opportunity to be the appeals court that we talked about earlier.

**RITCHIE:** Can you tell me, what's the relationship between a subcommittee like the Energy and Water subcommittee and the full committee? Are you a wholly autonomous unit of the Appropriations Committee or is there more negotiation when it goes from the subcommittee up to the full committee?

**KENNEDY:** That sort of ebbs and flows. As with so many things around here, it depends on the personalities involved. A subcommittee is definitely not autonomous. It is not autonomous in its work product recommendations. It is not autonomous in its staffing. Subcommittees don't have their own appropriations. Subcommittees don't have their own individual budgets. The subcommittee chairman does not have exclusive staff appointment authority. It's done in consultation with the full committee chair. But having said all of that, the full committee ratifies what the subcommittee has done. You don't see significant changes to a subcommittee's recommendations in a full committee mark up. Now, that's certainly in no small measure because the subcommittee has anticipated the requirements of all the other members of the full committee and has tried to accommodate those. So if you get to the full committee level, people are happy.

That doesn't always happen. This year when the full committee marked up the FY '04 Defense appropriations bill, Senator [Larry] Craig had a sharp disagreement with the subcommittee's recommendations on an issue affecting Idaho, and took it to a roll call vote. Now, he lost that roll call vote 28 to 1. But typically the full committee just takes subcommittee recommendations and endorses them and moves on. Again, that happens because there's a great deal of communication going on within the committee and between the full committee and the subcommittee. It's not happening in a vacuum.

**RITCHIE:** One other question about the '70s, I know we're getting close to lunchtime, but you mentioned earlier about Jimmy Carter's veto of that water bill. A lot of people up here say that soured the waters between the Carter administration and the Congress. You joined the subcommittee staff right after that. Were there still repercussions from that? Was that a big mistake on his part to have done that?

**KENNEDY:** Well, I was pretty far down in the echelons here, so I can't say that I've got any direct knowledge about that or stories to tell, but the short answer is yes. That made a lot of people angry. It disappointed a lot of people. For some it confirmed that he didn't know how the place operated. Some people thought it was silly. I would have to say in my mind it really more than anything it reinforced a notion prevailing in a lot of people's minds that this guy was not a good legislator. He did not appreciate the legislative process. There was a whole lot of talk about: "This ain't the Georgia legislature!"

**RITCHIE:** Well, as governor he had succeeded by going around the Georgia legislature, so I guess he assumed you do that with Congress as well.

**KENNEDY:** Right. That's a little harder to do.

**RITCHIE:** I think we should stop before we start the 1980s, which is a whole other story. But do you think that we've covered the big issues for the 1970s when you first came here?

**KENNEDY:** Oh, certainly. As you can tell, I'm very much old school when it comes to the process. Perhaps the greatest thing about working on appropriations was that sense of regular order, that you were doing things a certain way and that had been done that way for a long time. It was all part of a tradition that people were proud to be a part of.

**RITCHIE:** Well, very good. I'll look forward to talking about how things began to change over time as well!

**End of the Second Interview**

## THE APPROPRIATIONS PROCESS

### Interview #3

Wednesday, February 18, 2004

**RITCHIE:** We talked about the 1970s and ended just before the 1980 election, which was a huge turning point for the United States politically. For the first time in twenty-six years the Republican party took back the majority in the U.S. Senate. You had been working on the minority staff on the Appropriations Committee with Senator Hatfield. Did you have any inkling at all that you'd be the majority after that election?

**KENNEDY:** No, I don't think anybody did. It was a long and tumultuous election eve. Everybody went off to various election-eve parties. Most people went to bed at an early enough hour that the outcome was not yet decided, but certainly within the next couple of days it was clear that the Republicans got the majority in the Senate.

**RITCHIE:** A lot of Democrats like Warren Magnuson and Frank Church, who had been in the Senate for a long time, went down to defeat that election. So, suddenly, the Republicans were in the majority and Senator Hatfield was slated to chair the Appropriations Committee. When did you find out what he had in mind for you?

**KENNEDY:** Actually, it took a while. He didn't say anything right away. It was a matter of some weeks actually. He had been the senior Republican on the Energy Committee in '79 and '80 and by virtue of that he had a minority staff director and other staff on the committee. It was frankly unclear whether he was going to ask that fellow to come to Appropriations or what he was going to do. But ultimately it just kind of turned out that he asked me to do it. My recollection is when the issue finally surfaced between the two of us and I sort of asked him what he wanted to do, his response was "Well, you're already there." He took the attitude of, "Well, of course that's the way it's going to be." But he himself never said it. I won't say it was typical but I'll say that he often practiced sort of indirection to get where he wanted to wind up.

**RITCHIE:** You went from being a minority staff member on the subcommittee to being the staff director for the whole committee. I wondered if you could talk about the committee as a whole. What's the difference between being on a subcommittee staff and being staff director of the full committee?

**KENNEDY:** It's a very different situation. Certainly on Appropriations, I can't speak to other committee arrangements, but the work of the Appropriations Committee is done in its thirteen subcommittees. That's where the policy and budget expertise resides, in the professional staff of those subcommittees. It is, certainly at the time and I think continues to be, a very bipartisan, almost non-partisan committee. I think we've said previously in these interviews that it's always been my view that it's been very difficult to get into an impassioned political, ideological argument over whether the funding level for something ought to be ten or eight million dollars. The committee is making thousands of those decisions every year and they just tend to be worked out in a bipartisan fashion. The bulk of that work is being done there at the subcommittee level by the subcommittee staff, majority and minority, and by the chairman and the ranking member.

The full committee and the role of the chairman of the full committee and his staff director and immediate people in that front-office operation is really very much process oriented, to make every effort to make sure that the subcommittees have what they need to do their work and produce those bills in a timely, predictable, orderly manner. That's the sort of internal responsibility, if you will, of the full committee staff. Externally, the role of the staff director involves a lot of communication and interaction with the Senate leadership as to what their plans are for the appropriations process, counterparts in the House and the administration, primarily OMB [Office of Management and Budget], and the White House liaison people about the desires of the administration, and how differences get negotiated. Subcommittees by and large don't need to worry about that stuff too much. They need to be concerned about the actions and activities of their House counterparts certainly, what kind of bill they are producing. But some of the overarching—how do all thirteen pieces fit together as a whole?—that's a full committee responsibility. And I forgot to mention the full committee dealings with Budget Committee and how that process will influence the appropriations process.

**RITCHIE:** Now the Budget Committee was a relatively new player at that point. It had been created in the mid 1970s and hadn't really developed into its modern role until about the time you got to be staff director.

**KENNEDY:** Well, if you look at the late '70s and there are some watershed events with Senator [Edmund] Muskie as chairman, with votes on the Senate floor that really tested whether or not the Budget Committee was going to stand for budget

discipline or whether it would be swayed as other members of the Senate were by the political consequences of votes. My recollection is that votes on child nutrition or food stamp programs, things that ordinarily Senator Muskie would have been very much in favor of and that he opposed and they were defeated because the Budget Committee raised objections in the name of enforcing the budget resolution. So it was beginning to show some muscle, but of course it wasn't until Senators [Pete] Domenici and Baker and OMB Director [David] Stockman, and other folks sat down in the wake of that '80 election and figured out a way to use the reconciliation process to do things for the budget that the Reagan administration wanted to see done, that it really started to flex its muscle. That was the first time, I think, that the Senate leadership really put all its chips in that one basket. The budget resolution from that time on really became a vehicle for the leadership, and the budget resolution became a test of party loyalty: This is what we need to do to support the president or establish our identity as a party.

**RITCHIE:** Did that clip the wings of the Appropriations Committee a bit?

**KENNEDY:** I don't really think so. Certainly there was a lot of grumbling and a lot of chaffing under this new regime and a lot of discussion about the validity of using outlay estimates as a measurement of fiscal performance rather than in our view the more accurate and more readily accountable count-up-our-budget authority. That's not an estimate, you can count it, it's there. There was a whole lot of back and forth about that, but the Appropriations Committee had always prided itself in appropriating less money than any president requested in his budget. It had a long and storied history of that, and every year we would print another chart in the *Record* and say, "See!"

So, I think a lot of the grumbling about the budget process, focusing on those nasty old appropriators, was misplaced criticism. Indeed, everybody knew this. All the budget cognoscenti knew that the real problem, if you were concerned about the growth of federal spending, was not with annual discretionary appropriations but with entitlement programs. That was plain for anyone to see. The problem was, of course, you couldn't do anything without entitlement programs without enacting a law. Whereas you could do something about an appropriations bill by vetoing it. Brother Stockman and I had this conversation on more than one occasion and he was quite candid about that, saying "I know that the appropriations process is not the problem but I can slow you guys down with one third plus one of one house to sustain a veto."

There was grumbling and chaffing but I think in the final result it really didn't change much of the outcome. The Appropriations Committee continued to appropriate less money than the President had asked for, but the Budget Committee, and the budget resolution process, gained more legitimacy and vigor. I think Congress chose to ascribe to that process that this is how we achieve fiscal discipline. And if it weren't for this, these people would run amuck. But I don't think that's the case.

**RITCHIE:** So essentially what it did was put a cap on what each of the thirteen subcommittees could appropriate? They can still decide where the money goes within that cap but that they can't exceed the cap.

**KENNEDY:** Right.

**RITCHIE:** Could you explain, especially for somebody who is outside the institution and puzzled about it, exactly what the reconciliation process was and how it affected the appropriations?

**KENNEDY:** Well, of course, you'll have to get people like Steve Bell and Bill Hoagland in here to talk about that, but, oh goodness, the Budget Act of '74 specified a certain process for the congressional budget resolution. In the spring of any year there was to be a first budget resolution that would create functional totals for all federal programs, and sort of an overall maximum amount of federal spending, estimate of revenues, and estimate of the deficit. In the wake of the adoption of the conference report on that budget resolution, committees were to be given an allocation based on the assumptions of that budget resolution.

The Appropriations Committee would get a pot of money, and the Appropriations Committee was then supposed to allocate those funds to its thirteen subcommittees, proceed on its merry way, and get all the appropriation bills done by early September. Then, if I remember right, on or about September 15 there was supposed to be a second budget resolution, which would take all of that into account and establish final numbers. If for some reason subsequent to that the numbers were judged to be out of wack, then that second resolution could contain instructions to Senate committees to reconcile all those actions between the first and then the second one to a certain number. "You've done all this. We'd rather you were here. So report out legislation that would change

stuff you've already done so we can get to here. And, oh, by the way, the legislation that you produce in response to that reconciliation instructions is going to be subject to certain limitations on debate."

So the '74 Act established this reconciliation process as a retrospective look back and see where you may have gone wrong to try and fix it. What was revolutionary about the '81 process is that the leadership and the administration looked at the debate limitations entailed in reconciliation and said. "Aha, this is how we can push through up front a lot of the changes that the administration would have us make in the budget, and we can do so without worrying about filibusters and any number of things that would otherwise pertain in the Senate." Senator Hatfield and others—but he as chairman of the Appropriations Committee perhaps most vocally—protested this, saying that it was a prospective use of reconciliation, and was an abuse of the process. He made his point and he lost. It has been that way ever since in that reconciliation, if it is used, it flows from reconciliation instructions included in the first budget resolution, and in fact I think in all the subsequent rewrites of the Budget Act a second budget resolution has just gone away. I don't know that there is such a thing. It's certainly never used in practice.

**RITCHIE:** It's a case in which the Senate has accepted almost a rules change by statute in a sense, by the reconciliation providing how things can be expedited and suspending the usual rules. It's an interesting tool that they handed to themselves.

**KENNEDY:** If you go back and look at the report on the legislation that eventually became the Budget Act, it got reported from both what was then called the Government Operations and the Rules Committee. Senator [Robert C.] Byrd among others was among those who worked on legislation. If you look at the report and the debate in '74, and then the debate in '81 when this reconciliation was used in this new way. I think particularly for people like Senator Byrd, in '81 they were saying, "Whoa, we never dreamed that this is the way this could be used." I think, if I recollect right, there was a series of parliamentary questions that got raised with the Parliamentarian at the time on the floor, and he rendered an opinion one way. It wasn't necessarily a unanimous view.

**RITCHIE:** Do you think that the use of reconciliation was inspired primarily by the Republican leadership and the new chairman of the Budget Committee or by the

White House? Were they informing the White House that this was a good way to do it, or was the White House taking the lead in suggesting that they could change their policies?

**KENNEDY:** Well, success has many fathers. I think there are a number of people who now claim the idea that might not have at the time. I honestly cannot tell you who conceived of this originally. Stockman makes reference to it in his book, someone tumbling upon the idea.

**RITCHIE:** What was your impression of David Stockman and the role that he played at that time?

**KENNEDY:** I guess like a lot of folks I viewed him as brash, and cocky, and arrogant. But the more I was exposed to him, the more I respected him, and indeed came to like him. He was definitely a smart fellow who knew his stuff. He did his homework, and he was unlike other OMB directors that had popped up in front of the Appropriations Committee. He was very active, and certainly unafraid of contention, and he was clever. One of my classic stories about Stockman was every year in those first six years of Mark Hatfield's chairmanship when the president's budget came up we would have so-called budget overview hearings. The full committee would be invited to come, and Stockman would always be a principal witness. Invariably this was a forum for senators to come in and complain about some particular proposal of the administration that did harm to their constituents. The committee, then as now, is a very large committee, a lot of members, and Senator Hatfield had to run everybody on a clock to give everybody some time to ask questions.

Senators always tend to burn up their own time with lengthy statements about the outrages that Stockman was perpetrating. One of the perennial program changes that the Reagan administration recommended was a reduction in what they called subsidies for urban mass transit. This, of course, was particularly painful for people like Senator [Alphonse] D'Amato from New York. At the occasion of one of these hearings, it was Senator D'Amato's turn and he just lit into OMB, and David Stockman, and the administration, and anybody who would dare dream of reducing this federal subsidy for mass transit. When he was done and it was time for Stockman to respond, he simply said, "Well, Senator, I see no reason why the people of North Dakota," pointing at Mark Andrews, "or Idaho," pointing at Jim McClure, and just went around and picked out

people from more rural states who did not have a lot of mass transit to speak of, “I see no reason why their constituents should subsidize the fare box price of people in Manhattan.” D’Amato just went through the roof and Stockman just sat there. Sure enough, by the time D’Amato was through fulminating the red light had gone on and he was out of time. Stockman had only said one sentence. So he was good about that. I think people were sorry when he was gone. He had his “woodshed moment” back in ‘81, and people got mad at him, but he did a good job and they were sorry he left.

**RITCHIE:** On an on-going basis, what is the relationship between the OMB and the Appropriations Committee? Is it a regular contact? Does OMB take the lead, or are they providing information?

**KENNEDY:** Yes, they are providing a lot of information and putting stakes in the ground all the way through the process. I think it was the Stockman OMB that started this “statement of administration policy” process where at every step along the way in the appropriations process there is a letter from the OMB director to the House subcommittee chairman and ranking member about their product as it comes out the subcommittee, and on, and on, and on. So that if the bill moving in its orderly way from House subcommittee to full committee to House floor to Senate subcommittee, full committee, to Senate floor, all along the way you have these wickets that the administration establishes about, “This is what you’ve done that we like, and this is what you’ve done that we don’t like, and we want you to change this.” And you may eventually get, towards the end of that process, a letter that says that “We really don’t like this, and if it stays in the President’s senior advisors would recommend a veto.”

All the way through that process of paper correspondence there are ongoing conversations, negotiating, people trying to figure out which of these eighteen paragraphs of objections are the ones they really care about. It varies from administration to administration, and director to director, and chief of staff to chief of staff, whether or not the real focus of this is the OMB director or is it somewhere else in the administration. When Leon Panetta was President Clinton’s chief of staff, when it got down to the last serious parts of the process he was the one at the table. Here recently, when it’s gotten down to the last little bits of serious business, lo and behold it’s the vice president that pops up. But in the day-to-day grind it is very much the people at OMB.

**RITCHIE:** So if it's somebody from outside of OMB, is there more political clout behind it?

**KENNEDY:** Well, again, it depends on who the director is. When it was Stockman, he was the guy, even after the woodshed incident Stockman was the guy. In a rare instance in those days, Jim Baker might pop up. If it is clear that the President has vested full faith and authority in his own OMB director, he can handle the political stuff too. But, yes, I suppose generally speaking if it's someone outside the OMB director, it's probably got a little more political tint to it.

**RITCHIE:** So in other words, when the vice president shows up and says, "We'll veto this," then you know that they'll veto it.

**KENNEDY:** Oh, indeed.

**RITCHIE:** But in other cases, it's a game of chicken, isn't it? To see how far one side can get before the other side blinks?

**KENNEDY:** Yes, and from time to time administrations will do something to establish their credibility. There was a continuing resolution in late '82, it might have been at the end of '81, but anyway it was early in the Reagan years, and there was a little confab in Senator Howard Baker's office with Senator Baker, and Senator Hatfield, and Senator Dole as chairman of Finance, Senator Domenici as chairman of Budget, and David Stockman, and Jim Baker, and Paul Laxalt, who was the president's man in the Senate. Stockman and Baker sat there and said, "Don't send this thing to us, we'll veto it." And people said, "Nah, you don't really know." They said, "Don't send it to us, we will veto it." Well, if you veto it the government is going to be closed. "You'll generate something new to reopen so that is doesn't stay closed."

This measure had already passed the House and so it was a matter for the Senate to decide. Senator Baker decided, "Well, we're not just going to do nothing. We're going to act on this, and we'll see what the President does." It was sent to him and he vetoed it. We immediately cranked up some new vehicle. There was a time in the first Clinton administration, back then, I want to say it was in '95, when the phone rang one day and it was Pat Griffin, the head of legislative liaison for the White House, saying

“Don’t send us that legislative branch appropriations bill, we’ll veto it.” Well, why in the world would you do that? It’s just our business, not that much money. He says, “Well, we’re not going to sign yours until you treat us better in ours, meaning the Treasury appropriations bill, which includes the funding for the immediate office of the president, and OMB, and other things. We didn’t believe him, and it was sent to the White House, and he vetoed it. There was all sorts of outrage over a breach of comity between branches, but there was never any attempt to override the veto.

**RITCHIE:** We shut down for a week, speaking as a nonessential employee.

**KENNEDY:** [Laughs] So, over time, I think people have learned that, “Yeah, they do mean it.” At least in the past ten years I haven’t seen any exercises of, “Oh, let’s send it down there and let’s see if he really means it.”

**RITCHIE:** In this case, you were the same party as the president and the OMB, but in the cases when the opposition party holds the White House, does that change the relationship with the OMB?

**KENNEDY:** Actually it often makes it easier.

**RITCHIE:** Oh, okay.

**KENNEDY:** When I was minority staff director during the first Bush administration, Bush 41, there was an attitude at OMB that the role in life of the Republicans on the Appropriations Committee was to do what the administration told them to. The Republicans on the committee didn’t necessarily see it that way. I think you see that now with this administration and with Republican majorities in both House and Senate, there is considerable resentment that the administration treats folks in general, and the appropriations process in particular, as “You’re supposed to do this because that’s the way the president wants it.” It’s almost as though this was a parliamentary system. Folks don’t like that.

It’s always sort of struck me, for a long time, that things can actually be more difficult when you are dealing with folks in the same party, because there are these

expectations of “we are all supposed to agree,” and you get into these who’s-ideologically-more-pure conversations. When you are dealing with the loyal opposition you don’t come with that baggage. You recognize that there has to be some sort of negotiated agreement. Speaking personally, it was easier for me in the ‘80s to deal with my counterparts in the House working for Mr. Whitten than it was for me in the ‘90s to deal with my Republican majority friends in ‘95 and ‘96.

**RITCHIE:** You bring up a good point in that the relationship between the House and the Senate is critical with appropriations. The House has always interpreted the Constitution to suggest that appropriations should always begin in the House and then go to the Senate. Did they also feel that the Senate should be following not just in chronology but also following the leadership that the House has exerted on appropriations?

**KENNEDY:** Oh certainly. I think that that feeling has waned somewhat in the past twenty years, but certainly in the late ‘70s, early ‘80s, when I first became acquainted with the process, there was definitely an expectation on the part of the House that the Senate would pretty much go along with what the House had recommended. The House had the attitude of, “We pay better attention. Our members are only focused on appropriations, that’s all they do. We know the details. We’ll send you the bills, you make the adjustments you think are necessary, but don’t mess them up too much.” Indeed, that’s pretty much the way the process worked, as we’ve talked before.

When I got to know the appropriations process, the House would pass and send to the Senate a bill, and the Appropriations Committee would recommend amendments to that bill. Individual, discreet amendments. In so doing, the committee would recommend leaving much of the House bill intact, just the way the House passed it. You just make individual changes. You then went to conference with the House and you only talked about those changes. All those things the House had recommended that you didn’t touch were just fine. Now, of course, that’s not the process that’s followed. The House bill comes over and a complete substitute is adopted for it. I sort of lost my thread here, but that earlier process was clearly geared to: “Yeah, the House has done a lot of work on this and we are happy to take what they recommended, with these following exceptions.”

**RITCHIE:** I wondered if as the staff director for the committee does the fact that

your schedule is determined in part by what the House does and when it does it, does that complicate matters in terms of trying to project your schedule on the Senate side?

**KENNEDY:** Well, sure it did. It's become much more complicated now than it was when I first had the job in the early '80s. The House marched along at its accustomed pace on appropriations bills. Bills would get sent to the Senate, we'd mark them up and report them out. Sure, it would take longer than it was supposed to, but nonetheless every year we would see thirteen bills come to the Senate, and we would report out thirteen bills. We could afford to wait in those days and do it in that orderly way. Plus no one had yet dreamed up this notion of "Oh, we'll just take the House bill and just do a complete substitute to it," because everybody was still thinking that if you do that you're bound to have Rule XVI point of order against the substitute, and House Rules will never grant the rule necessary for the conference report, and all this complicated procedure stuff that in recent years has been just kind of swept aside.

In those days, and indeed on into the '90s, it was not really a problem to wait for the House bill. It was a reasonably predictable schedule. I could go over to House Appropriations, and every year the first thing they did was make a calendar that hung on one wall of their full committee room over there, and it was laid out like clockwork: On this day will have subcommittee mark-up on this bill, and this will be full committee, and two days later we'll have it on the floor. And it worked that way. It doesn't work that way anymore. Now I think it is far more problematic for the staff director of Appropriations to try to plan a schedule. In fact, you now see the Senate Appropriations Committee originating its own bills to save a little time, shave some time off that schedule, have that Senate original bill waiting when the House bill comes over.

**RITCHIE:** Was there ever any impetus for that early on in the '80s, when people talked about doing that?

**KENNEDY:** Oh, yes, in fact we did it once with a foreign operations appropriations bill. We reported it out, and I think it actually took a third reading on the Senate floor. There were many who were shocked and appalled that we would do such a thing. Of course, our brethren in the House told us, "In the end that's all well and good, but if you so much as dare to pass it and send it to us we won't let it in the door. You're not doing yourselves any good."

**RITCHIE:** I wondered about Senator Hatfield as chair at that stage, when he was taking over the committee. The Reagan administration was several steps to the right of him and a number of other Republican senators were much more conservative. He'd always been an independent-minded person. How did that play out in his role as chairman of the Appropriations Committee? Did he feel any pressures from the conservative wing of his party or did he steer his own course?

**KENNEDY:** No, the differences were certainly there, but the pressure was not. I think folks knew his position, they respected his reasons for it. He did not ever try to use his chairmanship, his gavel, to impose his position on anybody. As everyone well knew, he was very much against the kinds of things that the president was recommending in the defense budget. In theory he could have just refused to have a mark-up on the defense bill. The one real power the chairman has, and perhaps the only power, is to set the agenda and call the meeting. He could have refused to have a committee mark-up on a defense appropriations bill with which he strongly disagreed, but he didn't do that. He was respectful of the institution's obligation to deal with this. So because he treated the institution and other Senators with respect, they afforded the same back to him.

Where there were disagreements, there were disagreements. There were disagreements on the MX missile, there were disagreements on chemical weapons. There were occasions when his vote and that of fourteen Democrats made the difference and produced the recommendations from the Appropriations Committee that got reversed by the Republican majority on the Senate floor. But again, that was fine, that's the process. We vote and we see how it comes out.

**RITCHIE:** I can imagine that everybody in Washington wants to talk to the chairman of the Appropriations Committee at sometime or another. By definition he's an extremely important person in the whole process. Was part of the role of the staff director and the staff to be a line of defense for the chairman?

**KENNEDY:** Sure, and there were a lot of people who got steered our way that originally had sought to seek the chairman, "He can't do that, but you can go and see these people." We saw a lot of petitioners, but I think also just as most of the work of the Appropriations Committee goes on in the subcommittees, most of the petitioners go to the subcommittees too. The entire appropriations process is one of working at the

margins. The farther along you go in the process, the narrower the margin you're working on. Year in and year out, I bet you Congress doesn't alter more than seven percent of what the president proposes. In the traditional process, where it comes first through the House and then to the Senate, by the time it gets to the Senate full committee you're down to the real minute tweakings. If you want to try and do something in the Senate Appropriations Committee, you'd better try to do it in the subcommittee because the full committee ninety-nine percent of the time is going to ratify what the subcommittee recommends.

Senator Hatfield was not a very top-down kind of chairman. He didn't seek to impose his own particular view of the world on the rest of the subcommittees. He would be moved to make recommendations, and subcommittee chairman would do what they could to accommodate him, but he didn't attempt to dictate things to his subcommittee chairman colleagues.

**RITCHIE:** The Democrats had been subcommittee chairmen for years. Every single subcommittee chairman when Hatfield took over was a brand new subcommittee chairman. The only Republican who had been in the majority before that was Barry Goldwater. So everybody was for the first time stepping into the majority. Did that create any problems with your thirteen brand-new subcommittee chairs?

**KENNEDY:** Well, it did. I was telling this tale the other day. My recollection is that in the Congress that ended in 1980, the Appropriations Committee was comprised of seventeen Democrats and eleven Republicans. Of the seventeen Democrats, fourteen of them survived into the next Congress, and as much as Mark Hatfield wanted to reduce the size of the Appropriations Committee—he said it's just too many people, just too unwieldy—the Democrats felt just as strongly that they didn't want to have anybody get bumped off the Appropriations Committee. And frankly, the longer Senator Hatfield thought about it, he said, "Well, you know, we might want to have some of these guys."

The upshot of all that was that the new Appropriations Committee in that Congress was—I hope I've got this right—fourteen Democrats and fifteen Republicans. Of those fifteen Republicans, seven were brand new to the Senate, and those seven plus Thad Cochran were brand new to the committee, and of those eight who were brand new, five of them were suddenly subcommittee chairman. It's just a walk-in-the-door-and-here's-

your-gavel kind of thing. Yes, there were some pick-ups along the way. Senator [Matt] Mattingly, fresh from Georgia, became chairman of the legislative branch appropriations subcommittee. In the first bill he produced for subcommittee mark-up in the summer of '81, he lost every proposal that he offered to the subcommittee on a four-to-one vote. His two Republican colleagues joined the two Democrats on it, and said, "No, we're not going to do that." But everybody got through it.

We shouldn't pass over this part of the conversation without my saying that when Senator Hatfield became chairman he went out of his way to try to keep as many incumbent staff people as he could. There were certainly people who had worked for Chairman Magnuson who left in wake of his defeat. There were people who worked on the Democratic side of the aisle who didn't want to work for a Republican majority and happily went to—well, not happily but went to a minority staff position even though we asked them to stay with the majority staff. He really made an effort to retain what he viewed as a professional staff for the committee, without regard to what their political affiliation might be, and who they might have worked for in the previous Congress. That, I think, helped with these newer chairmen. There was good institutional memory and knowledge of process that helped get rookies through their first year. It certainly helped me having those people around.

**RITCHIE:** Your predecessor, Featherstone Reid, had only one calling card which said "Assistant to Senator Magnuson." He used that for whatever job he did for Senator Magnuson over the years. Did he brief you at all or did you get any kind of passing of the torch from him?

**KENNEDY:** No, not really. You know, Feather's role with the committee was always kind of undefined. Yes, he had the one card and everybody knew that he spoke for the chairman, and that he was very close to Senator Magnuson. But on the staff, the guy that was viewed as sort of the Appropriations clerk, if you will, was Terry Lierman, who did the Labor-Health bill for Magnuson. Between the two of them, it was never quite clear who was doing what. You're right, Feather never ascribed to himself the title of staff director, but he never ascribed it to anybody else either. So it was a little murky there. There was not a torch pass.

**RITCHIE:** What about the Democratic senators on the committee at that stage? You mentioned that there was a lot of continuity, even though their ranks had grown

smaller. How gracefully did they make the transition from majority to minority?

**KENNEDY:** Well, they did rather well, is my recollection. Again, the nature of the committee being what it was, they came to realize fairly quickly that “Okay, we don’t have the gavel anymore, but it’s not like we’re going to be disenfranchised.” Then as now you had some very senior people on the committee. Senator [John] Stennis was the most senior, but he elected in ‘81 and ‘82 to remain the ranking Democrat on Armed Services, and allow Bill Proxmire to be ranking Democrat on Appropriations. He changed his mind two years later and bumped Senator Proxmire. But in that first Congress it was Proxmire, and then Stennis, and then Byrd, and then [Daniel] Inouye, and [Ernest] Hollings. Byrd, Inouye, and Hollings are all still there, and then on down the line, people like Bennett Johnston, Jim Sasser, Dee Hudleston. Dale Bumpers, I think, was the most junior Democratic member of the committee. None of them particularly ideological, none of them particularly partisan. All of them respected and liked Mark Hatfield, and it all seemed to work.

**RITCHIE:** Senator Proxmire had a reputation of being a maverick. He did that all- night filibuster in ‘81 on the raising of the debt ceiling, and things like that. Was he a person who required a whole extra care and handling?

**KENNEDY:** No, actually there was a time there in those first months and years when I recommended to Mark Hatfield that he not appoint to the conference committee any member of the committee that voted against the bill. I mean, what is this? You just shouldn’t have committee members voting against the bill. And Senator Proxmire made it a fairly regular practice to vote against certain appropriation bills. As a matter of fact, so did Mark Hatfield. He always voted against defense appropriations. But we were willing to make an exception for the chairman. This was only done once or twice when Proxmire voted against something and Hatfield didn’t put him on the conferees’ list. Proxmire was shocked that this would happen to him and cooler heads prevailed, and we all got along, but there were little deviations like that. But again, Proxmire was not out to blow up the process for the sake of maintaining his position, let him do his thing and move on.

**RITCHIE:** Could you talk a little bit about the conference committees in the beginning? You had a Republican majority in the Senate, and a Democratic majority in

the House, and you had a Republican president's agenda that was somewhat controversial at the time. How did the conferences work?

**KENNEDY:** Early on they had their moments of being rather fractious, because I think there was a sense in the House of, "Who are these people? Upstarts. Do they really know what they're doing?" Of course, when you got into the conference the old-line Democratic majority in the House could start speaking to their chorus of Senate Democrats on the Appropriations Committee, and they would reinforce one another. That was a stage in which I think we were glad that we had the administration with us, because it was clear that President Reagan was enjoying considerable political influence, and it was clear that his administration meant what it said, and was willing to demonstrate that. The raw recruits of the Republican majority had a very strong ally in the administration.

**RITCHIE:** When you're in a conference like that, what's most important? Is it keeping the majority party together, being able to vote as a group on things? Or can individual senators sway decisions on some of the sections of a conference report?

**KENNEDY:** It can happen. It doesn't happen often, but having said that I wouldn't say that what's important is keeping the majority together. What's important is keeping the Senate together, because ostensibly you're there representing the position that the Senate has taken. It wasn't that hard to do. For all the individual decisions that get made, there are just a very, very small percentage of decisions that get made on a vote, or show of hands, or where your people are counted. Mainly it's just that the chairman and the other people speaking to the issue on the Senate side saying, "Well, that's our position. You guys have to deal with it. If you guys don't like it, make us a proposal."

**RITCHIE:** Does the Senate have some advantage in the fact that its rules don't really permit the majority to get its way automatically, and that therefore there is more of a need for accommodation on the Senate side than on the House side?

**KENNEDY:** Yes, and that's something the House cannot comprehend. That became a real difficult issue in '95 and '96, when we'd go to conference with Senate bills that were the product of the Senate, which means both sides of the aisle, and the House conferees would just say no. "We don't care, that's not our position. We don't agree

with what you've done. We're unified. We're not negotiating." It was a very difficult time.

**RITCHIE:** And yet if they wanted to pass a bill they had to get it through the Senate.

**KENNEDY:** Right, and get the president to sign it.

**RITCHIE:** Tell me how much does the individual personality of a chairman affect something like the conference committee? Is part of it who's sitting in the seat and the relationships that he's developed, and the style that he has?

**KENNEDY:** Oh, sure absolutely, and that's true not just who happens to be chair, that's true of all the personalities in the room. I think I enjoyed conferences most of all just because of that, and because of the play of personalities, and the theatrics of it all. People throwing what you knew were staged tantrums for effect. People making personal pleas.

I remember one time in the '80s when Senator Stennis—this would've been '81 or '82 because I don't believe he was ranking yet—but anyway we were in a conference and the issue was a matter within the jurisdiction of the VA-HUD subcommittee, and Eddie Boland of Massachusetts was the chairman of the House subcommittee, and had been forever, and was an institution on the Appropriations Committee, just flinty and hard nosed. Senator Stennis was appealing some case on a housing issue, and Mr. Boland kept sitting there and saying, "Senator, I'm sorry, we'll work with you in any way we can, but we're not going to put in essence some sort of earmark into this bill for that purpose." In those days, there were indeed House chairmen who opposed earmarks, Boland being one of them. At one point, Stennis said, "Well what am I going to do? They won't even return my phone calls." And everybody went. "Oh, now that's just not right." Boland said, "You're right, that's outrageous. We'll put it in here." Okay, we just can't treat John Stennis that way. So there are moments like that that are well worth the price of admission.

There is another that has always been one of my favorite stories of life in the Senate. It speaks to what can happen in conference between the House and the Senate. In

1983, as part of the economic stimulus package that was proposed by the Reagan administration, the Senate in consideration of that bill added a provision, sponsored by Senator [Arlen] Specter and Senator [John] Heinz, that had the effect of advancing the fourth-quarter payment of Revenue Sharing (which was still in existence at the time) into the third quarter, giving states double the amount of money that much sooner. Senator Hatfield was a long-term opponent of Revenue Sharing, and the Reagan administration was in opposition to the amendment, but it nevertheless passed by a considerable margin, seventy to thirty or something like that. Subsequent to passage, there was a meeting in Senator Baker's office with Dave Stockman and Jim Baker, to talk about how the conference would proceed and how the administration felt about the Senate product. Stockman was adamant that this Revenue Sharing provision had to be taken out of the bill. Senator Hatfield readily agreed. He said, "Absolutely, that's got to go." I was sitting there thinking: It was adopted seventy to thirty!

In the due course of time, we got to conference with the House, and we got to that particular amendment in the Senate bill. Almost as soon as we got on it, Eddie Boland, the chairman of the House subcommittee that had jurisdiction over the matter, said, "Well, the House is willing to take the Senate amendment." Senator Hatfield said, "Wait a minute, we haven't offered it to you yet." Which was sort of an unusual circumstance, because it was, after all, the Senate position. And indeed the members of the House said, "But the Senate passed it." Senator Hatfield said, "Well, the Senate on reconsideration may not want to propose that to you." And indeed on a show of hands of the Senate conferees, the Senate receded from its own amendment.

Senator Specter, one of the sponsors of the amendment, was sitting in the room when this happened, and he was somewhat nonplused. When the conference report on this measure came back to the Senate floor, there was a somewhat testy exchange between Senator Specter and Chairman Hatfield about what had transpired. My recollection is that it was not late at night but it was in the evening. There was considerable attendance in the body because this was sort of: If we wrap this up, then we can leave. So there were a lot of people there who had heard this exchange between Specter and Hatfield, one of whom was John Stennis, who was the ranking Democrat on the committee at the time. Senator Stennis sought and got recognition, and stood up and told this wonderful story. He talked about how he had been in the Senate for a long time, and he had been to a lot of these conferences. He said, "You know, there were times

when you could walk into one of these conferences and you could *see* it. You could *see it in their eyes*, it's just not going to happen." He said, "This was one of those times. I walked in and looked at the members of the House sitting across the table, and I *knew* this amendment was just *dead as Hector!*" This was getting people's attention. People were beginning to chuckle about this.

Then he told the story that is the classic story about the conference. He said, "I remember one time when a junior member got an amendment adopted to an appropriations bill when Senator [Carl] Hayden was chairman. The bill went to conference, and the conference report came back out on the Senate floor, and the senator's provision was not included in the conference report. So he came up to the chairman and said, "Excuse me, Mr. Chairman, but what happened to my amendment?" Hayden looked at the senator and said, "Well, the House wouldn't take it." The senator said to Mr. Chairman Hayden, "Well, why not?" Hayden looked at him and said, "They didn't say." It absolutely brought the house down, but it is the perfect distillation of what can happen in conference. Stennis' last words were: "Sometimes they just don't say." That defused the whole atmosphere in the chamber, and the Senate voted, and everything went along. But virtually since the first few days after those words were spoken on the Senate floor, I've had them hanging on my wall somewhere. It's a very useful thing to point to these days in the lobbying business because you can say to clients, "Sometimes they just don't say."

**RITCHIE:** That's a wonderful story. I can just hear Stennis saying that.

**KENNEDY:** It was marvelous.

**RITCHIE:** You mentioned earmarking. Is that a trend that has increased since 1980 or was it pretty well in place in 1980?

**KENNEDY:** Earmarking has always been with us, and there is absolutely nothing inherently wrong with it. It is Congress making the recommendation that is at variance with that which the administration has proposed. Fine, that's what Congress is supposed to do. If the Congress doesn't earmark money, the administration will. This is all a question of who decides how things get allocated. It's not as though this is some sort of benign automatic process where if you just leave it alone it's all going to get done

automatically. But the practice of earmarking has just kind of gotten way out of hand. It's just mushroomed completely out of proportion. If you looked at the conference report on the Omnibus that the Congress passed earlier this year, the level is just staggering. They're earmarking twelve thousand dollar grants. It's just preposterous. And the staff is getting overwhelmed by all of this, and the appropriations process is falling into greater and greater ill repute, in my view, as being nothing more than a vehicle for this kind of thing.

**RITCHIE:** Do you have any explanations as to why it's gotten so out of hand?

**KENNEDY:** Well, I could probably cook up several, but I don't think I will.

**RITCHIE:** Do you think this is inevitable? In other words, this is the way the legislative branch is going to go. It's going to be much more specific in its dealings with the executive branch, instead of giving discretion to the administration?

**KENNEDY:** It depends entirely of course upon the attitude of the administration your dealing with. One explanation perhaps of its exponential growth in recent years is that you had a Republican majority in Congress and a Democratic president. The majority felt that, "If we don't do this, they won't do what we want. So we have to put in a whole lot of earmarks." But that explanation quickly falls apart when you get to 2001 and you've got Republican majority in both houses and a Republican president, and it's gotten steadily worse. When Mitch Daniels was OMB director at the beginning of this Bush administration, he got about this close, I thought, to the position of saying, "We don't care, it's report language, it's not law, and we're not going to do it." I would not have blamed him if he had, because technically he's absolutely right. I think it may take that sort of attitude to bring it to heel.

**RITCHIE:** Of course, the only trouble is that they'll have another appropriations the next year and they'll have to face a lot of angry people.

**KENNEDY:** Well, that's true, but if you know you're willing to ride it out I think ultimately you can win that argument, and get back to a "we've all have to get along here" attitude. The reason why it's all report language is because nobody ever wanted to write this degree of specificity into black letter law. To me, it's just sort of implicit in

that there is a recognition that we've all got to get along and be flexible, and adjust to changing circumstances, and maybe it will turn out this way and maybe it won't. But more and more and more that you identify these hundreds of specific earmarks, the more you are getting away from that flexibility. All of us have to work together to make this happen.

**RITCHIE:** The newspapers like to describe all of this as pork, and it has a pejorative connotation, but do members use the appropriations process as a way of establishing that they can bring back funds to their state? That there are specific projects that say this is mine, this is what I did for you?

**KENNEDY:** Sure, no doubt about it.

**RITCHIE:** And do you see anything wrong with that process?

**KENNEDY:** No, none whatsoever. All of us could make individual assessments of individual projects as to whether or not we think they are meritorious, and all of us would find any number of them to be ludicrous or insupportable in some other way. But the general practice of members of Congress trying to get federal support for things in their district, absolutely nothing's wrong with that whatsoever. Again, if they weren't doing that, then the administration would be doing that according to their desires, and why should a member of Congress allow a member of the executive branch to substitute his judgement for his own in terms of what's best for his district?

**RITCHIE:** It always seems to be the smaller states that get the chairman of the appropriations committee, Arizona, West Virginia, Alaska.

**KENNEDY:** Less populated states.

**RITCHIE:** Yes, small in population, not small in geography, and to some degree the population growth in those states has been probably attributable to someone like Carl Hayden, who brought back federal money to Arizona for water projects and highway projects. Does being a member of the Appropriations Committee enhance your ability to bring projects back to your home state?

**KENNEDY:** Of course.

**RITCHIE:** As opposed to non-members of the committee?

**KENNEDY:** And I think you can go farther in that. It's not just the chairman but the general rank-and-file membership of the Appropriations Committee tends to be from states of less population. You'll certainly get the exception to that. Senator D'Amato of New York was a long time member of the committee, but he left and went on Finance when he had the chance. Senator [Dianne] Feinstein and Senator [Barbara] Boxer have sort of traded places on that. Senator [Phil] Gramm from Texas was on Appropriations for a while, but he too left when he had a chance to go to Finance. So I think a hindrance for a senator from a state with a lot of people getting on the Appropriations Committee is that there are too many constituencies to try to deal with. You cannot possibly help them all. So you wind up helping a few and disappointing a lot. I think that's why you'll find big-state senators, if you will, going to committees like Finance where you can deal with things in larger scope.

**RITCHIE:** That's interesting. I get the sense that people who are on the Appropriations Committee tend to be institutionally-oriented. It's not a flashy committee in a sense that committees dealing with legislation get that kind of publicity. Senators on the Appropriations Committee seem to me more structurally-oriented and institutionally. Is that a valid description?

**KENNEDY:** Yes, I think so.

**RITCHIE:** A lot of its work is done behind closed doors and isn't the type that's going to make headlines.

**KENNEDY:** And you're not going to produce big, important, long-lasting, major pieces of legislation that have your name on it. But year in and year out, you're going to get certain things done.

**RITCHIE:** What about the oversight role of Appropriations? I mean looking at where the money has been spent and calling administrators to account.

**KENNEDY:** Well, it's very much the hammer behind the door. I don't think it is as effectively utilized as it could or should be. Hearings are very tedious things, and it strikes me that, particularly in the Senate, hearings turn out to be less about attempting to understand what the agency is doing and why, and what it may have done right or wrong, than it is an opportunity for administration witnesses to give their speech and senators to give theirs. Senators don't devote the time to it that really effective oversight would require. But having said that, as I said at the outset, the hammer behind the door is always that the committee can recommend sharp reductions in programs it doesn't like. Just the threat of that, however rarely applied, tends to keep agencies in line. Of course, there's a constant conversation going on between the professional staff of the committee and the professional budget officers of the agencies. Those guys at the agencies know that things had better not get too far out of kilter, lest the committee exercise its power.

**RITCHIE:** There are often certain areas that a chairman will give his blessing to, being chairman can influence enormously. Senator Magnuson was interested in health issues and so the National Institutes of Health blossomed while he was chair of the Appropriations Committee. Did Senator Hatfield have an area that he took more interest in than others, that he kept an eye on?

**KENNEDY:** In his early years as chairman, I think a primary focus was finishing up, if you will, a lot of ongoing federal infrastructure projects in the Pacific Northwest, specifically in Oregon along the Columbia River and on the coast of Oregon. That's the whole series of federal dams on the Columbia and on the coast, and a whole series of harbor projects. As time wore on and he got those things accomplished or saw them nearing completion, he devoted more of his time and effort to health issues and education issues. Now, of course, those interests too manifested themselves in the state of Oregon in the form of bricks and mortar. There's a considerable health sciences infrastructure now in Portland, that was there only in nascent form some twenty-four years ago, that he nourished and brought along. But, yes, clearly towards the end of his career those were his real priorities in the appropriations process.

**RITCHIE:** It must be a wonderful feeling to be sitting in that chair and realize that because you're there a lot of projects will get funded that might not have gotten funded otherwise, or would never have gotten the level of funding that you could bring to them. A real sense of direct correlation between your interests and your political abilities.

**KENNEDY:** Absolutely. I remember in '97, Senator Baker for whom I was then working in his law firm, agreed to go to Oregon. He and Mrs. Baker, Nancy Kassebaum Baker, were going to take a trip to Japan, and they agreed to stop in Portland, Oregon, on the way out, for Senator Baker to make some remarks at a fund-raising dinner for the Mark Hatfield Institute of Government at Portland State University. Riding into Portland in the car with Senator Baker, he remarked with some frequency about various structures, and projects, and the occasional building with the Mark Hatfield name on it. I think he gained a fresh appreciation of what it meant to sit in that chair and make recommendations for things that would happen. So, yes, it must be quite something over the years to do that, and then see the fruits of that eventually.

**RITCHIE:** Just like driving into West Virginia and seeing all of the Robert C. Byrd buildings.

**KENNEDY:** That would be a comparison.

**RITCHIE:** Well, thank you. I think this a good time to stop. I appreciate it.

**End of the Third Interview**

**THE REAGAN ERA**  
**Interview #4**  
**Wednesday, June 30, 2004**

**RITCHIE:** We just had the first state funeral in thirty-one years, for Ronald Reagan, and since you are now in the Sergeant at Arms office I'm sure you must have had a lot to do with it. I wondered if you could relate some of the events and activities you were involved in.

**KENNEDY:** The office was involved in a whole lot of things and very much a part of the whole process. The plan for the state funeral is largely developed by the people in the Defense Department, specifically the Military District of Washington. Plans for the Reagan funeral had been going on for a long time. There had been a lot of conversations with the family, and the plan had been thoroughly vetted, revised, modified, and updated in the past couple years, as everyone knew that President Reagan was in decline.

Having said that, given that from the time of his death until the time of his arrival for the lying in state there was only three days, and given that this state funeral was held in the context of post-9/11 and all the security attending thereto, it was a huge undertaking. The whole event was officially categorized by the Secret Service as a National Security Event, which escalates security precautions to an incredible degree. One of the Secret Service agents that was up here on the Hill coordinating all of the activities likened it to preparing for a inauguration with just three days' notice. Of course, preparing for the inaugural is a multi-month thing. It all seemed to come together quite well. Everybody was very impressed with the ceremony and the dignity of the occasion.

It required a huge level of participation from the Capitol Police on a round-the-clock basis because from the time the casket arrived in the Rotunda until it departed the Capitol was open and people were filing through. It required a lot of work with and cooperation with the House of Representatives because the Rotunda is mutual ground. There was the occasional friction between the two houses as to who was "in charge." Of course, neither body is "in charge," and that's part of the problem.

For my own part, I spent a great deal of time negotiating issues with the press. You know the Sergeant at Arms and the Senate is the employing authority for the staff in the various media galleries. They are constantly negotiating between what the Sergeant at Arms views is proper in terms of protocol and security and what the media want in terms of access and numbers. There was intense media scrutiny in all of this and they had a huge presence up here. It just took a lot of negotiation between what they wanted to do and what was proper to do. And then there were the various connected protocol responsibilities of the office. There were escort duties. When the vice president comes to the Senate, I greet him and escort him where he wants to go. Bill Pickle, the Sergeant at Arms, and his House counterpart Bill Livingood, were responsible for greeting Mrs. Reagan when she arrived, and for greeting the President and Mrs. Bush when they came on Thursday. I was asked to escort [Mikhail] Gorbachev when he came. That was fun, you know, that was interesting.

It was a very busy time but everyone was aware that it was a historic event and appreciated the historical import of what was going on. On Friday, the day of the funeral, the Sergeant at Arms office was responsible for getting the senators up to the National Cathedral—load them on buses and take them up there. That was a very impressive ceremony. Again it was a privilege to be there for an event of that significance.

Then in the hours just before the arrival ceremony we had an emergency evacuation of the Capitol, indeed the whole campus, because of a perceived air threat. That was attention getting. I was standing with my House counterpart, the House deputy, standing outside the vice president's ceremonial office in the Capitol. We were preparing to rehearse our escort of the vice president to where he was supposed to be in the Rotunda for the ceremony. She and I both received BlackBerry messages that the Capitol Police have an escalating threat and there's concern of an unauthorized aircraft in the area. The threat system goes from condition blue up to condition red, red being "we've got an incoming plane." First we received a yellow alert, then we received an orange alert, so she and I knew that something was afoot. So when the police in the Senate Reception Room started hollering, "Everyone needs to leave the building immediately!" we had a bit of head start on other folks, knowing that it really was serious.

We went out the second floor and ran down the grand steps and made a beeline

over here to the Capitol Police headquarters. In that reception area off the Senate floor at the time there were dozens of dignitaries that Mrs. Reagan had invited to come to the Capitol. Former Secretary of State [George] Shultz, former Secretary of State [Al] Haig, former Secretary of Agriculture John Block. Senator and Mrs. Baker were not yet there but they were to be there. All those folks were summarily hustled out of the building. By the time we got over there to police headquarters they had figured out what the problem was and they knew that they didn't have a real threat to the Capitol, but it was a real life exercise.

**RITCHIE:** Do you think because of the heightened security for the funeral everybody was on a hair trigger that stimulated some of the response to that instance, or would it have happened no matter what?

**KENNEDY:** I think it would have happened no matter what. Clearly there was a heightened state of alert and people were just that much more nervous perhaps. But they have protocols for looking at this, the Capitol Police do. There's a conference call that gets set up immediately whenever an aircraft enters Washington airspace and is not doing certain things or is doing certain things. On that conference call it's the Capitol Police, the Department of Homeland Security, the Secret Service, it's a host of agencies. This airplane was unidentified and not responding. It met the criteria, so Chief [Terrance] Gainer, the chief of the Capitol Police, made the call. The two Sergeants at Arms were on that call and completely agreed.

The Capitol got evacuated in about ninety seconds. It was a very good thing that it happened while the building was closed to public tours. If there been the normal summertime afternoon population in the building it would have been very difficult. A lot of people could have been hurt just trying to get out. Were you here?

**RITCHIE:** I had just left. I had agreed to do a "chat room" for the WashingtonPost.com's website, and it was easier to do it at home watching the funeral on television than to do it here. So I had just left the building a few minutes before.

One of the differences between this state funeral and previous ones was this one took place on the West Front as opposed to the East Front, because of the construction of the Capitol Visitor Center. How much did that complicate efforts to reorient the whole

ceremony in the other direction?

**KENNEDY:** It was much harder really for the pallbearers. Otherwise it didn't make that much difference. Now, many people pointed out the symmetry of President Reagan being the first President inaugurated on the West Front and how appropriate it was that he would leave the Capitol from the West Front. So who knows if the CVC had not been under construction whether we would have done it on the East Front or not. But the main complication was for the guys who actually carried the casket. It was a very heavy casket, 750 pounds, and there were concerns because the first couple of times that the military rehearsed the soldiers had such difficulty with that great weight that there were some contingency plans made to actually bring the casket around to the Senate steps and come up that way. Because those troops had to go up three flights of stairs just to get into the building, and then once in the building they had to come up two internal staircases to get to the Rotunda. They switched teams twice, once on the Capitol terrace and then once in the building. They just changed guys.

**RITCHIE:** Were you involved in this dress rehearsal? Had they gone through all these stages before?

**KENNEDY:** Oh, yes. Bringing the caisson up onto to the terrace down there on the West Front, and unloading the casket, and taking it up and mounting it on the catafalque. They did everything.

**RITCHIE:** You also mentioned that you dealt with the media. Someone pointed out that one of the big difference between this state funeral and the one thirty-one years ago was that the last time there were only three networks. Now the media has grown exponentially. What were the problems about accommodating so many more stations and so many more reporters?

**KENNEDY:** Well in the Rotunda itself there had been an agreement long ago that there would be pool coverage, and that was handled by NBC, in terms of television coverage. The other great demand in the Rotunda itself was from press photographers. They wound up with I want to say about thirty spaces on a platform there in the Rotunda. Plus they persistently argued for, and eventually got, permission to have a photographer up in the dome to shoot those internal shots. And then out on the West Front, there were

certain designated camera positions that had been negotiated with and had been approved by the Military District of Washington in developing the funeral plan. Those were pool coverage. Then there were other platforms on the ground on Constitution Avenue that were—I forget the term for it, but anyway they were platforms where you could have everybody, not pool. So you had CNN, and CNBC and all the rest of it. The major networks and the minor networks.

In fact, there was on, what was this Friday morning I guess, the day of the arrival Larry Janezich, the director of the Radio & TV Gallery, came to the office hat in hand and regretted to inform Mr. Pickle and me that NBC had constructed an unauthorized platform out on the Capitol grounds, because they had decided they were just going to need more room. So there was a bit of trip to the woodshed for the NBC producer, but eventually it did get approved. They got to keep it on the grounds.

**RITCHIE:** The media was just intense in covering the whole operation. I can't imagine how you could have accommodated them anymore than you did.

**KENNEDY:** Well, when it was all over people seemed to be fairly happy with all the arrangements.

**RITCHIE:** Well, considering that we have several other former presidents who are in their eighties and nineties now, were there any experiences from this state funeral that you think might affect the way future ones would be done? Any revisions that might be made or lessons learned?

**KENNEDY:** Yes, I think certainly and in fact there is already been a “lessons learned” meeting of all the congressional participants. The House folks arranged for a joint meeting a couple weeks ago that involved the House and Senate Sergeants At Arms, the Clerk of the House, the Secretary of the Senate, people from the Speaker's office, the Capitol Police, people from the galleries, to raise problem areas, things that went right, things that went wrong. I think primary among them are, as is so often the case, are basically just communication and coordination issues. There is no single entity in charge, and there won't be. So you have to have a willingness of the House and the Senate and folks in the Military District of Washington to sit down together and talk about how it's going to go.

It's fresh in everybody's mind now. If we have another state funeral in the near future, I think that it will go more smoothly. Certainly a big concern is just movement of people through the building. There were people who waited in line for hours and I think everyone would like to see that there's a way to move it more quickly. I don't know if you can, just because of the way you have to access the building now, and the necessity to screen people. I was in Washington for the Johnson funeral, and in fact was living over here on East Capitol Street. For that funeral, access was through the East Front of the grand staircase directly into the Rotunda. It was easier to move in then. There was no security screening, so presumably people moved more quickly. But even so, I can remember looking out my apartment window at 10:00 at night, and this was the dead of winter, and the line was—I was in the 300 block of East Capitol Street—and it was almost all the way down to Lincoln Park. It was estimated, I guess, that there were some forty thousand people that came through the Rotunda for the Johnson lying in state. For Reagan it was in excess of a hundred thousand. I mean there's just so many people you can move through there.

**RITCHIE:** Perhaps the Visitor Center might improve things, if it's ever finished.

**KENNEDY:** It will get finished.

**RITCHIE:** And I'm sure that funerals will revert to the East Front, which is much more accessible. The West Front is beautiful, but it's three stories taller than the other side. Well, the state funeral directed an enormous amount of attention onto Reagan's presidency and there were a lot of reflections on that time. I wondered how you reflected on Reagan's legacy, having served as the staff director of the Appropriations Committee in majority or minority positions through his entire presidency.

**KENNEDY:** Well, there was much talk in the Kennedy household earlier this month about the degree of revisionist history that seemed to be going on. As my wife put it at one point, she said, "You know I can remember when ketchup was a vegetable." The whole story is not being told here, and that's the way it always is with funerals. The guy got a very good send-off and it was an appropriate recognition of his eight years as president. But those eight years were not always as happy as was talked about during the

first week of June. Of course, I worked for a senator who had a lot of disagreements on a policy basis with that President. They got along famously as friends, but disagreed on chemical weapons, and the nuclear freeze, and the Contra affair, and general budget priorities. There were a lot of disagreements. In reflecting on those eight years, I thought about a lot of those times, and it was more of a fight than it was one big happy family.

**RITCHIE:** How did you rate the administration in terms of, for instance, their dealings with Congress? Was it an effective administration in terms of it's congressional lobbying?

**KENNEDY:** Yes, I think so. In the first few years on Appropriations our primary point of contact was Dave Stockman. Say what you will about Dave Stockman, but he was a very smart fellow. He was a very good advocate for the administration's positions. And, goodness, people like Jim Baker were extremely competent folks. We learned early on to trust what they said to us. They were people that if you negotiated a deal with them, they stuck to the deal. If you did something that the president didn't want you to do, they'd tell you. If it came to it, you would get a bill vetoed. That happened too. At that sort of professional level, I thought it was a very good administration to deal with. Certainly in the first term. Then after Stockman left his first successor was Joe Wright, and then we had Jim Miller. Jim was much sharper edged than either Stockman or Joe Wright. He had a more political agenda than a policy one. It got a little difficult with him from the appropriations standing point, but we got through that too.

**RITCHIE:** In reflecting on that time, Reagan never had majorities in both houses, he only had a majority in the Senate, and even that he lost during his last two years. Did the fact that he was dealing with both parties in a sense force him to be a bit more pragmatic than he might have been otherwise?

**KENNEDY:** Oh sure, and I think it was a great benefit to everybody. This might be revisionist history too, but I think that '81 to '87, those six years where you had a Republican majority in the Senate, a Democratic majority in the House, and Reagan in the White House, things worked very, very well. They did so because you just had to work with the other side of the aisle, the other body. Frankly, it made our lives a bit easier in the Senate because we could always say to the administration. "Well, you know, the House just wouldn't agree. We'd love to carry your water here but we just can't sell it to

the Democrats in the House.” And of course the chairman of the House Appropriations at the time was Jamie Whitten from Mississippi. I think it’s fair to say that he and the majority of his committee were a little bit more conservative than perhaps the majority of the Democratic Caucus in the House. They in turn could use the Senate Republicans and the president as their foil and say, “We couldn’t sell it.” So things were driven more towards the middle.

**RITCHIE:** I think that probably the leadership and the Senate right now feels much more pressure from the House in some respects than even from the administration. And that complicates matters in trying to get things done.

**KENNEDY:** Indeed.

**RITCHIE:** In Paul O’Neill’s book [*The Price of Loyalty*], he quoted Vice President Cheney saying that Reagan proved that deficits didn’t matter. That was, of course, the big issue. The Reagan administration was committed to a balanced budget but never had one. There were soaring deficits through most of that decade. How did the deficits in the 1980’s affect the appropriations process?

**KENNEDY:** Well they affected it because Appropriations was everybody’s favorite whipping boy. Mark Hatfield said till he was blue in the face that appropriations bills are not the problem. The primary cause of the federal deficit is the growth of mandatory spending and entitlements. He would say that many, many times a year. Everyone with any knowledge of the federal budget completely agreed with them. Pete Dominici would agree with him, Bob Dole would agree with him, Alice Rivlin would agree with him. The CBO [Congressional Budget Office] would just churn out reports. You can just look at the facts. The Appropriations Committee, year in and year out for generations, appropriated less money than presidents asked for. It’s just historical fact.

But, as I had this conversation with David Stockman one time, he said, “All of that is true, but I could stop an appropriations bill, characterize it as wasteful spending, too much money, and we can stop that appropriations bill from becoming law with a presidential veto, and all I need is one-third plus one to uphold the veto. On the other hand to change any of these entitlement programs, I need a majority of both houses. So, you’re the target of opportunity. It was more of a rhetorical difficulty, if you will, than a

real substantive policy thing. But every time an appropriations bill went to the floor there was somebody who would do some sort of hand wringing about how if it weren't for this we wouldn't have these deficits.

I don't know how to make this connection but I'm thinking that the first Reagan veto that was overridden was on an appropriations bill. Now I want to say it was in '82, it might have been '83, but it was a supplemental. I think the sum total of it was like twelve billion dollars, and the majority of it was for defense. Let's just call it eight and four. Well, when the bill was sent to the president, it came out more like six and five. We cut defense and increased the amount for non-defense, but the total was less than was requested. And the president vetoed it. "This is just wasteful spending." All of it directed at the non-defense spending, because you know a defense dollar never caused any deficits in the Cap Weinberger days. The House overrode the veto handily, a Democratic majority. Then it came to the Senate and we overrode the veto when it was right on the money. It was like 67-33. It was a very interesting vote. Vice President Bush came up and presided even though he would not be voting in that situation, just to lend the administration presence.

Howard Baker did his customary thing of sitting on the desk in the well so everybody knew he was watching. I remember Larry Pressler coming in and voting "aye," and people kind of looking, and others. The interesting thing about the vote, the point I'm trying to get to, is Baker never really whipped anybody on this vote. It was getting down to the end there and everybody knew how close it was and Howard Greene [the Republican Secretary] was sitting at the table and he was kind of looking at Baker about "Are we going to keep this going? Do you want me to go and get anybody? Do we need to turn somebody? And Baker just gave him the wind-up sign. He knew what the outcome was and he made no effort to try to reverse it. So Bush brings down the gavel and the veto is overwritten, and Hatfield and I made a beeline for his chairman's office downstairs and cracked open a bottle of champagne. I may be ascribing more to it than was really there but I was convinced at the time that Senator Baker had decided it was time to show the administration that Congress was in charge and not David Stockman. This may have not been the mix of dollars that the president liked but it was less money than he had asked for, and it was misrepresenting the situation to say that this was responsible for creating deficits.

**RITCHIE:** As I recall some of that domestic money was for getting out of the recession that the country had gotten into at that time.

**KENNEDY:** That was why I think this veto override was in '82 because I think the so-called economic stimulus package was in '83. That was, yes, from the get-go that was an anti-recession fiscal stimulus package.

**RITCHIE:** Liberals were very concerned about Reagan when he came into office, that he was going to take the government to a hard right position, but in dealing with a complicated Congress the Reagan administration was quite often forced to the middle on a lot of issues. It wound up not rocking the boat perhaps as much as some people feared that it would, and becoming a much more popular administration as a result of that, another irony in looking back at that period.

**KENNEDY:** Right. It seems to be a point that the current administration has missed. A little pragmatism now and then can be helpful.

**RITCHIE:** Well, what about that quote that "Reagan proved that deficits don't matter"? Is that a valid conclusion to draw from the experience of the 1980s?

**KENNEDY:** No, I think Reagan proved that deficits don't matter as much as Reagan himself said they did, but they do matter. It's just a question of degree. I haven't looked at this recently but I guess economists would tell you that what matters is the size of the deficit relative to the size of the economy. The accumulation of national debt relative to the size of the economy, things like that. I happen to think that currently we ought to be a bit more concerned about deficits than the Congress currently seems to be. That's sort of old school, I guess.

**RITCHIE:** It was in the 1980's that push for a balanced budget amendment really began to gather some political steam. A lot of people were advocating it in the House and the Senate. Of course, Senator Hatfield eventually proved the pivotal person in ending that movement. But what was Hatfield's general view on getting a balanced budget? Was he very committed to a balanced budget or did he think that the government could operate in a deficit mode?

**KENNEDY:** I think Senator Hatfield was like most of his colleagues in that he believed in a balanced budget, not to say in the abstract but yes as a goal. But it wasn't the be all and end all, and it mattered very much how you got there. I think he was disappointed, let's say, in colleagues that talked a lot about the balanced budget but didn't vote that way, who voted for tax cuts, voted for increases in entitlements, and came to the Appropriations Committee with requests for all kinds of projects. Interestingly enough, he did vote for a balanced budget constitutional amendment in the '80s, as did Robert C. Byrd. They both sort of joined hands in the well of the Senate and voted for one. Of course, when '95 rolled around he had changed his mind.

**RITCHIE:** Another proposal that came along was the line-item veto. President Reagan advocated it consistently in the 1980s. It finally got passed in the 1990s and was in existence for a very brief time until the Supreme Court ruled it unconstitutional. How would that have affected the appropriations process if the line-item had become fully functioning?

**KENNEDY:** It's honestly hard to say. I think a line-item veto would be a terrible thing to give to the executive. It would drastically skew the balance. But I think it would be effective more as a threat than in practice. Just knowing that the club was behind the door, I think Congress would back away from things that the administration wouldn't want them to do. Fundamentally, I think this is not about earmarks, member projects, and all that.

I think the far more serious issue is the use of the appropriations process by Congress as a policy-wielding tool. Robert C. Byrd always reminds us that the power of the purse belongs with Congress, with the people's branch. That power can be used by Congress to encourage administrations to do things or to prevent them from doing things. If a line-item veto authority takes that power away, then there's a huge, fundamental shift in the balance of power between the two branches. Together we could think of any number of foreign policy issues that have been addressed and shaped in the appropriations process that might not have happened if the president had a line-item veto. Those are significant national security matters, those are not "a bridge in my home district" kind of thing. Its proponents always talk about it that way, but I think the more serious issues are these larger national issues.

**RITCHIE:** You mentioned that fundamentally the problem with deficits was entitlements. In the early 1980s there was a bipartisan effort to do something about the Social Security System. Claude Pepper, and Daniel Patrick Moynihan—

**KENNEDY:** Dole.

**RITCHIE:** Dole, and a lot of other members were very much involved in that. Has the entitlements situation improved since the 1980s, or have things gotten worse?

**KENNEDY:** Oh, I think the 1990 budget agreement was extremely significant in helping the size, shape, and direction of the whole federal budget. The creation of caps on discretionary spending and far more important the establishment of the pay-as-you-go rules for entitlements and revenues did wonders. I think that was a very responsible agreement. It was done on a bipartisan basis. In the end, it was very much the Democratic majority in the House that passed it. [Newt] Gingrich and the Republicans rebelled. But in the Senate it was very much a bipartisan agreement, and of course it was negotiated by and signed into law by George Bush. I thought that whole 1990 budget agreement was terrific and helped a lot. I wish we could reestablish it.

**RITCHIE:** Given that it worked, why was there such opposition to it among the House Republicans?

**KENNEDY:** I think it goes to this whole matter of tax cuts. They believed that the establishment of these pay-go rules just locked in revenues, you'd never have a tax cut again. And of course, we've demonstrated that's not so, because the first tax cuts in the first years of the second Bush administration were done under pay-go rules. It can happen. I guess I believe that deficits do matter and that if you want to be serious about that you need to have some sort of controls, some sort of sideboards on what you do with the entirety of fiscal policy, not just this little bit of non-defense discretionary appropriated dollars, but everything. Entitlements, and revenues, defense, it's all part of the picture. The Andrews budget summit agreement addressed that entire picture and anything that doesn't ultimately is not going to work.

**RITCHIE:** In November 1986, the Republicans lost the majority in the Senate. That was not anticipated at the time. I remember being somewhat surprised when the

majority shifted at that time. Senator Hatfield reverted to being the ranking Republican and you became the minority staff director. I wanted to ask how different is it being minority staff director as opposed to being majority staff director?

**KENNEDY:** Oh, it's night and day. We were very fortunate in that John Stennis became chairman and he and Mark Hatfield were great friends. Senator Stennis' staff director, Frank Sullivan, had been his minority staff director for the previous four years so we knew one another well and got along famously. The Appropriations Committee being the bipartisan committee that it still is, we did not have the frictions that existed in other committees. But having said all that, being in the minority is not nearly as much fun. You get to write the book review, maybe, but you don't get to write the book. You're kind of along for the ride. You're not doing much to influence the direction of where you are going.

**RITCHIE:** Did you give any thought to leaving once the Republicans lost the majority?

**KENNEDY:** Well, I did, yes. In fact, at the beginning of the first Bush administration the White House extended a little feeler my way to see if I was interested in being a part of the Senate liaison operation. I didn't want to do that because I knew the time involved and I had gotten married in '88 and we were expecting our first child in the spring of '89 and I just didn't want to go to the White House in early '89.

But at least for the first couple of years I didn't think about it much. I was kind of happy where I was. In '85 I had flirted with, but ultimately turned down, an opportunity to go to a corporate office here in Washington. I just didn't want to be a lobbyist. In '87, when the majority changed, I still didn't want to be a lobbyist. I didn't want to go work in the Reagan administration, so I stayed where I was. Then, of course, after a while, when you've been here long enough, you kind of think "I've been here this long, I might as well keep at it."

**RITCHIE:** In addition to policy, one other legacy of Mark Hatfield as chairman is that he renovated that suite of offices that the Appropriations Committee occupies in the Capitol. It had gotten kind of dingy before he stepped in and were magnificently transformed in the restoration. Did you have anything to do with that?

**KENNEDY:** No, just to encourage him. If there's one small thing that I did, you may remember that there is now a viewing window where you can look into the hearing room. That space used to be closed and inside the hearing room there was a telephone closet, a phone booth, in there. It was Senator Inouye who said to me one day that he had this idea that we ought to take out the phone booth, and open that door, and put in glass so that people could see the room. I kind of put that idea in Senator Hatfield's head, and he thought that was great. So in the midst of all those other renovations they did that.

If you haven't, you should go over and look, because they are back at it in that hearing room. They're doing marvelous work. All that dark green on the walls is all over-painting. They've gotten down to the original [Constantino] Brumidi and it's this vibrant light blue. The allegorical figures that are painted on the wall really leap off the wall at you now, much more than before. As the conservationist was saying yesterday, it's just like they were floating. It's really magnificent. But, yes, he took a great deal of pride in that. He loved the restoration of that room. He loved the look of it when it was done.

**RITCHIE:** When I take people through the Capitol, I always tell them that you can measure the influence of a committee by its location, and the Appropriations Committee has the best suite of offices of any committee. Being the "money" committee, it's in a position to do that.

**KENNEDY:** The Finance Committee was always very jealous of that suite.

**RITCHIE:** In the nineteenth century, the Finance Committee had the offices on the second floor, right outside the Senate chamber, which today is the majority whip's office.

**KENNEDY:** Oh, really? On the east side? That was Finance?

**RITCHIE:** That was Finance back in the 1900 period. Appropriations and Finance were quite close to the chamber, and other committees were further away, but Finance moved to the Russell building eventually.

One other question, to go back to the Reagan and Bush era, you described the

1990 budget agreement as a necessary reaction to the situation in the 1980s, trying to settle the problems that had lingered during that decade. In many ways, George Bush, Sr., did the responsible thing but he paid a huge political price for it.

**KENNEDY:** He did.

**RITCHIE:** Do you think there was any other way of doing it? It made it look like he was going back on his political promises.

**KENNEDY:** No, I don't think there was any other way of doing it. I'm not the one to secondguess this. Others more skilled in the politics of the situation and how you spin things might say that all of it could have been expressed better. It was pretty clear that the Democrats' main goal in the negotiation was to get the president to expressly say that "Yes, we've got to raise taxes," and make him break his promise. Could we have gotten an agreement without that bald expression? I think maybe we could have, I don't know, but from a policy point of view, as I said earlier, if you are going to be responsible about it you have to deal with all components in the fiscal picture. You have to talk about entitlements, and that agreement did that.

Recall that what prompted the negotiation was the threat of a massive sequester under the old Gramm-Rudman regime from the '85 act. Those procedures were still on the books, and those procedures were aimed at only one component really of the budget, namely appropriated dollars. Yeah, they'll tell you that there were some applications to entitlements and mandatory spending, but very minor, and none of the really big ones. Under the law, the government was going to be faced with a huge sequester, a percentage-across-the-board cut on both defense and non-defense, and the administration was saying, "This is unsustainable. We cannot do this." The Democrats were only too happy to agree because of what it would do to non-defense, and because they saw the opportunity to get rid of Gramm-Rudman and do something else.

The whole motivating reason why the negotiations got kicked off in the first place was because they were operating under a regime that focused only on spending. What was the nice part about it was that we were able to get rid of that protocol and move to a framework that is more comprehensive.

**RITCHIE:** One last Ronald Reagan thought, his training was as a labor leader as well as an actor [as president of the Screen Actors Guild]. He had an ability to claim victory no matter what he got, which I think is a labor negotiator's chief skill. He lost a lot of battles but he always managed to express it in such a way that people thought he had won.

**KENNEDY:** Yes, even when he was signing all of those tax bills in '82 and '83, everything was just fine.

**RITCHIE:** I think he referred to them as "revenue enhancements."

**KENNEDY:** Right.

**RITCHIE:** Well, you said you needed to leave here by 2:30, so this is probably a good place to break. We can pick it up next time with the Bush administration. But this has been very interesting to me. Thank you.

**KENNEDY:** Certainly. Thank you.

**End of the Fourth Interview**

## THE GOVERNMENT SHUT DOWN

### Interview #5

Tuesday, May 1, 2007

**RITCHIE:** We've talked about how you came to work for Senator Hatfield, and then the appropriations process in the 1970s and '80s, and we talked about the Reagan administration, up through the big Andrews Air Force base conference of 1990. I thought that today we could talk about the Clinton era and how things evolved in that dramatic decade. I wondered if you could tell me how Senator Hatfield related to President Clinton and the Clinton administration?

**KENNEDY:** Well, they weren't in service together all that long, although Hatfield was here for the entire first term of the Clinton administration. I think they got along pretty darn well. There was a time, actually, I think it was in '93, in President Clinton's first year in office, where Senator Hatfield flirted with the notion of voting for the budget resolution, which of course was very distinctly a product of the Democratic Party. As you know, certainly over time, and in recent years, a budget resolution vote is a party-line kind of vote. It is a test of party loyalty. Whether he was ever seriously considering it or not, the idea got floated that maybe Mark Hatfield would vote for this budget resolution. He got calls from among others Lloyd Bentsen, who by then had gone to be Clinton's Treasury Secretary. In the end, he did not vote for that budget resolution, but I think the idea that he even considered doing so was indicative of his openness to the kinds of things that they were suggesting and trying to do, because I think he remained concerned that federal fiscal policy had to be predicated on what he always referred to as the three-legged stool: appropriations, entitlements, and revenues.

I know that in staff-level exchanges, if you will, with President Clinton's folks in the White House and at OMB—when Senator Hatfield was ranking Republican and then with the second two years of the first Clinton term he was chairman of Appropriations again—they were very attentive and solicitous of his view. We would get calls as the president's budget was being finalized: Were there things that he would like to see in the budget? And so on. I think there were good relations there.

**RITCHIE:** I was thinking that it was sort of a peculiar circumstance that he was probably closer ideologically to the Democratic president than he was to the Republican

leadership in the House.

**KENNEDY:** Oh, definitely so.

**RITCHIE:** But as you say, party loyalty was being judged very closely in those days, so he stayed on the reservation. And the Democrats bit the bullet on Clinton's budget bill. Vice President Gore had to break the tie to pass it.

**KENNEDY:** Yes, I think that's right. Then of course it will be asserted that there were certain House Democrats who lost in the '94 elections because of, among other things, that vote—there was an energy tax, as I recall.

**RITCHIE:** Raising taxes was not a popular thing to do.

**KENNEDY:** No, it never is.

**RITCHIE:** But on the other hand you had those ballooning deficits at that stage. The issue was how the Congress was going to get some control of them.

**KENNEDY:** Well, I would assert, as I think I already have in an earlier interview, that I think that the framework that was arrived at at the Andrews Air Force base discussions is what led directly to the surpluses of the later Clinton years, creating "pay-go" and establishing caps on discretionary spending brought us some years of fiscal prosperity.

**RITCHIE:** Putting the caps on discretionary spending also put the caps on the members of the Appropriations Committee, didn't it?

**KENNEDY:** It's been of some interest to me that every time the Congress of the United States attempts to rein in those willy-nilly members of the Appropriations Committee, they wind up empowering them all the more. Gramm-Rudman back in 1985 created the 60-vote point of order against an Appropriations bill exceeding its 302(b) allocation. The attitude was: "Well, that will show 'em." That will rein in those guys. And of course, what flowed from that was that any subcommittee chairman worth his salt wrote a bill that spent every last dollar of the allocation, and when you got to the floor,

nobody could add anything, unless you made a commensurate reduction somewhere else, and that's always difficult to do.

Here recently, the whole discussion about earmark reform, where we're going to cut down on the number of earmarks, and where we're going to have transparency—okay, fine, well and good. I don't know of any member of the Appropriations Committee that is at all embarrassed by having his or her name attached to something that they're asking for. If it is the will of the body, and the administration, that the sheer number of them will be reduced, well, clearly the people who are going to have first crack at that smaller pot are going to be the members of the committee. So, once again, what is touted as something that is trying to alter the behavior of certain individuals, is just giving them more influence.

**RITCHIE:** We had talked about earmarks in an earlier interview, but it seems to have been in this period, in the '90s, that the number of earmarks grew to the point where people outside of Congress were aware that there was such a thing.

**KENNEDY:** Yes.

**RITCHIE:** Was there any reason why it became more popular for Congress to earmark at that time?

**KENNEDY:** To my view, the exponential growth in earmarks occurred after I left, after Senator Hatfield retired in 1996. That's not to say there weren't earmarks before, there certainly were, but the remarkable increase in the sheer number of them occurred from the late '90s up until last year. All of that time, of course, you had a Republican majority in Congress. For the last part of the '90s you still had the Clinton administration, and the increase in the number of earmarks was explainable, I think, as a way for a Congress of a different party to get its priorities established. But once you had the Bush administration in office, in January 2001, and they still keep going up, you can't explain it that way anymore. I don't want to be unfair about the Other Body, but I think this was influenced more by the House of Representatives than by the Senate. The Senate just sort of played catch-up. My impression is that in the House, increasingly it became viewed by the leadership as a way to reward or discipline people in the party and help those in difficult elections. This just multiplied and got just ridiculous, really, and way

out of hand.

I think certainly the staffs of both the House and Senate Appropriations committees, majority and minority alike, Republican and Democrat alike, would tell you that earmarks got out of hand and became a great burden on the staff, and time spent on trying to manage earmark requests, satisfying members, was time taken away from more thoroughgoing budget review and program assessment. You'll have staff tell you now that they don't hear any longer from members about overall program funding levels. You used to get calls about "How much are we going to have this year for Section 8 Housing?" And "We need more money for that program." Doesn't happen anymore. The call will be: "Am I going to get my EDI grant of \$50,000?" The sheer number of earmarks has really ballooned, and the dollar value of some of them has just gotten ridiculously small. You can see references in report language now for amounts as low as ten and twelve thousand dollars. It's crazy.

**RITCHIE:** Do you think that lobbyists had a role in this? Figuring out that this was a way into Congress to get money, and bringing interest groups in that way?

**KENNEDY:** Yes, I don't think there's any doubt about that. And interest groups can be very small. But I think a culture developed that folks outside of Washington interested in federal funding began to think, "Hey, I'd better get one of these Washington insiders to help me." It became sort of a trophy. I'm sure you read—I didn't read all of it, I only read the first installment of the big, huge, long *Washington Post* article about Gerry [Gerald] Cassidy and his firm [beginning March 4, 2007]. I think the more universities heard about the successes of other universities, they said, "We need to get one of these." It became something you need to have. But yes, I don't think there's any doubt about that there are more folks in the private sector that are involved in the appropriations process than there used to be.

**RITCHIE:** It's funny, before World War II the Congress passed more private bills than they passed public laws, and now they've sort of gone back to the private claims.

**KENNEDY:** Yeah, in a way that's right.

**RITCHIE:** During the first two years of the Clinton administration, in '93 and '94, Senator Byrd chaired Senate Appropriations and I think David Obey was chairman of the House committee.

**KENNEDY:** He was, right towards the very end. Mr. [William] Natcher was still with us early on.

**RITCHIE:** Some of the things I was reading said they were getting their appropriations bills passed on time. It seemed like they were running a tight ship in terms of appropriations. Did Senator Hatfield work well with Byrd and Obey as ranking minority member?

**KENNEDY:** Oh, yes. He didn't have that much interaction with Mr. Obey, but that's just the way it is. But he and Byrd were great friends and worked well together.

**RITCHIE:** It seemed like the committee had a good bipartisan process going, meeting their deadlines and all. As compared to the big fight over the budget at that time, appropriations didn't seem too divided.

**KENNEDY:** I may have told you this before, but it was either in '93 or '94 where Congress enacted all the appropriations bill into law before October 1, which was the first time that had happened since Harry Truman. President Clinton decided that was worthy of a little reception down at the White House for all the members of the House Appropriations Committee and the Senate Appropriations Committee, and the four staff directors, majority and minority. Senator Hatfield and I went down to the White House on the appointed morning, and Jim English, Senator Byrd's staff director, rode with us. We just happened to get there at the same time as Senator Byrd, who was coming in from his home in Virginia. We all walked into the State Entrance of the White House together and Senator Hatfield turns to Senator Byrd and says, "You know, Robert, I've been here many times, but it always gives me a thrill to walk into the White House." And Byrd, without missing a beat, says, "Same here, Mark, but it's not as great as the thrill I get every single day when I walk into the United States Senate." For Senator Byrd, the Senate always comes first.

But yes, things marched along quite well. The Appropriations Committee, at least

as I always knew it, prided itself on process and doing its work on time. When I first became majority staff director in 1981, I went over to visit my counterparts in the House Appropriations, working for Mr. [Jamie] Whitten, and learned a lot from those folks. One of the very first lessons they taught me was the calendar. They always had a big calendar mounted on the wall. They just laid out the schedule. This Tuesday morning we will have this subcommittee markup, and this Thursday morning we will have this full committee markup, and we'll be on the floor, one, two three. It's harder to do that in the Senate, but it was impressed upon me early on that it's an orderly process that marches along. We don't have time to wait and think and gather coalitions, because we need to get our work done on time.

Things went a little bit astray in that regard in recent years, but I think certainly under Senator [Thad] Cochran's chairmanship in '05 and '06, and now with Senator Byrd back in the chair and Mr. Obey chairman again in the House, I think you will see renewed attention to meeting deadlines, and making progress, and following the proper procedure.

**RITCHIE:** Well, the election of 1994 sort of turned everything upside down here. The Senate and House both changed majority. Senator Hatfield became chairman of Appropriations again, and you returned as majority staff director. What was it like coming back into the majority at that stage?

**KENNEDY:** Well, of course, it was exciting and it was unexpected. It also had its difficulties, because as you mentioned earlier, Senator Hatfield was not exactly in step with the House Republican, Speaker [Newt] Gingrich-led Revolution. And there were some things done in the initial weeks and months of the new Republican majority in '95 that I think he thought were not necessarily prudent and wise. As it specifically affected the Appropriations Committee, there was this notion, again led by the House of Representatives, that committee funding should be cut across the board by ten percent. I think Senator Hatfield thought it was silly and shortsighted, and that it missed the mark. It was shooting at a problem that didn't exist.

That meant some tough decisions for him as chairman on the Appropriations Committee in staffing matters, but we managed to make that work. A few short years later, when Senator [Ted] Stevens became chairman, he was successful in persuading his colleagues that was not a very smart way to do things. The Appropriations Committee

budget and staff is now quite robust.

**RITCHIE:** Well, the Speaker was trying to get control over the House committees. He was doing a lot of things to reduce the power of the chairmen, passing over senior members to put his own people in as chairmen, to rename the committees, to change their jurisdiction, and then to reduce the staff was one way in a sense of making them less independent powers. That was probably truer in the House—

**KENNEDY:** Than in the Senate, right.

**RITCHIE:** —But the House has always been more of a hierarchy and Gingrich wasn't all that out of step with some of the things that Speaker [Jim] Wright and the Democrats had done previously.

**KENNEDY:** No, no, that's true, but to take that House model and try to apply it to the Senate just didn't work very well.

**RITCHIE:** Yes, the House passed the Contract with America in its first hundred days, and then it stalled in the Senate for deliberation over the next two years..

**KENNEDY:** Not unlike the current Congress with the House in its first one hundred hours.

**RITCHIE:** The House can always set deadlines, but the Senate can't do it.

**KENNEDY:** Yes.

**RITCHIE:** How well did Senator Hatfield get along with the Republican leadership in the Senate at that stage? Senator Dole was the majority leader.

**KENNEDY:** And Senator Lott was the Whip. He was getting along with the leadership just fine. There were some elements within the Conference that thought he was not in tune with some of the things that he should have been in tune with. I mean, let's face it, by this time the makeup of the Republican Party in the United States Senate was distinctly different than it was when he first came in 1966. When he and Howard

Baker, and Chuck Percy, and Ed Brooke, and Bob Griffin, and Cliff Hansen—that was the Republican class of '66—when they were sworn in in 1967 they joined people like Jack Javits and others, who were decidedly moderate if not liberal Republicans. People like Lowell Weicker, and Mac Mathias, and Bob Stafford and others, John Chafee. But by 1995, most of those people were gone. Javits was long gone, Weicker was gone, Packwood was gone. The majority party in the Senate was considerably to his right, if you will. He was just sort of alone.

**RITCHIE:** Was the Appropriations Committee itself feeling pressure from the new majority in terms of the directors they wanted to go in?

**KENNEDY:** No, I don't think so. In sort of a macro sense, the Appropriations Committee lives with what is put before it. There had passed through the Republican Congress a budget resolution that gave the Appropriations Committee a certain amount of money and its discretionary allocation. There may have been members of the committee that would have wished it to be otherwise, but there's the number, okay, that's what we can live with. Let's do our work. The problems came more with sort of specific things that, again were more the House than the Senate, I think, wanted to see done. The problems came more with policy matters, legislation written into appropriations bills. That became the bigger issue, I think, in trying to ultimately resolve differences with the House than in just moving the bills and dealing with the numbers.

**RITCHIE:** Was that when the precedent was established that you could legislate on an appropriations bill? I remember that Senator Hutchison got that through.

**KENNEDY:** You're absolutely right. It was in '95 or '96—one of those, it was probably '95—where Senator Kay Bailey Hutchison from Texas offered an amendment to the Interior appropriations bill relative to the endangered species act, and it was legislative in nature. A Rule 16 point of order was made that it was legislation. The chair concurred. She didn't attempt to raise the defense of germaneness—and I don't recall now whether it was because there wasn't a conceivable defense, or if she just didn't know that was available to her. But in any event, she appealed the ruling of the chair, and the chair was overturned. Therefore, you're right, there was a precedent established that the Senate had decided that Rule 16 was not in effect anymore. There were those on the Republican side of the aisle that were briefly elated at this, and then over time it came to be

understood what a Pandora's box this was. Eventually, when Senator Lott was leader, some years later, he engineered a reversal of the precedent to reestablish Rule 16. But it took a while for everybody to realize that was in their common interest.

**RITCHIE:** I remember the Parliamentarian expressing his frustration that the rules said one thing but the precedents said just the opposite, and he had to advise the chair to follow the precedent.

**KENNEDY:** That's right. It was interesting to me the other day—and this is bouncing off the subject, at least bouncing out of the time frame—when the Senate had under consideration the Iraq supplemental. Senator [Jim] DeMint of South Carolina raised a Rule 16 point of order against a particular part of the agriculture relief portion of the bill. Senator [Patty] Murray, who was managing for the Democrats, on the advice of staff, raised the defense of germaneness. There followed several minutes of confusion because nobody had heard that in such a long time. Senator [Barack] Obama was in the chair, and of course he didn't have an appreciation of what all that meant. The Parliamentarian was advising and various people were jumping up in the chamber, demanding to know what was going on. It was very confused.

**RITCHIE:** Senator DeMint, like a lot of senators these days, came from the House, and there germaneness means something very different.

**KENNEDY:** Indeed.

**RITCHIE:** Over there it's very much enforced, and over here it's a lot looser.

**KENNEDY:** Well, one of the people that stood up to inquire what was going on was Senator [Jim] Bunning from Kentucky, also a former member of the House. The presiding officer had said on the advice of the Parliamentarian, that the question is: is the amendment germane? Because under the precedents of the Senate, the Senate decides that, the chair just doesn't rule. Bunning jumped up and said, "Do you mean to tell me that the Senate will decide what is germane? Isn't it the Parliamentarian's job to do that?" Anyway, they worked it all out.

**RITCHIE:** It was in '95 that President Clinton vetoed several appropriations bills

and we had the government shut down. Was that really a product of the appropriations bills or a product of the budget agreement. Did the budget set the issues that he was vetoing or was that a matter of what was actually in the appropriations?

**KENNEDY:** Well, I think the first one he vetoed, oddly enough, was the Leg. [Legislative] Branch Appropriations bill. I recall having a heated discussion with Pat Griffin, who was then head of legislative affairs for President Clinton, about doing that. I was in high dudgeon talking about how outrageous it was that the president would deny the Congress funding for its own operations, and comity between branches, and all that. And he said, “Well, you tell me what you’re going to do with the Treasury Appropriations bill, which funds our operations, and then maybe we can have a discussion. But” –again this was more of an issue with the House– “as long as the House is pushing these certain things, we will not sign the Leg. Branch Appropriations bill.”

They had their issues in the Treasury bill, and that actually produced a very contentious conference. Senator [Jim] Jeffords was the chairman of the Senate Treasury Subcommittee. His counterpart in the House was one Ernest Istook, who is a very conservative fellow. The House was trying to put through as legislation a requirement that people testifying before Congress had to stipulate certain things like whether the organization ever got any federal funds, or something like that. The Senate was having none of it, and the conferees were just at loggerheads. Senator Jeffords, with Senator Hatfield concurring, just wanted that particular amendment to be reported in “true disagreement,” which had been the procedure. When conferees couldn’t agree, and you had true disagreement, you reported that particular matter in true disagreement so the House could vote first on the conference report and then vote on the matter in disagreement. The House refused to do that because the leadership of the House was fearful if that particular amendment were reported in true disagreement, the House, voting as a whole, would agree to recede to the Senate position and drop the language.

I honestly forget how it ultimately got resolved, ultimately it obviously did, but one of the things I believe it led to, in subsequent years, was a change in procedure. In those days the Senate relied on so-called numbered amendments. The House would send an appropriations bill. It would come to the Appropriations Committee. The Appropriations Committee would report out that bill with lots of amendments. The committee would just let stand in the House bill what it agreed with, and just altered

those things that it disagreed with. Then the bill would come to the Senate floor and the same procedure would happen on the floor. When the bill left the floor, it was a bill with Senate amendments, plural. When we went to conference, the conference was only on the amendments. If the House passed an Energy Appropriations bill and it said fifty million dollars for this particular thing, and the Senate agreed with fifty million, when we got to conference you didn't talk about that. It wasn't an issue. You only talked about separate amendments.

In '95, in that Treasury bill, one of those separate amendments was the Senate had stricken that House language. Under that old procedure of numbered amendments, when you couldn't reach agreement on a particular thing, as I said, it was reported in true disagreement, and each House would vote on it separately and apart from the whole conference report. In the late '90s, and certainly on through to date, the Senate Appropriations Committee now takes a House appropriations bill, strikes everything, and offers a complete substitute, so that when the committees go to conference now, everything in both bills is still in dispute. But when the conference is over, there is agreement on everything in both bills, and the conference report comes out and there is just an up-or-down vote on the conference report, as is the case with authorizing legislation all the time.

It was a significant departure from historic appropriations procedure, and it allowed for the leadership—and in time the Senate leadership caught on to this—to do things that it had never been able to do before: to use appropriations vehicles to carry matters that would not have survived had they been using the old procedure. It enabled the leadership to walk into conference, to an appropriations conference, and drop in entirely unrelated legislation and get the conferees to agree to it, get the House Rules Committee to issue a rule waiving all points of order, and the two bodies would be presented with stuff they had never seen before on an up-or-down vote on a appropriations bill. Not a good procedure. It would appear that the Senate committee is going to continue to use the amendment-in-the-nature-of-a-substitute process, but it would also appear that both bodies, and the House has formalized this in revisions to their rules, are going to be resistant to new material being added in conference.

**RITCHIE:** When the bill comes out it's this thick, and people don't even see the new material that's gotten into it.

**KENNEDY:** Right.

**RITCHIE:** Could you describe, from your perspective, what it was like when that confrontation was happening between the Clinton administration and the Congress—really the House?

**KENNEDY:** It was a very frustrating time. And it was a very confused time. By the time all this had occurred, Senator Hatfield had announced that he would not run again. Senator Dole, everybody knew, was going to be running for president. The House took a continuing resolution and added to it—again, legislative provisions relative to Medicare—thinking that the president would be forced to sign it in order to keep the government running. I think that Senator Dole and others cautioned that maybe this was not the best thing to be doing, in private counsels, but ultimately the decision was made that this was how Congress would proceed. It went to the president and he vetoed it. Then the House, and I think certainly to my surprise and to the dismay of lots of folks in the Senate, the House decided that they just wouldn't pass another continuing resolution.

So large portions of the federal government were out of money. They had no budget authority to obligate, and we just sat that way for what? Ten days? Two weeks? A long period of time. Senator Dole tried various things to get us unstuck. The Senate passed the bills and sent them to the House, to try to get things going again, and nothing happened until it became so abundantly clear to everybody that the president was winning the public relations campaign. The American people were saying: "What in the world are you guys doing?" Eventually, of course, a continuing resolution was passed to get the government up and running again, and then there were protracted negotiations on into '96, to finalize the particulars of I think the five remaining appropriations bills that had not been enacted. That eventually got signed into law as a comprehensive package, and people moved on, but it was a searing experience, something that people said they never would want to go through again.

**RITCHIE:** I think a lot of members were surprised that the public missed the government services. They thought they wouldn't notice that they were gone.

**KENNEDY:** Yes, they were. I mean, there were a lot of folks in those closed

meetings that said things like, “Hey, it’s not our government. It’s his government.” Or “These are programs we don’t like anyway.” They just totally missed the point. No, it’s not your government or his government, it’s the American people’s government, and there are people out there that know these programs exist, and benefit from them, and think they’re a good thing.

**RITCHIE:** The most dramatic image for me was driving to work in the morning—there was a lot of snow in Washington at that time—and seeing people standing in line in the snow for the Vermeer exhibit at the National Gallery of Art, which shut down with everything else. Anyone who would stand out in the snow at dawn to see an art exhibit would be pretty outraged when the politicians got in their way.

**KENNEDY:** Yeah, that was one that the media certainly played up. Here were folks coming to Washington, to their nation’s capital, to see their museums, and they were closed. The Smithsonian was closed, the National Gallery was closed.

**RITCHIE:** They always used to use the Washington Monument—that if you cut back the National Park Service they would shut down the Washington Monument. It turned out that the National Gallery of Art had more influence than the Washington Monument!

**KENNEDY:** Exactly.

**RITCHIE:** What do you feel was the result of that showdown? Was there any benefit after all that? Did people learn any lesson from that experience?

**KENNEDY:** Well, yes, it was a lesson that you would have hoped didn’t need to be taught but I think people learned the lesson that you don’t want the government to shut down. I suppose the political lesson that was drawn was you don’t want to be seen as the cause of the government being shut down. And Congress was seen as the cause of that, and in my opinion rightly so. The Congress decided to just shirk its responsibility until the American people brought it to its senses.

**RITCHIE:** They could have gotten around that by passing another continuing resolution.

**KENNEDY:** Sure.

**RITCHIE:** There was a mechanism for doing it without necessarily giving in to the president.

**KENNEDY:** Absolutely, and they could have passed a continuing resolution that would have constrained spending to very fiscally constrained levels. They could have passed a continuing resolution that would have kept everything at the previous year's level, or some percentage below that. Had it been simply a federal spending level argument, I think the Congress could have won. But when they threw in this extraneous thing on top, about Medicare reimbursements, that had the effect, as I understood it, of increasing the costs for Medicare recipients, increasing their co-pay or whatever it was, then the Congress gave the president a whole other issue to talk about, and lost the argument.

**RITCHIE:** About that time, a memorable event occurred in the Senate: the vote on the Balanced Budget Amendment. I've never felt the atmosphere in the Senate chamber as dramatic as it was that day, and I wondered if you could talk a little bit about the Balanced Budget Amendment and Senator Hatfield's role in that?

**KENNEDY:** Well, it was. It was an incredibly tense atmosphere. Of course, the constitutional amendment to balance the budget was one of the items in the Contract with America. And the House, as the House had done before, passed the amendment by the necessary margin. Everybody knew this was coming. Everybody knew the Senate was going to have a vote on it. Some weeks before the Senate took it up for consideration and had a vote, Mark Hatfield got up on the Senate floor and made a speech about the amendment and said that he would vote against it. Now, he had voted against it before. He had also voted for it before. There was a time in the early '80s, I believe, when it came before the Senate and he voted for it, as did one Robert C. Byrd. In fact, they almost literally held hands in the Senate well and both voted for it. It failed of passage that time, too. Anyway, Senator Hatfield got up and announced his position, explained his reasons, and it sort of passed largely unnoticed, I guess because people knew that's what he was going to do, and there were those on the Republican side of the aisle who were confident that they had the votes, relying a good bit on certain members on the other side of the aisle who had, in their political campaigns, had said they favored such an

amendment, therefore they expected they would vote for it.

Well, as the days wore on and better vote counting was conducted, the supporters of the amendment came to realize that some of those votes on the Democratic side of the aisle were not going to materialize. And every Republican was going to vote for it—except Mark Hatfield. The pressure became very intense. He was getting calls from all over creation. Elizabeth Dole, who was then the head of the American Red Cross, called him up and talked to him about how important this was to Bob Dole. There's a minister out in California that preaches from the so-called Crystal Cathedral—

**RITCHIE:** Oh, Schuller.

**KENNEDY:** That sounds right.

**RITCHIE:** Robert Schuller.

**KENNEDY:** He called up Mark Hatfield. I think Billy Graham called Mark Hatfield. One of my favorites was Haley Barbour, who came calling. I've worked with Haley since, and I love to tease him about this. He came to see Mark Hatfield, and Haley was chairman of the Republican National Committee at the time. His pitch to Senator Hatfield was again how important this was to Robert Dole, and one of Senator Dole's competitors in the upcoming presidential race was going to be one Phil Gramm, and Haley Barbour was saying, "You need to help Bob with this, if this thing goes down it's going to be blamed on him and Phil Gramm is going to get the nomination." Of course, Phil Gramm spent a whole lot of money and didn't get a single delegate. So much for Haley's political calculation.

Then last but by no means least Senator Dole came to see Senator Hatfield on the day of the vote. He came downstairs from his leader's office to the Appropriations Committee in S-128. I ushered him back to the chairman's office, and then got out of there, so I did not personally hear the conversation. But Senator Hatfield told me afterwards that he had told Dole he would resign. He would just step out of the Senate and then Senator Dole would have his necessary two thirds. I've seen Senator Dole quoted somewhere since as having said he thought that was a grandstand stunt and didn't believe that Hatfield would do it. Senator Hatfield, as you might expect, has said no, he

was absolutely sincere in that offer. And I think he was because even though he had not publicly announced it, I think he knew in his own mind he wasn't going to run again.

But anyway, it was a very difficult time for him. He felt a lot of pressure. The pressure he didn't mind so much, I don't think. I mean, he had stood up to pressure before back in the McGovern-Hatfield days with the Nixon administration. As Senator John Warner has told me, he had heard from Hatfield personally of Hatfield as a young naval officer getting Marines in the boats to go land on Iwo Jima, and how tough he had to be to make that happen. He doesn't lack for courage. But I think it was hard on him because he had so many friends of his who were urging him to do something, and putting it in terms of "do something for these other people." But it was just against a stand that he had taken in principle. Of course, the odd thing was—it's not odd, but this is true in a lot of these situations—the more the pressure intensified, and the more public it became, for Mark Hatfield the less chance there was that he was going to change his mind. The last thing he wanted to demonstrate to the world was that he could be pushed around. It just wasn't going to happen.

**RITCHIE:** And of course he was proved right in the end, because they were able to balance the budget without this cumbersome amendment.

**KENNEDY:** Indeed. That's exactly right. But if you were in the gallery, or if you saw it on TV that day, you'll recall that they did one of these scenes where all senators were at their desk and voted from their desk. He rose and gave a sort of strangled "no" and sat back down.

**RITCHIE:** I can remember the expression on Senator Dole's face.

**KENNEDY:** He was not a happy man.

**RITCHIE:** There are only a handful of times that I've seen all the senators sitting at their desks in the chamber.

**KENNEDY:** Yes, that's right.

**RITCHIE:** And every seat in the gallery was packed, and the entire press gallery

was up there, leaning over to get a better view of what was going on.

**KENNEDY:** Yes, it was high drama, it really was.

**RITCHIE:** And it was a symbol of what the Senate can be: one senator can stand his ground and prevail.

**KENNEDY:** Interestingly—when was this?—two years ago I think, Senator Cochran sits on the Profiles in Courage board of the Kennedy Library. A couple of years ago, I learned that some young high school student wrote the award-winning essay on a Profile in Courage about Mark Hatfield’s vote on the Balanced Budget Amendment, and was recognized at the annual Profiles in Courage ceremony up there at the Kennedy Library. Obviously, I got a copy of the essay, and it was fun to read. You might want to find it yourself and put it into the files around here.

**RITCHIE:** Yes. Immediately after that vote, the Republican Conference rewrote its rules, and one of the rules dealt with electing chairmen of the committees. It was clearly connected to Senator Hatfield’s independence on that particular vote. Do you think if he had chosen to run again that he would have been challenged for his chairmanship in the next Congress?

**KENNEDY:** I don’t think so. Who knows, of course, it would have depended in large part on the makeup of the committee and what other things may have happened. But yes, it was in the wake of that vote that Senator [Rick] Santorum and Senator Connie Mack—Santorum being the more vocal of the two but Senator Mack being equally part of it—led a discussion in the Senate Republican Caucus about how “we just can’t let this happen.” If you were a chairman you were supposed to be part of the leadership team, and this was a leadership vote. Of course, these were two former House members, Senator Santorum at the time just fresh from the House, and this was very much a House of Representatives mentality. And while all this discussion was going on—and it went on for some time before the caucus finally met and did make some rules changes—Senator Hatfield would be sitting out on the Senate floor, since this was early in ‘95 it was probably a supplemental, and various senators would come by and say, “Don’t worry about this, Mark, we’re not going to let them do it.” These were people on both sides of the aisle. I particularly remember Senator [Ernest] Hollings of South Carolina coming up

to Senator Hatfield. They were old friends. They'd been governors together back in the '60s. Hollings reminded Senator Hatfield that the *Senate* votes on who chairs a committee, and there would not be a single Senate Democrat who would vote for replacing Mark Hatfield with somebody else. And Senator Hatfield took some comfort in that, I dare say, because he probably had his thoughts that if it were left entirely to the Senate Republican caucus he might not keep his seat.

The Senate Republicans—I believe you are right, I have no reason to think otherwise—they did change their rules, and they did change the way Senate Republicans decide who to recommend to the Senate, but the Senate ultimately still votes on committee memberships and chairs. It wasn't the first time in my tenure, or yours, where the question of who chairs was an issue. You'll remember the back and forth between Senator [Richard] Lugar and Senator [Jesse] Helms on who was going to chair Foreign Relations. Senator Helms—he chaired it at one point and decided he would go to Agriculture?

**RITCHIE:** He had run for office promising that he would chair Agriculture, but then he said that was only for one Congress, and he exerted his seniority on Foreign Relations.

**KENNEDY:** That's right, it's not that Helms had relinquished it, but he stood aside and Lugar got it. Then Helms came back in a couple of years and exerted his seniority. Interestingly, it was folks like Mark Hatfield, and Lowell Weicker, and Bob Stafford, that crowd, who were certainly more politically and philosophically aligned with Dick Lugar than with Jesse Helms, but they supported Helms down the line, because they said, "If this gets left up to ideological purity, we don't have a chance, so stick with seniority."

**RITCHIE:** Yes, the Senate has a history of having some of its iconoclasts and insurgents winding up as chairmen of committees, not necessarily following the party line, so anyone who is as independent-minded as Lowell Weicker would never stand a chance unless there was a seniority system.

**KENNEDY:** Right.

**RITCHIE:** Well, Senator Hatfield's Senate career ended when he did not run in 1996. Did you have any thoughts about staying in the Senate, or were you looking to leave with him?

**KENNEDY:** I'm sure, yes, I had some fleeting thoughts about staying on with Senator [Ted] Stevens, continuing to work as staff director on the Appropriations Committee, which I'll always believe is the best job one can have in the Senate. But those two gentlemen are very different, and it would have been a very different experience working with Senator Stevens. The more I thought about it, the less that seemed liked the right thing to do. The more time passed without my actually going directly to Senator Stevens and talking to him about it, the more he was focused on getting somebody else to do it. In say June of '96, sometime in the summer of '96 thereabouts, Senator Howard Baker called up Senator Hatfield and after they had some preliminaries, Senator Baker asked Senator Hatfield what I was going to be doing, and would I be interested in coming down and talking to him. So that sounded like a reasonable thing to do, and I did. I went with Senator Baker to Baker Donelson in '97.

I also talked at one time with Congressman Bob Livingston, who was chairman of House Appropriations at the time, about maybe going over there and working on House Appropriations, which one of my colleagues in the Senate Appropriations Committee did after Senator Hatfield retired. I was interested mainly because I only had, what, eighteen more months of service before I could retire. Ultimately, I decided I didn't want to do that. Ultimately, I figured out another way to get that time.

**RITCHIE:** Well, we've gone passed three now. Did you want to stop now?

**KENNEDY:** Yes, this would be a logical time to stop. As I've said to you before, so you can take this with a grain of salt, but I will try to be more faithful and we can get this thing wrapped up!

**End of the Fifth Interview**

## INSIDE AND OUTSIDE THE SENATE

### Interview #6

Wednesday, May 16, 2007

**RITCHIE:** We had gotten up to Senator Hatfield's retirement, and it was then you went to Baker Donelson. I was looking at your biography online, and I noticed that the firm identified you as a "public policy advisor," but didn't define what that was. I thought we could start with that.

**KENNEDY:** Well, a "senior public policy advisor" in the parlance of the Baker Donelson law firm is the phrase that Senator Baker and others came up with in lieu of the word lobbyist. I mean, everybody throughout town in the lobbying business has different euphemisms for what they do, but that's our title for lobbyist.

**RITCHIE:** How would you define the responsibilities of the position? What actually did it involve?

**KENNEDY:** Well, as it does in all of these situations, it involved helping existing clients of the firm navigate the shoals of the legislative process and hopefully finding new clients for the firm that needed some assistance in that regard. I found, in my first tenure at Baker Donelson, and in my current one, that most of what that entails is providing counsel and advice, and information about what the Congress is doing, likely to do, not doing, not likely to do; when various things might happen; who sits where; who's influential in certain decisions and who's not. And not very much of the work, at least for me in my experience, has been actual lobbying, that is, coming to congressional offices and meeting with members and staff, seeking a particular legislative outcome.

**RITCHIE:** Does someone else in the firm do that, or do the clients do that themselves?

**KENNEDY:** All of us do it to some extent, but I think all of us have had a similar experience, that most of what you spend your time doing is advising the clients. Yes, most of the clients then, armed with that information, are better able to go lobby themselves. Certainly when I was on staff up here, I was more receptive to, if you will, and more appreciate of someone who came and plead their own case and didn't have to

get somebody to do it for them. Now, some people are better positioned than others to do that. Some of my clients at Baker Donelson have included some small and some not-so-small non-profit entities, who are not as knowledgeable or sophisticated in the ways of Washington. Sometimes they need a little more direct on-site help than others. But the big folks, the Boeings and the Lockheeds and the Nuclear Energy Institute and all that crowd, they know how to come here and argue their case.

**RITCHIE:** Did you specialize in any particular type of clients or requests?

**KENNEDY:** No, not really, because most of my tenure in the Senate I was working as the staff director of the Appropriations Committee, be it in the majority or minority. At the full committee level one tends to learn a little bit about a lot and not a whole lot about any one particular thing. With the possible exception that you do learn a whole lot about legislative procedure. And, of course, you learn that the appropriations process one way or another affects everything the government does. So I had a variety of clients and a variety of industries, all of whom either had something at stake in the appropriations process or wanted to try to influence the executive branch one way or another in the appropriations process. That included a regulated electric utility, it included a pharmaceutical company, it included the American Trucking Association, it included the American Newspaper Association. I mean, it's a pretty broad range of folks.

**RITCHIE:** It was about that time in the late '90s that earmarking was taking off. Did your clients come to you to figure out how to get an earmark?

**KENNEDY:** No, the only client that I had in my first stint there at Baker Donelson that was very focused on getting federal dollars was the international organizing committee for the Special Olympics Games held in and around Durham, North Carolina in 1999. They were a very nice client to want to help, and in the end they received \$12 million worth of federal money, which helped them enormously to put on very successful games.

**RITCHIE:** Was it a matter of finding the right sponsor in that case?

**KENNEDY:** Yes, and it was a combination of things. It was knowing where to go, the appropriate places to look for some federal support, and the guy that was the

executive director was knowledgeable in this process. He may have worked on the Atlanta Olympics. But in any event, he knew where various programs existed that had lent this kind of support before. It also helped considerably that Senator [Lauch] Faircloth of North Carolina was on the Appropriations Committee at the time, and the games were going on in his home state, and he was up for reelection. It was a confluence of events that produced a very successful outcome.

**RITCHIE:** It makes a big difference if it's happening in a senator's state.

**KENNEDY:** Indeed.

**RITCHIE:** Having spent so much time on Capitol Hill, and now stepping away from it, how different did the Congress look once you were downtown?

**KENNEDY:** Well, it didn't look that much different to me, I don't think. But one thing I began to appreciate almost immediately was when you are here you take for granted how easy it is to get information about what's going on. Off Capitol Hill, it can be very difficult. The institution become impenetrable. The things that you took for granted become very hard to come by.

**RITCHIE:** Is it the personal connections, that you see people who are in the know and they keep you informed?

**KENNEDY:** It's that. Part of it is that you are part of the process. On the part of folks who just left the Hill there is a reluctance to pick up the phone and pester the folks you were just working with, because you know they're busy and they've got other things to do. But having said all that, the digital age has changed that significantly. The accessibility of the information now is better than it used to be, and happens much more quickly. A conference report gets filed and boom it's on the House Rules Committee web page and everybody gets to see it.

**RITCHIE:** I suppose your years of experience up here also helps you to read a conference report, to find what was buried within it.

**KENNEDY:** That's true. It's useful to know where to look.

**RITCHIE:** Especially with appropriations, it's always fascinating to see what comes out of conference, since a lot wasn't there when it went into conference.

**KENNEDY:** And for real connoisseurs of process there's always a certain interest in looking to see what they've come up with this time. In this Congress, when the first Iraq war supplemental emerged from the House Appropriations Committee, in Mr. Obey's report accompanying the bill there was this one sentence: "The committee has included language relative to spinach." Period. And of course that turned out to be a provision of law providing federal assistance to the spinach growers, primarily in California, who had been disadvantaged because of the E Coli scare. That's all they were constrained to say about it in their report.

**RITCHIE:** Working in a firm like Baker Donelson, did you also get involved in campaign fundrasing? People who are seeking help from Capitol Hill are often expected to provide help in some way.

**KENNEDY:** Not very much, quite honestly. It increased a little bit over the years that I was there. But it had more to do with the clients. I mentioned earlier that one of our clients when I was there in my first tenure was a regulated utility in the Pacific Northwest. As folks from that company would come to town and I would take them to meetings in various offices, those offices made the connection between me and the company, so over time I started to get faxes, "You're invited to..." Ninety percent of those things I would ignore. That's still the case in this tenure as well. Every now and then the firm would have a small event, a breakfast or a lunch for somebody, but not very often. There's not a whole lot of that.

**RITCHIE:** Baker Donelson is an interesting firm because it's got people from all sides. Wasn't Linda Daschle working there?

**KENNEDY:** Yes, indeed.

**RITCHIE:** Was this Senator Baker pulling in people that he knew? You mentioned that he called about you specifically. Was he the person setting up the shop?

**KENNEDY:** Yes, certainly. The Washington office of the law firm, which when the Washington office was established the firm was called Baker Worthington, is very much Senator Baker's creation. He set out from the beginning to have it be a law office and to have a public policy practice. The public policy group is populated primarily—not exclusively—with non-lawyers, which has worked out fine. I think he also was attentive to making it a bipartisan firm. Party affiliation is not uppermost in his mind, but I think he did not want our public policy enterprise to be regarded by others as a gaggle of people who used to work for Republicans.

**RITCHIE:** I suppose if part of the process is getting doors to open, it's good to know people behind a lot of different doors.

**KENNEDY:** And I think it's a tribute to Baker and his standing in Washington, and throughout the country for that matter, that when Linda decided that she wanted to leave government, leave being deputy administrator of the FAA, that she wanted to come to the Baker firm. Clearly, her associations are with the Democratic Party, but she recognized in Baker someone with standing in Washington that transcends party affiliations. She wanted to do that too. I don't think she wanted to be in a pigeonhole of just one particular party affiliation.

**RITCHIE:** You did this work from 1997 to 2003. What made you decide to come back to Capitol Hill after having escaped for a while?

**KENNEDY:** Well, as I think we may have discussed in one of the earlier conversations, I learned at some point after I left here the first time that I needed to spend some more time in the system in order to be assured of health benefits as a federal retiree.

**RITCHIE:** Under the old Civil Service System.

**KENNEDY:** Right, so I knew that at some juncture I would be coming back. When Senator [Bill] Frist became majority leader, and followed Senator [Tom] Daschle's good example of picking someone with a law enforcement background to be Sergeant at Arms, it occurred to me that that's a good decision but somebody like Bill Pickle, who is Sergeant at Arms after having had spent thirty years in the Secret Service, may not know all that much about the Senate. So I approached Howard Liebengood, who was Senator

Frist's chief of staff in his personal office. One thing led to another and I get selected to be Deputy Sergeant at Arms, which was a terrific job, and it took care of the little problem of having enough time to qualify for health benefits.

**RITCHIE:** You say terrific, but it had to be a complicated job, because the Sergeant at Arms operation is huge.

**KENNEDY:** It is huge. The Sergeant at Arms is the single largest employer in the United States Senate. As you know, every office is an independent hiring authority, but the Sergeant at Arms has got approaching nine hundred people working for him and spends a couple of hundred million dollars a year. He's sort of the quartermaster of the Senate. He provides all kinds of services in addition to the—these days—primary role of security. The Sergeant at Arms takes care of a host of things that makes senators' lives and the operations of their offices a lot easier on a day-to-day basis. It was not unlike being the COO of a not-so-small business. It was fun.

**RITCHIE:** How did you divide things up with Mr. Pickle?

**KENNEDY:** Well, we very quickly hit it off and worked out a very enjoyable and I think productive relationship. He was very much the CEO. Things didn't get to his desk unless they absolutely had to. He was very much the principal security officer and the principal protocol officer. I was more responsible for the day-to-day management of the place, in which task I was enormously helped by the assistant Sergeants at Arms in the organization and by the directors of the various elements in the organization. There are about twenty of them. They are the real worker bees who make the place go. Unlike any other organization in the Senate that I know of, the Sergeant at Arms is pretty hierarchical. Those folks down there, the mid-level managers were really the ones who got the work done. Everything else just percolated up.

**RITCHIE:** One of the big changes around here in the last fifteen years or so has been the Congressional Accountability Act. Did you find that that impacted on the type of work you were doing?

**KENNEDY:** Oh, yes. At the time we had an outstanding man as the head of the

Sergeant at Arms' human resources office, Doug Fertig. Doug had come to the Senate from the city of Alexandria, I believe. Anyway, he was the head of human resources, and he was the guy who brought to me personnel issues. Because of the Congressional Accountability Act, the grievance procedures and the job classification procedures and all kind of other things were much more formalized that they ever had been, and I think more so in the Sergeant at Arms office than perhaps in the Secretary of the Senate's office or any other place in the Senate. Again, they're the biggest organization. The employees of the Sergeant at Arms range from Ph.D.'s working in the Computer Center to blue-collar folks moving furniture around and running woodworking machines or printing presses down in Postal Square. It's a very disparate employee base with different kinds of issues. From time to time, disciplinary actions had to be taken. From time to time, the Sergeant at Arms got taken to court. I think there's still at least one case that actually predates my tenure in the Sergeant at Arms' office that is somewhere out there in the federal judicial system.

**RITCHIE:** We just had a case where a staff person sued a senator who fired him. The Senate employment counsel argued one side of the case and the Senate legal counsel argued the other side of the case.

**KENNEDY:** Right, it's been argued before the Supreme Court.

**RITCHIE:** They haven't rendered a decision yet.

**KENNEDY:** Right. It's going to be interesting.

**RITCHIE:** They'll probably find a technicality to slide by on.

**KENNEDY:** I'm sure they're going to want to stay out of it as much as they possibly can.<sup>1</sup>

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<sup>1</sup>On May 21, 2007 the Supreme Court held that it lacked jurisdiction in the case of *Office of Senator Mark Dayton v. Hanson* because the District Court's order that a trial be held had not stated any grounds for its decision and therefore could not be characterized as a constitutional holding.

**RITCHIE:** The other huge change was that September 11<sup>th</sup> changed the whole security issue on Capitol Hill. That's a major part of what the Sergeant at Arms does. Did you get involved at all in security issues, or was that Mr. Pickle's?

**KENNEDY:** Well, it was Mr. Pickle's call, because he had the experience in that world. I was with him every step of the way and involved in the various decisions that were made, primarily with the Police Board, which is a joint House-Senate entity. It's the House Sergeant at Arms, the Senate Sergeant at Arms, and the Architect of the Capitol. Those three individuals sit down every other week or so and consider various security issues and operational issues with the Capitol Police and how people ought to be deployed, and whether or not certain streets ought to be open or closed, with the approval of the Senate Rules Committee and the House Committee on Administration what sort of thing is going to happen on campus to improve security and the like. If I made a contribution in those discussions from time to time it was to offer a perspective from the point of view of somebody who has served in the Senate for a long time--this to remind Mr. Pickle that this is the Senate, this is not the White House. There are certain things that come to be accepted as standard practice downtown that the Senate will not tolerate, in terms of security, and who can go where, and who can do what.

**RITCHIE:** It's the great conundrum of being in the most open of all federal buildings and the visitors being constituents and potential voters.

**KENNEDY:** That's exactly right. It is a conundrum. The Congress of the United States has spent tens of millions of dollars, and that's not counting the Visitor Center, on various security measures up here on Capitol Hill that I think is sort of fighting the last battle. All these barriers have been put up against vehicles, and that's all well and good. And yes, that may deter certain things. But it has not made this campus by any means invulnerable or impenetrable. Anyone who is dead set on doing harm to this institution can do so. I don't think there's anything that we'll ever be able to do about that.

**RITCHIE:** And the Capitol will always be a symbol, which means it will always be a target.

**KENNEDY:** That's right.

**RITCHIE:** Well, did you find yourself dealing with the Appropriations Committee in terms of the Sergeant at Arms' appropriations?

**KENNEDY:** Oh, yes. Mr. Pickle was only too happy to dispatch me to deal with the Appropriations Committee, because the Sergeant at Arms' office, like everybody else, is dependent upon the judgment of the Appropriations Committee on how much money is going to get appropriated. So I was frequently in the offices of the Appropriations Committee, pleading our case and attempting to interpret back to Mr. Pickle where we stood and why.

**RITCHIE:** My sense, though, is that the legislative appropriations side of it is probably a little easier than the executive branch appropriations.

**KENNEDY:** Oh, it is. But it is also a very small world. There are only a few people who are really focused on it, pay attention to it, and care about it. Just a couple of decision makers. When you get that one influential decision maker who likes something, or they don't, that can make a big difference. Senator Ben Nighthorse Campbell was chairman of the Leg. Branch subcommittee in '03 and '04, in his last two years here in the Senate. It was because he was so very interested in it that the U.S. Capitol Police got a mounted unit, guys on horseback. The then chief of Capitol Police, Terry Gainer, was delighted with it. Lots of people were because it's widely known in the law enforcement community that a mounted unit is very, very effective in crowd control. It is a "force multiplier," as the defense guys like to say. So for a couple of years there, the Capitol Police had a mounted unit. Then the leadership changed on the subcommittees and the next chairman in the House didn't like horses, so now they are gone.

**RITCHIE:** So you really have to know the personalities of the senators who are on the committee, and their peccadillos.

**KENNEDY:** I remember the first time that Mr. Pickle testified as Sergeant at Arms before the Leg. Branch subcommittee. I was there with him, and Chief Gainer was there, he would be testifying later on the agenda about the Capitol Police. Before the hearing, Pickle and I walked up to the dais and we were saying hello to the staff people, one of who said to me, "How does it feel to be on the other side of this?" I said something like, "It's a little different. I understand that you guys are in charge. You'll be

making the decision. But on the other hand, the people on this side of the dais all have guns.” But it was then, is now, a very happy relationship. The Sergeant at Arms tries to be attentive to the committee and vice versa.

**RITCHIE:** Well, and especially because your office was providing services to the senators, one was protection and the other was technical services, and it clearly benefitted when funding for those services was increased.

**KENNEDY:** That’s right, and the committee is mindful of that fact. The committee has the role of making sure that what’s getting appropriated is proven and justified, and is going to be spent wisely, and is not a penny more than is actually needed. But the committee is also mindful that if it provides insufficient money for something that the Sergeant at Arms is going to be doing, you’re absolutely right, that ultimately impacts on senators’ offices.

**RITCHIE:** It strikes me that both the Secretary of the Senate and the Sergeant at Arms offices are in the same boat in the sense that their job is make the institution run smoothly so that no one actually notices what they’re doing for them, so the legislators can focus entirely on the legislation and not have to worry about the day-to-day administration of the institution. It’s only when some part of those organizations doesn’t function well, or gets some bad publicity, or doesn’t fulfill the mission they are charged to do, that all of a sudden the Senate notices they are there.

**KENNEDY:** Right. And then the Secretary and the Sergeant at Arms have at least one hundred folks who think they could have done it better.

**RITCHIE:** But considering how many people work up here, it seems to work fairly efficiently in that there aren’t that many flaps about the day-to-day operations.

**KENNEDY:** No, I don’t think so. I think as much as anybody, the police face the brunt of complaints, because it seems to me that when there are hiccups they seem to be problems with perimeter security. People get their feathers’ ruffled about how they are treated when they come through the doors or through the detectors, or what they have to do if they get challenged. As you know, there are a lot of prima donnas around here.

**RITCHIE:** The Capitol Police force also grew enormously and you have a lot of people who aren't as familiar with the lay of the land.

**KENNEDY:** True.

**RITCHIE:** We used to have the same policemen at the door who were there every morning and who knew everyone by sight. Now there's less continuity, deliberately in some respects, officers are rotated to different posts. So distinguishing between a member of Congress and a staff person and a tourist sometimes doesn't come as readily.

**KENNEDY:** Right.

**RITCHIE:** That's a reflection of how the whole security apparatus has mushroomed.

**KENNEDY:** It really has.

**RITCHIE:** Well, in 2005, you went back to the Appropriations Committee. What was it that drew you back?

**KENNEDY:** Well, the way that evolved, actually it was in May of 2004 or thereabouts—I guess it was earlier than that, probably April of 2004 I got a call from Senator Cochran's personal office chief of staff, Mark Keenum, who asked if I could come over and see him. I went over and sat down in Mark's office and without a whole lot of to-do, he said, "Senator Cochran is anticipating being the next chairman of the Appropriations Committee and wonders if you'd be interested in being staff director again." Which I honestly had not anticipated him saying. So I stumbled around a little bit and eventually said, "Yes, I think so, but give me some time to think about this." Because I said to him I really hadn't thought that I'd be back up here in the Senate for much more than a couple of years. I was thinking that at the end of the 108<sup>th</sup> Congress, having done my time in the Sergeant at Arms office, gotten the time I needed for some benefits, I would go back to the private sector somewhere, Baker Donelson or someplace else.

So the family went off for the boys' spring break and spent a week at the beach. My wife Patricia and I talked about it. It really wasn't that hard of a decision to make. I mean, it's a wonderful job, I knew that. I knew that the job had changed since I last had it, and I also knew that I would be working for somebody different. It wasn't going to be Mark Hatfield anymore. I had gotten to know Senator Cochran when he first came on the committee in 1981, so I had been around him and had gotten to know him over the course of a number of years. I thought it would be great to work with him. So I came back from that trip in the spring of '04 and said, "Yes, sir." I said it to Mark Keenum, "Yep, I'm ready to do it." Then I had the meeting with Senator Cochran to make it official. Then both of us tried as best we could not to say anything about it for the next series of months. Up until January of 2005, not until Senator Cochran officially became chairman of the committee was there anything publicly said about my coming back to the committee, although word did percolate around.

**RITCHIE:** That marked the first time that a chairman of the Appropriations Committee had to step down because of the term limits that the Republican Conference had created. Senator Stevens had maxed out on his six years to be chair of the committee. What do you think about this idea of limiting service of a chairman. Does it make a lot of sense? Is it disruptive? Does it take away experience or does it share power? What do you think of term limits in general?

**KENNEDY:** In general, I don't like them. I believe I understand the thinking behind them, in that you don't want folks to sit in one place for too long. But I think in some ways term limits can unduly empower staff—the principals change and the staff are always there. I think more significantly, it's a really fundamental change for the Senate of the United States, which anybody who has ever known it knows it has been based on by-God seniority. We both remember the dance between Senator Lugar and Senator Helms, and how Senator Helms passed up the opportunity to chair Foreign Relations in the early '80s so he could stay on Agriculture for another Congress, while he was up for reelection, so Senator Lugar got the gavel. Then lo and behold in the next Congress Senator Helms asserted his seniority and I well remember that the Mark Hatfields, Lowell Weickers, John Chafees, Bob Staffords of the day all said, "We're with Helms, because if these things get to be popularity contests those of us who occasionally wander from the true Republican path are never going to have the opportunity to get a gavel." I think they were right about that.

I think the term limits proposal is another bad idea that came from the House and got imposed on the Senate—at least the Senate Republicans. Mind you, the Senate Democrats have not bought into this. It's part of the age-old struggle that has gone on primarily in the House but also here in the Senate between the leadership and the committee chairs. And that power flows back and forth. In the House, in recent years, it's flowed towards the leadership. They decide. They pick and choose. A Newt Gingrich can elevate a Bob Livingston to be chairman of Appropriations, and leave Joe McDade sitting there wondering what happened. But in the Senate, it hasn't been so. This business of term limits, while not going quite so far as to have the leadership just handpick people, it gets closer to that model.

**RITCHIE:** Actually, it was just a musical chairs situation, because Senator Stevens moved to chair the Commerce Committee.

**KENNEDY:** And he bounced [John] McCain.

**RITCHIE:** Who took another chairmanship. Most everyone who chaired a committee still had a committee to chair, it was just a different committee.

**KENNEDY:** Right.

**RITCHIE:** How different was it to work for Thad Cochran than it was to work for Mark Hatfield?

**KENNEDY:** Well, it wasn't dramatically different. First off, they're both consummate gentlemen. They're just very decent, fairminded people who care about folks. They're both deliberate, rational men who render considered judgments about things. They don't run pell mell. Neither one of them is a media hound in any sense. They're not interested in message. Both were very attentive to the needs of their states and their constituencies. I'll have to say that I found Senator Cochran to be the lowest maintenance senator that I've ever encountered. He is perfectly capable of standing up on his own two hind-legs and taking care of business. He is very comfortable on the floor with the floor procedures, and he doesn't need a script. He always likes to have prepared remarks when he goes to the floor to manage a bill or opens a markup or whatever, but he always invariably makes changes to it. He reads it and writes in longhand the way he

would rather say it. Not to say that Mark Hatfield was not capable of doing these things on his own, but he tended to rely more heavily on me and other staff to guide him through certain situations. But it was an absolute delight and I thoroughly enjoyed working with Senator Cochran.

**RITCHIE:** Had you found that the Appropriations Committee itself had changed at all in the interim, from the time you left in '97 till when you came back in 2005?

**KENNEDY:** Yes. It had gotten bigger in terms of staff. There were a lot more staff people than there had been. There was more direct involvement of individual members with staff hiring than there had been. There was more attention and time being devoted to earmarks than there had been. That's about the sum and substance of it.

**RITCHIE:** It is the largest Senate committee in terms of staff and budget, I think.

**KENNEDY:** It's probably right up there. I don't know if it's the largest. Others have always been in contention for that. What used to be known as Government Operations used to be pretty big. Judiciary used to be pretty big. But you're probably right.

**RITCHIE:** There are something like 125 staff members on the committee.

**KENNEDY:** That sounds right.

**RITCHIE:** Are people becoming more specialized? Is more being divided up among the subcommittees as opposed to the full committee?

**KENNEDY:** No, I think it's just a perception of increased workload. I mean, the federal government is bigger than it used to be, and the committee now considers more money than it used to. If you have a defense appropriations bill that is half a trillion dollars a year, it's probably best to have eight or nine people working on the subcommittee staff than four. Just the sheer volume of information that has to be dealt with needs to be divided up.

**RITCHIE:** In the last couple of decades the Senate has gotten a lot more partisan. Did you find that worked its way into the committee, or was the committee still working on a bipartisan basis for the most part?

**KENNEDY:** I think the committee still works on a bipartisan basis. That always has been one of the things that I've enjoyed about the Appropriations Committee because it's always been more about trying to make government function in a useful, productive way and not trying to score points. When Senator Hatfield was chairman, he enjoyed a terrific relationship with Robert C. Byrd. When Senator Cochran was chairman they enjoyed that same relationship. One thing that I should have said in comparing the two, Senator Hatfield and Senator Cochran, was that they were both very much regular order kinds of guys, and were attentive to and cared about procedure, and that means something. I think in that respect, the committee is still very much the way it used to be, some fifteen, twenty years ago. The committee has been driven off that path by the leadership more often in recent years than I might have liked, but that's not my decision to make. But I think that if given its druthers the committee is still very much a bipartisan enterprise that likes to function in a regular, predictable way.

**RITCHIE:** I thought it was interesting in 2006 when the committee seemed to be functioning effectively. It was going to get its appropriations bills out on time, Senator Cochran had pledged that. They had them all ready to go, and then none of them came up on the floor. At the end of that Congress, Senator Domenici was bidding farewell to the majority leader, and he said that he loved Bill Frist as a man but he can't pass an appropriations bill to save his life. I had never heard a farewell address that was that critical before!

**KENNEDY:** Yes, Senator Domenici was saying something that I think a lot of people wanted to say. He had the candor to say it. I couldn't possibly and won't want to try to speak for Senator Cochran, but I think it's fair to say that he was enormously frustrated with the leadership last year, when he did a remarkable job in getting all of the appropriations bills out of his committee before the August recess. No less an observer of these things than Robert C. Byrd noted that fact and complimented him on doing that in comments in the committee markups. He took pains to say how this was a good thing and this was the way it ought to be, and that Senate Cochran was doing a fine job. And then the bills just sat there on the calendar. It was very frustrating.

One of the things that contributed to the frustration was that the leadership, Senator Frist and Senator [Mitch] McConnell, had asked Senator Cochran to please be attentive to the requests and concerns of Republican members of the Senate who were up for reelection in '06, people like Rick Santorum, and Mike DeWine, and Conrad Burns, and Jim Talent. He said, "Yes, of course I want to be responsive to what they want to do." So in the committee's consideration of the FY '07 appropriations bills, he made every effort that they bills as reported were responsive to those. And then they just didn't go anywhere. So on the one hand he was being asked by the leadership to do these things, and then on the other hand he was being told by the leadership, "Well, we can't bring up these bills. The Democrats will offer amendments that will be troublesome and problematic, and there will be difficult votes." I remember a meeting in the majority leader's office when that argument was advanced and Senator Cochran retorted by saying, "If any senator's reelection depends on how they vote on any particular amendment on an appropriations bill, they don't deserve to get reelected." He felt pretty strongly about this.

Towards the end, there, as the summer dragged along and nothing much was happening, there was a meeting in the majority leader's office, again with Senator McConnell, Senator Cochran, and Senator Frist. The majority leader turned to Senator Cochran and said, "Well, Mr. Chairman, what's your plan to wrap all this up? How do you want us to proceed?" Senator Cochran said, "Well, *you're* the majority leader, you call up the bills. People will offer amendments, and we'll vote, and we'll decide, and we'll pass, and we'll go to conference, and we'll move on." Again, just regular order. There's nothing fancy about this. It didn't have to be tricky. Just proceed. That's very much his mind-set. That's the way the Senate works its will. Don't be afraid of raising issues, and casting votes, and making decisions. That's what the people are here for.

**RITCHIE:** But they never did?

**KENNEDY:** They never did. I suppose, and I guess I would be one of them, there are those that would argue that the failure of the Congress to conclude that business, its most basic fundamental business to provide appropriations for the operations of the government, in some way I am confident that contributed to the defeat of Republican incumbents.

**RITCHIE:** Well, it fed into the argument that it was a "Do-nothing Congress."

**KENNEDY:** Right. Do-nothing and incompetent.

**RITCHIE:** So what was left was a continuing resolution to keep the government operating.

**KENNEDY:** Right.

**RITCHIE:** Which is sort of what the Democrats had left the Republicans when their last majority had ended. Maybe that's a telltale sign.

**KENNEDY:** That's true. That's true.

**RITCHIE:** In the 2006 election the Republicans lost the majority. Did you think about staying with the committee or did you decide that it was time to go?

**KENNEDY:** Well, no, there's an old saying on the golf course that it's better to be lucky than good. As it happened, by the time the election came along, I had already left. The individual who had been serving as the managing partner of the Baker Donelson office left the firm to take a position in the federal government. When I learned about this, I called up Linda Daschle, who is still with the firm, because I still had it in the back of my mind that someday I would be leaving the Senate again, and one of the places I might go was back to Baker Donelson. So I asked Linda what gives, and what does this mean for the Washington office at large, and particularly for the public policy group? She said she didn't know all that it meant or implied but that she herself was not interested in the position of managing partner, and would I be interested? One thing led to another and by July the board of the firm had decided to make an offer that I felt like I wasn't able to walk away from with a son about to go to college this September.

I went to Senator Cochran and explained all this to him. He was every bit as gracious as we would expect him to be. He put it very simply. He said, "Well, I'll be sad to see you go, but I won't be mad at you if you do." That was sort of that. The committee finished its business by the end of July, and then there was the August recess, and on September 1 I resumed at Baker Donelson, this time as managing partner of the Washington office, and got credit for a whole lot of prescience that I didn't deserve at all when two months later there was the election and the Senate majority flipped, which

people did not really expect to have happen.

**RITCHIE:** What's the difference between being a senior partner and being managing partner?

**KENNEDY:** Oh, I don't know. Every organization needs to have somebody that can say no from time to time. That's why an office needs a managing partner, in that from time to time I get to be the one that says no. A whole lot of people in the organization can say yes. There's certain managerial, management, personnel things that are attendant to running an office like that. Senator Baker has been very considerate in saying, "You're the managing partner. You're running this place." Anything that goes on in his head that concerns the Washington office he talks to me about it, which is sort of an interesting reversal. On a day-to-day basis, what I do now and what I did before is not that different. I spend more time on management issues than I thought I would, but most of my time is still devoted to public policy matters.

**RITCHIE:** Well, you've had a remarkable run of dealing with the Congress since you came as an intern in 1972. I wanted to get your impression about how the Congress and the Senate in particular have changed over that time period. What do you think are the major changes you've observed in the institution?

**KENNEDY:** When I first came, thirty-five years ago, the institution had been under a Democratic majority for a good long while and being the youngster I was at the time it felt like to me it had *always* been such. Lo and behold, eight years later, in the 1980 election, when it changed, everybody was just stunned. Perhaps this is just the product of experience of years, but it seems to me that there is more of a sense in the Senate now than there was that it can change, and in fact it has changed a fair amount here in the last twenty years, in terms of going from majority to minority status. So that's changed.

There are more independent operators in the Senate than there used to be. Again, this might be a difference of looking at it as a twenty-five-year-old and as a fifty-nine-year-old, but there's less deference paid to folks who have been around for a while than there used to be.

Television, of course, has made a huge difference. I guess I'm of the old school that thinks it has not improved the situation. I think they'd be better off if the Senate were not televised, but that is water long ago under the bridge and it's not going to get reversed. Certainly, for those outside the building, it has made an enormous difference. For the education of the general populace about what the Senate and the House do, broadcasting their proceeding has been a great thing. But it has also, as everybody knows, it's opened the door, given the opportunity, for a lot more grandstanding, and demagoguery if you will, and playing to the camera instead of the body. One of my pet peeves is certain senators who when you watch them on television, they speak to the camera, they don't speak to the presiding officer. It's no longer a debate in the body, it's a conversation with an outside audience. Even Robert C. Byrd does this sometimes, speaks directly to his C-SPAN audience.

And I'd have to say it's more partisan. I think that is attributable also to television—the immediate accessibility, the immediate ability to speak to people beyond the walls of the chamber, and make political statements to whatever interest group is out there that you want to try to get the attention of.

**RITCHIE:** How would you rate the senators? Do you think the senators today are as well-informed about issues, like appropriations issues, as they would have been in the 1970s?

**KENNEDY:** No. No, I think because there are so many more distractions than there used to be. The pace of the Senate is much faster than it used to be, and people don't have as much time as they used to have, I don't believe, to sit in one place and think about what's going on, and learn about what's going on, and read. It's more staff driven than it used to be. Clearly there are a lot more staff than there used to be. But again I think in one of our earlier conversations we talked about a display on the first floor of the Capitol in '97 or '98 or thereabouts. It was after Mark Hatfield was gone, and Sam Nunn, and Nancy Kassebaum, and Alan Simpson, and everybody was talking about, "Oh, my goodness, the place is just falling apart. It's not what it used to be." The Senate Curator put up a display about Isaac Bassett, and amongst his effects that were in the display was an entry from his journal or diary in which he was bemoaning the state of the Senate [in the late nineteenth century] that all the great ones were gone, Webster, and Clay, and Calhoun. So the great ones come and go.

**RITCHIE:** I think there's a universal tendency to think that the people you first encountered here were giants.

**KENNEDY:** Oh, sure.

**RITCHIE:** And that those you were dealing with when you were leaving were more human size.

**KENNEDY:** Right.

**RITCHIE:** Maybe the current senators will look like giants to a future generation.

**KENNEDY:** That's right. That would be an interesting project for you, actually. Forget about talking to us old guys and go out there and round up some of the junior LAs and ask them about their perspectives, because you're absolutely right. When you come here as a bright-eyed twenty-four or twenty-five-year-old, wow, there's people that you read about in your political science and history courses in college. There's Mike Mansfield. And there's Scoop Jackson. And there's Jack Javits. And there's Ed Brooke and Mark Hatfield, and so on. That's pretty impressive stuff. I guess this is just a product of age, but one of the differences about working with Senator Cochran from working with Senator Hatfield was Mark Hatfield was old enough to be my father, and in many ways became something of a father-figure to me and other people in the office. Senator Cochran is more of a contemporary. He and I just personally felt more at ease with one another than I ever did really with Mark Hatfield, just because of that age difference.

**RITCHIE:** I had an interviewee once who said that when she came to the Senate she was young and the senators were old, and when she left, she was old and the senators were young.

**KENNEDY:** Well, that's right. When I started looking around and counting the number of senators that are younger than I, I thought, "Well, maybe it's time to go."

Well, it is probably time to go.

**RITCHIE:** I was going to ask you if there was anything that I haven't asked about that you think that we should have covered.

**KENNEDY:** No, but—oh, I do want to get on, maybe not this afternoon, because I do need to leave and I don't want to unduly impinge upon your time, but if we can have another session, however brief, there's probably a couple of things that I want to get in the record.

**RITCHIE:** Good. We can have an epilogue. But this has been fascinating, and I thank you very much.

**KENNEDY:** Well, you're very good at doing this. The trick is always to get people to talk about themselves, and you can do that.

**End of the Sixth Interview**

## A RETURN TO REGULAR ORDER

### Interview #7

Wednesday, July 22, 2008

**RITCHIE:** I understand that Senator Hatfield had a reunion recently.

**KENNEDY:** Oh yes, he did.

**RITCHIE:** Did you have a chance to go to that?

**KENNEDY:** I did go, and it was a very nice occasion. There were about eighty of us, I guess. One fellow came all the way from Geneva. But most of the folks were Oregonians who went back to Oregon or never left Oregon. There were a few of us who went out from Washington. A good friend of mine, who also worked for Senator Hatfield, and I had lunch with him on a Saturday. It was somewhat disconcerting because he has gotten older. He just turned eighty-six July 12 and he's physically frail. But he's still quite alert, and attentive, and funny.

When we finished lunch, he—gracious as ever—said to my friend Tom Imeson and me, “Well, it's awfully nice of you to come and have lunch. I think back often on all the wonderful years we had together and all the things we did.” He just went on and on, it was sort of a blessing. I said, “Well, thank you, Mr. Chairman. That's very nice of you to say.” And he said, “Well, that was the nicest thing I could think of to say.”

Then at the reunion itself on Monday evening, frankly, I didn't think he would come. But, by golly, he did. Both he and Antoinette were there. He greeted everybody and when the time came, he was asked to say a few words. Of course, this whole thing had been organized by his personal office chief of staff, Gerry Frank. Gerry was very proud of himself for having gotten this many people together. So when it came time for Senator Hatfield to say something, he took the microphone and said, “I want to thank all of you for coming out for Gerry's party.” I mean, he still definitely rises to the occasion and it was grand to see him.

**RITCHIE:** Well, he was quite a figure here in his years.

**KENNEDY:** Yes, he was. I'm sure I've said elsewhere in this interview that since he retired and went back to Oregon in '96, in my various endeavors since then, I still benefit from my association with him. People remember Mark Hatfield and they remember him fondly, so people that were associated with him get a little break. It's nice.

**RITCHIE:** I think in the Senate there's a certain pedigree. When people say, "Who is the new Sergeant at Arms? Or who is the new Secretary of the Senate?" And the answer is, "He used to work for Mark Hatfield. Or he used to work for Howard Baker, or she used to work for Charles Mathias," you say, "Oh, they'll be okay then."

**KENNEDY:** That's right. I wonder, as I imagine you do, what the next generation of those folks will be. You look around the Senate chamber now and, for me at least, it's somewhat hard to discern who those folks will be. But I'm sure they will emerge.

**RITCHIE:** When you were talking to Senator Hatfield, did he express any interest in the way the Senate's operating these days?

**KENNEDY:** Well, the very first thing he asked me was how's Senator Byrd? So we talked about that for a little bit. We talked a little bit about how the Senate was working. We actually talked a lot more about politics both in Oregon and nationally and how the various campaigns were going. But he was curious about his old committee and it had not escaped his notice that things were not working as smoothly as they once had.

**RITCHIE:** It's hard to say they're working at all, actually.

**KENNEDY:** Well, yes, currently they're not working at all. Of course, that's something that I wanted part of this conversation to be about, because I find it just appalling that the Congress of the United States is just not performing what I always thought was its fundamental obligation. I've heard myself saying in recent days that this is just a dereliction of duty. For the Congress not to act on annual appropriations bills is just really hard for me to fathom. All in the name, as far as I can tell, of avoiding difficult votes, of avoiding confrontation with the president. I mean, they're separate branches of government. These confrontations were built in. These things are supposed to happen.

I remember, I believe it was 1981 when President Reagan vetoed, I believe it was a continuing resolution. After the conference on that continuing resolution, the House passed the conference report and it came to the Senate and there was a meeting in Senator Baker's office with, among others, Senator Hatfield and Jim Baker, then Reagan's chief of staff, and Dave Stockman, then OMB director, and Senator Paul Laxalt was there, who was known as President Reagan's best friend in the Senate. The meeting was to discuss: Okay, what are we going to do? Stockman and Baker were there to say: "Well, we're going to recommend to President Reagan that he veto this thing and we're confident that he will. We think it spends too much money." And Senator Hatfield said, "Well, we went to conference with the House and negotiated a conference report which I signed and I support. The House has passed it. It's come to the Senate. It is incumbent upon the Senate to play its constitutional role and act on this measure. We can vote it up or vote it down. I'm going to vote for it, but we need to act and we should not decide to simply not move forward just on the strength of the representation that the President's going to veto the bill. Let's send it to him. We'll do our constitutional duty and he can do his."

Well, that's what happened. President Reagan did indeed veto the bill and we started over. But the point is obviously that the Congress acted. I'm sure there is some political calculus in all this. I mean, Speaker [Nancy] Pelosi and David Obey and Harry Reid are all smart people, but it just absolutely astounds me that the Congress is not acting. It is particularly astounding that all of these folks are or were members of the two Appropriations Committees. The leadership of both houses is well populated with folks who've grown up in the Appropriations Committee. The members of the committee are supposed to be the cheerleaders for the process, not those who put the brakes on it. Now here in the Senate, Senator Byrd and Senator Cochran, God bless them, are moving forward. They are reporting the annual appropriations bills. They're going to do two more this Thursday. It looks like Defense and Legislative are going to get put off until September, but by this Thursday they will have reported ten of the twelve appropriations bills. Not one of them has gone to the Senate floor. They just sit there on the Senate Calendar. But at least the committee is doing what it is supposed to do.

I worry that if the House committee doesn't act and if this Congress just postpones all the federal government's fiscal business into next year, that increasingly there will be people in both bodies who say: "Well, what is this process? Why do we need it? Clearly, it's not working." The Democratic majorities in both houses are gambling

that the next administration—well, they’re certainly hoping that the next administration is going to be an Obama administration and then they can get things going again. But it may not be an Obama administration and once people lose a sense of what is the regular order, it’s hard to relearn that.

**RITCHIE:** It’s interesting that you mentioned that the Senate is actually ahead of the House at this stage.

**KENNEDY:** Right.

**RITCHIE:** The House has always argued that it’s supposed to come first when it comes to appropriations. There’s been sort of a long-running feud about it between the two bodies. Is that something that needs to be hammered out more—whether or not the Senate can take the lead if the House isn’t acting?

**KENNEDY:** Well, that would be interesting. If taken all the way down that path, what you’re saying is, could the Senate actually pass appropriations bills through the body and send them to the House? Historically, as you say, the House has blue-slipped those bills and refused to accept the message that the Senate has passed it on the grounds that appropriations bills are at least akin to revenue bills and the Constitution requires that revenue bills originate in the House. I frankly think that might aggravate the situation more than help it right now, because you do have Democratic majorities in both houses and if Senator Reid were to elect to pass bills in the Senate and send them to the House, that would complicate Ms. Pelosi’s life and annoy David Obey.

**RITCHIE:** Usually, it’s the House that’s supposed to be able to act more expeditiously. The House majority can act when it wants to.

**KENNEDY:** Right.

**RITCHIE:** And appropriations bills are privileged bills, right? Don’t they go right to the House floor when they’re reported out?

**KENNEDY:** Indeed, and they don’t even need to have a rule. For many, many, many years, at least when I was growing up in the process in the ‘70’s, House

subcommittee chairmen, people like Bill Natcher, and Eddie Boland, and Neal Smith, prided themselves on going to the floor without a rule, because they didn't need a rule to protect them from any points of order, because there was nothing out of order in the bill. But yes, you're right, sure the House could be passing these bills. As far as I can see, the only reason why— well, there are a couple of reasons, I guess. One of the reasons why the House committee has stopped acting is because the Republicans tried to force Mr. Obey's hand on the matter of offshore drilling. He didn't like that and perhaps with some justice said he's the chairman and he'll set the agenda. One would think that tempers would subside after that one little episode and they could get back to business and have an understanding how they were going to proceed. Well, they haven't and the larger issue that Mr. Obey has announced is he feels it foolish for his committee to be, as he puts it, "wasting time," reporting bills that are never going to get signed into law because he believes that the president is adamant and would veto anything that was sent to him.

Again, I don't personally believe that that's a valid reason for Congress not to act, for the regular order not to move along. And it seems to me that the Democratic majorities could make some political hay in demonstrating what they stand for, this is what they think the funding levels ought to be. In the reports accompanying these bills, this is the direction they would give to executive agencies and not just let them sail along with no direction from them at all, which is the situation they're currently in.

**RITCHIE:** It seems to me for the last decade, at least, there have been problems with appropriations.

**KENNEDY:** Yes.

**RITCHIE:** Both parties have encountered this and it does seem like it's frozen up the system. We talked earlier about Senator Domenici's comments when Senator Frist stepped down as majority leader, that he was a wonderful man, who can't pass an appropriations bill. Nobody seems to be able to pass appropriations bills these days.

**KENNEDY:** Well, nobody tries. It would be tempting to draw the conclusion that the appropriations process came apart when Mark Hatfield left. That was about a decade ago, but we shouldn't do that because it did continue to function in the regular order for some years after his departure. But certainly in recent years it has gotten just

horribly entangled. I have a lot of sympathy for—if that’s the right word—respect for the Senate leadership. They have a terrible job and lots of different demands to try to deal with, but I do wish that they would just plow ahead and try to force the issue a little more than they do and not be so skittish about bringing legislation to the floor, because the debate is going to be difficult or long or partisan or political. So be it.

**RITCHIE:** I’ve talked with some staff who work for senators and who deal with appropriations issues. They say that it consumes so much of everybody’s time, first the budget and then the appropriations, that maybe the way out is to think of a biennial appropriations, a budget process and a appropriations process that stretches over the two years of a Congress. Do you think that there’s any possibility of something like that?

**KENNEDY:** I think there’s an increasing possibility if folks walk away from the annual process as they are now doing, that there will be more people wondering if we can essentially not legislate on this matter for eighteen months, which is what they’re on the brink of doing, well then, why not go to a biennial? The annual appropriations process is rooted in the beginnings of the republic and certainly the federal budget has changed a whole heck of a lot and has gotten a lot larger, a lot more complicated. All the fiscal management of government is much more intricate than when the annual process was conceived. It has the potential of “saving time,” but it also has the great potential of eroding congressional power because the annual appropriations process remains the best tool that Congress has to get the executive branch agencies of our government to do what the law tells them to do.

I also think that if you went to a two-year appropriations process, you would see a lot more supplementals. Things will occur. You will have hurricanes. You will have floods. You cannot say, “Sorry, you have to wait for two years before we address that problem.” So you’re still going to have appropriations bills moving across the floor. If the concern is you can’t take an appropriations bill to the Senate floor because of amendments on other issues and difficult votes and all, that situation pertains with the supplemental just as much as it does with a regular appropriations bill. So I can see why the idea is tempting to people, but I’m not sure that it solves the problem they’re trying to address. I think it would definitely create other serious problems.

**RITCHIE:** Some of it may be taken care of if the earmark reforms go through,

because much of what the individual senator spends a lot of time on is listening to mayors from their states and others who are looking for specific grants. That consumes a big chunk of staff time—

**KENNEDY:** Sure, it does.

**RITCHIE:** —going through that. At the end of the year, when they finish the process, there's a sigh of relief, and then they start all over again.

**KENNEDY:** Right, yes, that is definitely one of the problems in recent years with the appropriations process, that it's choking on earmarks and there have gotten to be far too many of them and consuming way too much staff and senatorial time.

**RITCHIE:** I read one statistic that earmarks have tripled since the days when Mark Hatfield was chairman of the committee.

**KENNEDY:** That could well be.

**RITCHIE:** But now they've become much more publicized, and there's some reaction against them. The House and Senate seem to be pulling back on those.

**KENNEDY:** And perhaps appropriately so. I mean the great thing about increased transparency, if indeed it has increased, is that folks are more likely to see if some request passes the laugh test. Senators don't want to be embarrassed. But it's somewhat puzzling to me to hear various comments about how earmarks are slipped in and it's done in the dark of night and nobody knew. It's obscured and you can't find them. You know, the committee produces a report that identifies all these things and it's a public document. And it's by rule of the Senate that it has to be available for forty-eight hours before the Senate can consider an appropriations bill. It's there to be read. Why folks say that they're hidden escapes me.

One of the reform ideas that's been floated in the Senate Republican Conference is to take all of these so-called "earmarks" out of report language and put them in the bill language and thereby make them more transparent, more visible, and make them more susceptible to change or deletion on the Senate floor. The first problem with that it seems

to me is that if you put these things in the bill language, you've put into black letter law what used to be, in the form of report language, guidance. With report language, an executive agency can call up the committee and say, "Well, we don't really think it will work this way, can we do it another way?" The agency can work with the committee to address the situation. If it's in bill language, the federal agency is going to have to spend that money on the thing identified. This may be taking it to an extreme, but it's not beyond imagining that an executive agency is going to be put in the position of either violating Title 10 of the Budget Act and illegally impounding duly appropriated money, or violating the Antideficiency Act, which carries jail time, and spending it on something that is patently wasteful. I mean, you pick up the Energy and Water committee report and all those Corps of Engineers projects are in report language for the very plain and simple reason that construction schedules can change and you may not be able to spend this much money on that project that year. That's fine. When it's in report language, you have the flexibility to do that. Put it in the bill language, you won't.

**RITCHIE:** So the cure can be worse than the disease.

**KENNEDY:** Sure, and if somebody wants to go after a particular earmark in report language on the Senate floor, it's simple to do. Just write an amendment, "none of the funds in this act will be used to do what this report language says." So I don't understand some of these ideas.

**RITCHIE:** Another thing that you hear people talking about is the problem of legislating on appropriations bills. Historically, the rules of both houses have said that you can't legislate on appropriations bills, but of course both houses legislate on appropriations bills. The question is whether or not it's become more of a tendency to do that over time. Do you think that's become a problem or is that just a fact of nature with appropriations?

**KENNEDY:** Oh, no, I think it's definitely a problem. And I think it's definitely more prevalent than it used to be. In the early '80s, when Senator Hatfield was first chairman, he could say to a senator, "Look that violates Rule 16," and the amendment would go away. Now people just do it all the time. You're right.

**RITCHIE:** Even though if the chair rules against them, they can appeal the ruling of the chair and get a simple majority of senators to support you to insert it back into the appropriations bill.

**KENNEDY:** That's true, but I think they have learned the dangers of that. What was it—in '95, when Senator Hutchison offered an amendment relative to the Endangered Species Act, she was told it violated Rule 16, but the Senate overturned the chair. Then lo and behold, when Trent Lott in subsequent years became leader, he realized that it was the opportunity for great mischief and engineered a reversal of that decision.

**RITCHIE:** I've heard that, in the past at least, occasionally when senators from the authorizing committees had trouble with controversial bills, or controversial provisions, they would ask the Appropriations Committee to insert it into an appropriations bill, because they knew the appropriations bill was going to pass and that was one way to do it. Was that a tactic of use?

**KENNEDY:** That's true. Absolutely.

**RITCHIE:** Did that create problems in the system?

**KENNEDY:** Sure it did, because if it was truly a controversial piece of legislation, the Appropriations Committee that would be carrying this thing to conference did not necessarily have the expertise to argue the matter in conference. Now in earlier days when the Senate carried something like that to conference, the House would sit there and say, "Well, we're not going to do it. You may not care about your rules but we care about ours." Clearly, that has changed. Perhaps the single most arresting thing that could be done to get the appropriations process back to regular order would be to have the House Rules Committee enforce the House rules the way it did some 30 years ago and not allow all this stuff to be added in conference and be protected by rule.

**RITCHIE:** There had been talk about rules that would say that you can't put anything in a conference report that isn't in either the House or the Senate versions of the bill.

**KENNEDY:** Well, that's the rules of both houses now.

**RITCHIE:** Although it's a rule that's violated.

**KENNEDY:** It's a rule that's violated, and in the House they're able to do that by getting a rule that protects the conference report against a point of order. Then when it comes to the Senate, the Senate is afraid to vote the whole thing down and kill the whole deal after the House has already passed it. I don't know. It's a mess.

**RITCHIE:** If you had an ability to reform the system, how would you do it?

**KENNEDY:** I don't think the process needs to be reformed. It just needs to be upheld. As I've said earlier—I'm sure we're repeating ourselves somewhat since we've had this conversation over such a long span of time—but I'm confident that I said in an earlier interview that one of the great joys of working for both Mark Hatfield and then Thad Cochran as chairmen of the Appropriations Committee is that they're both regular order kind of guys and they wanted to just move the process along. Neither one of them was afraid of a vote. If, and I hope to goodness this happens in the next Congress, we can get back to that sense of regular order that appropriations bills move through both chambers in a certain predictable way, then I don't think you need to have any reforms. You just need to tend to business.

**RITCHIE:** So then what's really broken is the political process, not the appropriations process.

**KENNEDY:** That's right. I think that's exactly right.

**RITCHIE:** It seems to me that in the days when Mark Hatfield came to the Senate, the two parties worked together more. Maybe it was because there were people on both sides of the aisle who thought alike, in conservative and liberal factions from both parties. Now it seems like everything is a political issue. I'm not sure that the old systems that worked well under the old political process can survive the partisan instincts that take place.

**KENNEDY:** That's a very good point. By my observation the Senate Appropriations Committee, and for that matter I think the Senate Finance Committee, and the Senate Armed Services Committee, all remain pretty bipartisan in their operations and

in their production of legislation. But the committees can't control what happens on the floor and on the floor, of course, there are a lot of free agents who don't necessarily think that this bipartisan product is a great thing or don't necessarily think that it should not carry with it some other extraneous and potentially very political issue. But if the problem is a political problem, a process reform won't fix it. It has to do with the one hundred members of the body and they need to decide individually and collectively that they need to step back from making every single thing a political battle.

**RITCHIE:** The big question in this congress has been amendments from the floor. In the Senate it has always been easier to amend something on the floor that it has been in the House, which controls the proceedings more. The leadership currently is trying very hard to restrict the number of amendments that are debated. Were amendments much of a problem for the appropriations bills when you were working with the committee? Did you have to worry about what would come up on the floor and how to handle it that way or try to control the amendment process?

**KENNEDY:** No, not really. I mean, clearly there were scads of amendments. There were plenty of amendments, but most of them had to do with appropriations matters. Every now and then, certainly, there would be some big national hot issue that somebody would want to bring to the Senate floor in connection with debate on an appropriations bill and Senator Baker was known to fill up the [amendment] tree when things like that occurred. But then he and Senator Byrd and others would say, "All right now, let's stand down here and let's see if we can address these things, but let's not hold up this appropriations bill to do it." Eventually, the tree would get taken down and we'd move on. That latter part doesn't seem to be happening right now. Again, I can appreciate the challenges that both Senator Reid and Senator McConnell face. I can appreciate the frustrations that they both must feel. Reid doesn't want to have to deal with a lot of the things that the Republicans would like to have the Senate vote on, and Senator McConnell and his fellow Republicans take umbrage at the fact that Senator Reid fills up the tree and then tries to invoke cloture and they never get to do a thing.

**RITCHIE:** It's a great debate as to whether we're actually having any filibusters now or just having cloture motions that fail.

**KENNEDY:** Right, and I would be of the camp that says it's the latter. Again, this sort of goes back to what I said earlier about: just make 'em work. Why not have an honest to God filibuster? If they want to filibuster something, let them stand out there and talk about it.

**RITCHIE:** They're taking time to complain that it's taking a lot of time.

**KENNEDY:** Right.

**RITCHIE:** Someone said that the Senate doesn't so much debate as it debates whether or not to debate.

**KENNEDY:** Exactly right. My older son is working this summer as an intern in the Senate Press Gallery and it's been a very good experience for him and I'm delighted that the Sergeant at Arms saw fit to hire him and put him in that position. But he has said to me and to others when asked about how the experience has been, "Well, I've earned a great deal more respect for the institution and learned a lot more about its history. I'm not as impressed with the individual members." I think he is sitting up there in the Press Gallery and he's hearing just what you said. He's hearing people debate whether or not they should debate.

**RITCHIE:** Of course, he's also surrounded by some of the most cynical people who are watching the process.

**KENNEDY:** Well, there is that, as you well know from your publications and your work with the Press Gallery. But it's a good environment for him.

**RITCHIE:** Earlier on you were talking about the leaders who were here when you came and those who were here while Hatfield was here, and you wondered if there are still any people like that on the floor. Have you spotted any senators that you think are potential leaders, or some of the newer senators who look like they'll stand tall in the future?

**KENNEDY:** Well, that sort of puts me on the spot. I don't know that I want to venture an opinion on that, because it's telling that no one leaps immediately to mind.

But then again, let's remember that some of it is just a product of age. If you were asking someone, you know, a young Senate staffer twenty-eight years old, I'm sure they could tell you. Either I'm older and jaundiced and more cynical or they're newer, fresh-faced, and inspired.

**RITCHIE:** They also haven't had time to really demonstrate what they're capable of—and some of them do change. Some of them come in as bomb throwers and wind up as pragmatists. If you went back a generation and asked people how some senators would have shaped up, they'd be surprised at which ones really established stature and which ones didn't survive their reelection.

**KENNEDY:** That's right. That's exactly right. I'm sure there were folks in say 1968 who looked across the aisle at this young guy who was a two-term governor from Oregon and thought, "Who is this fella? He's not going to amount to much." Senator Stennis used to have a great phrase that is sort of pertinent to this. He would say, "Some people grow and others just swell." So you never really know. But I'm sure those people are there. I just can't readily identify them for you right now.

**RITCHIE:** Very good. Well, is there something else that we should be reviewing or discussing?

**KENNEDY:** No, I don't think so. I've gotten my opinions off of my chest about the current state of affairs and I thank you very much for this opportunity. It's been a real pleasure to have this conversation and reflect on these years up here.

**RITCHIE:** It's been fascinating for me. It's also been somewhat reassuring to hear from you that the processes actually work if people have the political will to work them.

**KENNEDY:** Oh, most definitely. But I do worry about the absence of the political will.

**RITCHIE:** I note in the *Congressional Record* a lot of senators these days talking about "regular order," as something they'd like to see resumed. They'd like to go back to where bills were shaped in the more bipartisan activity in the committees than on

the floor. The passage of the agriculture bill this year was sort of a triumph of regular order over partisanship.

**KENNEDY:** Right.

**RITCHIE:** It was passed over a presidential veto after a hugely complicated process. But there was a lot of talk about regular order while that was going on. Senator Spector talks about regular order in the Judiciary Committee pretty regularly and you hear almost a sort of nostalgia when they request it. It also reflects a sense of dissatisfaction with the efforts to go around regular order. And yet the leadership in both parties, beginning with Newt Gingrich in the House and on to Nancy Pelosi, and going back to probably Trent Lott and Bill Frist as well as to Harry Reid, the leaders have tried to go around the regular order a lot more to expedite matters for one reason or another. Skipping conference committees—

**KENNEDY:** Right.

**RITCHIE:** —by amending the bills to make them conform. Passing over senior members to be chairmen of the committees.

**KENNEDY:** Right.

**RITCHIE:** Trying to get the leadership rather than the committee chairs running the show. That seems to be the trend of at least fifteen years in development, and both parties seem to have embraced that.

**KENNEDY:** Yes, but you're the historian. You know that in Congress these things have ebbed and flowed. You've had Speaker [Joseph] Cannon ruling the House with an iron hand and then you'd have the revolt of the committee chairs. You had Woodrow Wilson writing about all the work of Congress occurs in committee. So these things go back and forth. My concern is you used the word "nostalgia." People are calling for the regular order with a sense of nostalgia. Okay, but those are the people who remember regular order. My concern is that the more recent members of the Senate have never seen regular order, so they feel no sense of nostalgia. They don't know what they would be returning to and they may not think that regular order is a good idea because

they don't know what it is.

**RITCHIE:** And that it worked.

**KENNEDY:** And that it worked, right. Well, thank you sir.

**RITCHIE:** Thank you. This has been a really very panoramic view of the institution.

**KENNEDY:** Well, you're kind to say so. As I say, I've enjoyed it. All of this is very near and dear to my heart and I like talking about it.

**End of the Seventh Interview**

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