

## Preface

This oral history with Charles E. (Chuck) Ludlam covers his public service career, from his first summer internship on the Hill with the Stanford in Government Program in 1965, through his retirement in 2005. Chuck Ludlam served as a trial attorney at the Bureau of Consumer Protection, Federal Trade Commission (1972-1975); counsel to the Subcommittee on Administrative Practice and Subcommittee on Separation of Powers, Senate Judiciary Committee (1975-1979); legal counsel to the Carter White House Domestic Policy Staff (1979-1981); legal counsel to the Joint Economic Committee (1982-1985); chief tax counsel to the Senate Small Business Committee (1985-1993); and counsel to Senator Joseph I. Lieberman (2001-2005). He was also a consultant to the Alliance for Justice (1981-1982); counsel at Musick, Peeler and Garrett (1981-1982); and vice president for government relations at Biotechnology Industry Organization (1993-2000).

Born on January 1, 1945, in Pennsylvania, he was raised in California. He graduated from Stanford University with a B.A. in 1967, and from the University of Michigan Law School with a J.D. in 1972. He served as a Peace Corps volunteer in Nepal (1968-1970), and following his retirement in June 2005 he and his wife, Paula Hirschhoff, then returned to the Peace Corps as volunteers in Senegal (2005-2007).

This oral history focuses on Chuck Ludlam's work on a wide variety of legislation and issues:

- \* The Ethics in Government Act, particularly the Senate Legal Counsel and civil subpoena enforcement provisions (Public Law 95-521)
- \* The Alaska Pipeline litigation (1970-1975)
- \* The Hart-Scott-Rodino Antitrust Improvements Act (Public Law 94-435)
- \* Airline Noise bill (H.R. 8729 and S. 3279)
- \* Organizational Conflict of Interest law (Public Law 95-70)
- \* Regulatory Flexibility Act (Public law 96-354)
- \* Tax-Exempt Bonds for Hospitals and Schools (Public Law 97-248)
- \* Natural Resource Subsidies bill (H.R. 3398 and Public Law 98-573)
- \* Venture Capital Gains Incentive (Public Law 103-66)
- \* Patent Reform Act of 1999 (Public Law 106-113)
- \* Ganske Amendment (Public Law 104-208)
- \* Genetic Discrimination law (Public Law 104-191)
- \* Orphan Drug Tax Credit (Public Law 104-188 and 105-34)
- \* NIH Reasonable Price Reviews (1973-1974)
- \* Embryonic Stem Cells Debate (1997-1998)
- \* Project BioShield Act (Public Law 108-276)
- \* Honest Government Accounting Act (S. 1915)
- \* Assets for the Poor legislation (S. 476 and H.R. 7)

- \* U.S.-China Cultural Engagement legislation (S. 1117)
- \* Economic Impact of Global Demographics project
- \* Disincentives for Volunteering in the Peace Corps
- \* Industrial Policy Initiatives (1983-present)
- \* Justice Department Representation of COINTELPRO Defendants (1978)
- \* Bad Debt Deductions for Unpaid Child Support legislation (S. 2514)
- \* Incentives for Cash Profit Sharing legislation (S. 932)
- \* Providing Liquidity for Net Operating Losses legislation (S. 1049)
- \* Stock Option Accounting legislation (S. 2877)

Chuck Ludlam provided extensive notes for many of the individuals and issues discussed in his interviews. He recounts some colorful tales, and provides background on Senators Jim Abourezk, Phillip Hart, Robert Byrd, Jim Allen, Dale Bumpers, and Joseph Lieberman; Congressmen Burt Talcott, Glen Lipscomb, and Gillis Long; and Senate Parliamentarian Murray Zweben. This history highlights the crucial role of dozens of senior Capitol Hill staff. The oral history provides insights into the lifestyle, skills, and tactics of a senior Capitol Hill staffer who has fought in the political trenches over a forty-year period

## **THE SENATE LEGAL COUNSEL**

### **Interview #1**

**Tuesday, December 2, 2003**

**RITCHIE:** This year is the twenty-fifth anniversary of the Ethics in Government Act that set up the office of the Senate Legal Counsel. [The Act was signed into law on October 26, 1978 as part of Public Law 95-521. The Legal Counsel and his or her office handle legal matters and litigation on behalf of the Senate. It is basically the in-house law firm that represents and defends the constitutional powers of the Senate, and the separation of powers upon which our government system is based.] Since you were very much involved in that, I wondered if you could tell me something about its origins, and how you got involved?

**LUDLAM:** First, let me explain the reasons why I'm presenting this oral history of my public service career. Some who read this oral history may be interested in how the Senate Legal Counsel office was established. I will provide here an insider's view of how it happened. A few weeks ago I met with the staff of the Senate Legal Counsel office to brief them on the origins of their office. Going back to 1978 when it was established, I had not been in contact with them. So none of the staff had any idea who I was or why I had requested the meeting. They assembled wondering what I had to say. I gave them a detailed explanation of how their office had come to exist and why it was set up the way it was. I think they were quite surprised and pleased to know more about the history of their office. For me it was an enjoyable reunion! So I am happy to present that same history to you here for others to review.

Going beyond the Legal Counsel history, I'm also interested in presenting an overview of what a career on the Hill and in public service looks and feels like. I have been endlessly involved with the Stanford in Government (SIG) program, going back to my first SIG Capitol Hill internship nearly forty years ago. I hope that this oral history might be read by Stanford students who are contemplating a career on the Hill or in public service. My story may give them some idea of the highs and lows, the satisfactions and failures, of such a career. I hope what I say here encourages them to follow in my footsteps.

I want them to see a range of issues in which one might be involved in a public service career and the intense intellectual stimulation that comes with this. I've been

involved in issues ranging from separation of powers to embryonic stem cells, organizational conflict of interest to Social Security funding, patent reform to bioterrorism preparedness, and tax incentives for entrepreneurs to U.S.-China cultural engagement.

One theme you'll see throughout this oral history is the crucial role of staff. Most oral histories probably focus on the public officeholders, but it's my view that the staff often deserve the principal credit for what gets done or not done in this town. You will see that I have deep respect, bordering on reverence, for the many professional staff I've had the privilege to work with over the years. I want to highlight their contributions and give them a moment in the spotlight. They are unsung, but to me they are the real heroes of the public sector.

Finally, I'm coming to the end of this career. My wife, Paula Hirschhoff, and I have applied to rejoin the Peace Corps. We both served as volunteers in the '60s, I in Nepal from 1968-1970 and Paula in Africa from 1968-1970. We loved that experience so much that we want to repeat it—this time together. With my retirement looming, this is a good time for me to look back and to tell here some stories that shed light on the Senate as an institution. Whether my career has been especially productive or not is for others to judge. I know it's been a privilege to work all these years as a public servant and it's been a fascinating journey. It's certainly going to be fun for me to reminisce with you.

Let me first give you some of my background—how I came to work in the Senate and Congress—and then I'll focus on how I came to propose and enact the legislation setting up the Senate Legal Counsel office.

I first came to work in the Congress in the summer of 1965 as a Stanford in Government (SIG) intern in the House with Congressman Burt Talcott.<sup>1</sup> My grandmother knew Burt in Monterey, California, and she landed me the position. My grandmother would die a thousand deaths if she knew that her setting me up with that internship with Burt had led to my career as a Democrat! It was a great summer with Burt. There were then hardly any interns in Washington, Burt was in his second term so he had plenty of time to spend with me, and that was the summer the Great Society raced through the House—perhaps the most intensive legislative session in congressional history.<sup>2</sup> I was impressed with the Congress as a fascinating place to work.

Two summers later, I was a SIG summer intern with Congressman Glen Lipscomb, who was my local congressman from San Marino, California.<sup>3</sup> I ran SIG's program here in Washington that summer. I had many conflicts with the right wing Republicans in that office, but it was another fascinating introduction to the Hill.

Both Burt and Glen were very conservative Republicans and I guess back then I was still nominally a Republican. San Marino was a John Birch Society (JBS) stronghold, ultra conservative.<sup>4</sup> The JBS controlled the school system. I remember being quizzed by parents about my political beliefs before they permitted me to date their daughters. I remember assembly after assembly where the JBS surrogates railed against the communist menace.

From my days in high school, through my graduation from Stanford in 1967, I completely overhauled my world and political views. This was the '60s and it had a huge impact on me and my generation. I was ready to question the San Marino/JBS values. I've always had a rebellious streak. Just ask my parents! But they nurtured this side of me. In first grade, they placed me in the training school for teachers, the University Elementary School (UES), at UCLA, an experimental "progressive school."<sup>5</sup> For one entire year, we studied the Navajo Indian, an experience that influenced me many years later to join the Peace Corps. We had no grades or formal lessons, but they taught us how to think. When we moved into the San Marino School District, I went through a brutal transition. At UES I had not been taught any of the basic skills—to add, subtract, and multiply, or to write in script. The San Marino folks didn't know what to do with me. They gave me three days of one-on-one tests to find out if I was retarded.

My evolution continued in high school. My junior year in high school I remember reading *Black Like Me*.<sup>6</sup> It was an eye-opening account of the racism in the South. I also had a friend, Bink Garrett, who founded a high school paper called the *Inquisitor*, which drew the ire of the school board for its free thinking and left-leaning articles. The school board tried to ban it. I got in trouble for organizing a "heaven and hell" party at the school; my principal wouldn't let me use the word "hell" in any of the promotion materials. My principal also castigated me for organizing a coed overnight to Palm Springs for all the top school scholars. I was president of the scholarship society and wanted to go have some fun. I had to ask the school board for permission to do that! I was beginning to discover that the right wing can be quite reactionary.

San Marino was a wealthy, insular and ideological community, but my best friend, Janet Zarem, was one of the few Jews who lived there. I was always attracted to bright and outspoken people like Janet who helped me to think independently. My government teacher, Bear Stevens, and my drama teacher, Paul Clopper, were brilliant teachers who taught me how to think for myself. They're still doing that!

Despite all these influences, I was then still a Republican. My car sported a bumper sticker that said, during the early Kennedy years, "I miss Ike, hell, I even miss Harry." The neighborhood gang often referred to the only Democrat who lived on our street as if he inhabited a haunted house. I was becoming more political, but hardly on the liberal side. I ran for student body president my senior year—my slogan was "Out of the Muck with Chuck"—but I got trounced. I also ran for head cheerleader. I was certainly the noisiest candidate, but I got trounced in that election also. In my high school annual, under my picture, the editors chose "enthusiasm with a purpose" to characterize me. I think it proved to be apt.

My freshman year at Stanford I was the social chairman, hardly a political post. I organized a school-wide casino party. But on Big Game weekend President Kennedy was assassinated and that spring some of my classmates went to Mississippi and were beaten up by Klan members. The '60s had begun, when questioning authority became a lifestyle, and many of us railed against the forces of reaction whether they were bigots, chauvinists, or war hawks.

Around 1964 I began turning fiercely against the Vietnam War and quickly became a Democrat. Bink, who had joined me at Stanford, had a big impact on my thinking about the war. I organized the protest at the 1967 Stanford graduation—those opposed to the war wore white armbands—and this was a huge crisis in my family. My mother had a fit—she thought people at the graduation would blame her for raising a son who would dare to ruin the event for everyone. This generational split was occurring across the nation—tearing families apart.

I was also heavily influenced by my best friend at Stanford, Jack Wenzel, who was a true intellectual and vastly more informed culturally than I was. When I got to Stanford I had never heard of Beethoven, while Jack knew every composer, symphony, and opera. Jack has been a totally loyal and generous friend for more than forty years.

My four years at Stanford occurred during the height of the “Sixties,” with the assassination of President Kennedy, the Free Speech Movement at Berkeley, the civil rights clashes, the assassination of Malcolm X, the Black Panther Party, Betty Friedan starting the woman’s movement, the Watts Riot, Cesar Chavez’s grape boycott, the Fillmore and the Jefferson Airplane, Haight Ashbury and the Hippies, Timothy Leary’s LSD/Acid and his Merry Pranksters, Ken Kesey and Lawrence Ferlingetti, and all the other manifestations of a generation in revolt. Martin Luther King, Jr., came to speak at Stanford and I’ll never forget his charisma. When Hubert Humphrey came, I helped organize the protest. It was the height of the Cold War and the deepening conflict in Vietnam. All this turmoil had a huge impact on me and still does.

The summer after the graduation, I worked in Congressman Lipscomb’s office where my opposition to the Vietnam war did not sit well. It was a very uncomfortable summer. They also hated the fact that I did some canvassing in favor of a fair housing initiative in Montgomery County. They didn’t think I was a Republican and, in fact, I no longer was a Republican. During that summer of 1967, I witnessed some history. One of my SIG roommates was one of Al Lowenstein’s best friends and Al came to stay with us as he attempted to recruit a senator to run against Lyndon Johnson in the 1968 presidential primaries.<sup>7</sup> When Al finally persuaded Eugene McCarthy to run, I went “clear for Gene” and worked for McCarthy in the 1968 primaries.

Right after the Robert Kennedy assassination I headed off to serve in the Peace Corps in Nepal for two years. I basically collapsed into the Peace Corps, totally wrung out from the horrors of 1968. At the end of my Peace Corps experience I met one of the giants who have shepherded me thorough life, Peter Hoagland. We met on a beach in Greece. We were both chasing after women, fortunately not the same one! Peter was another Stanford alum. He gave me good advice—to get back to law school and get my degree. I was thinking to bum around the world for awhile, and was a bit aimless. Peter was my first true mentor and remains one, as well as being a dear and trusted friend. He later became a distinguished state senator in Nebraska and a member in Congress. He would have been a fabulous U.S. senator, but being a Democrat in Nebraska, that was never possible.<sup>8</sup>

In the summer of 1971 I was again an intern, this time in the office of the secretary at HEW [Health, Education and Welfare] working on housing and welfare issues. That was after my second year at the University of Michigan Law School. It was quite clear by now

that I was headed into politics and public policy for my career. My first government employment after graduating from law school was as a lawyer at the Federal Trade Commission, Bureau of Consumer Protection, from 1972 to 1975. I prosecuted companies for deceptive advertising.<sup>9</sup>

In 1975 I got back to the Hill for my first job as a lawyer. I was hired by the Senate Judiciary Committee working with Senator Jim Abourezk.<sup>10</sup> That's where I worked on the Senate Legal Counsel legislation. Irene Margolis, my first boss on the Hill, was a superb mentor.<sup>11</sup> When Abourezk retired in 1978, I served for two years in the Carter White House with the Domestic Policy Council working on regulatory reform issues. Si Lazarus, my boss, was another superb mentor.<sup>12</sup>

When President Carter was defeated by [President Ronald] Reagan in 1980, I was unemployed for six months and then served as a consultant for the next six months with the Alliance for Justice. I wrote a report railing against the Reagan corruption of the regulatory process. Then I became counsel with my father's law firm, Musick, Peeler, and Garrett, which was just then opening a Washington office. I focused on the 1982 tax bill and efforts to save the tax exemption for non-profit university and hospital construction, and related bonds. I won that fight.

I finally landed back on the Hill with Congressman Gillis Long,<sup>13</sup> from 1982 to 1985, working with him to staff the House Democratic Caucus, of which he was chairman; the Joint Economic Committee, of which he was a member; and the House Rules Committee, where he served as the second ranking member. When Gillis died suddenly in 1985, I came back to the Senate again, this time with Senator Dale Bumpers.<sup>14</sup> I served as chief tax counsel of the Senate Small Business Committee for eight years, until 1993.

In 1993 I began seven years of service as the principal lobbyist for the biotechnology industry with the Biotechnology Industry Organization (BIO). I was the vice president for government relations and represented one thousand companies on the cutting edge of molecular and genetic research. Now I'm back with Senator [Joseph] Lieberman as his economics legislative assistant and counsel, focusing on high tech, budget, tax, and industrial policy issues.

So I've bounced around a bit over these forty years. Three internships, the Peace

Corps, the F.T.C., Senate, White House, House, Senate, and downtown as a lobbyist.

**RITCHIE:** A varied career.

**LUDLAM:** Yes. I'm not sure you could say my career has always trended upward! It's gone horizontal a few times! But as I hope to explain in this oral history, I've had some wonderful opportunities to serve and make public policy.

**RITCHIE:** Were your Capitol Hill internships important?

**LUDLAM:** Yes, Stanford in Government (SIG) was critical to much of my transformation and to my whole career. I've always been grateful to SIG for the role it played. SIG is over forty years old and this year it's commemorating its history. They asked me to write the overview and introduction for a brochure they're issuing. SIG is a fabulous organization. I've had the privilege of working with it for many decades to bring new generations of Stanford students here for internships. Jeanne Halleck<sup>15</sup> and Suzanne Abel,<sup>16</sup> both with Stanford's Hass Center for Public Service, have been critical mentors to SIG. They are both beloved by the students and I am deeply grateful to them for helping SIG to thrive.

SIG's success led me and some others—principally Catherine Milton at Stanford—to found a year-round academic campus here—Stanford in Washington (SIW). Catherine was the assistant to Don Kennedy, Stanford's president and former FDA commissioner. Don and Catherine were visionaries who led the founding of both SIW and the Haas Center for Public Service at Stanford, institutions that have changed the whole university for the better. Catherine remains a dear friend. The first director of the SIW campus, David Danelski, and his successors, Elie Abel and Adrienne Jamison, have created a first-rate program.

It's an inspiration to me to see so many capable and enthusiastic students coming here each year for internships with SIG and SIW. Many of them have become friends, including Andy Weis, now a lead staffer with the House Homeland Security Subcommittee, and Jon Welner, Gary Rosen, and Pilar Keagy. I know the country is in good hands with them.

**RITCHIE:** How did you become involved with the Senate Legal Counsel proposal?

**LUDLAM:** The Senate Legal Counsel proposal has a strange and tortured history.

The proposal emanated from the Watergate scandal. The Select Watergate Committee proposed in its final report that Congress enact legislation to address a variety of abuses and problems that the committee had documented. These recommendations were bundled together and introduced as a bill called the Watergate Reform Act, introduced as S. 495 on January 30, 1975.

My base at the time was as a counsel to the Separation of Powers Subcommittee of Senate Judiciary. Jim Abourezk of South Dakota was the chairman. He was one of the wildest members ever to serve in the Congress, and I will later recount some stories of his antics. It was a frenetic four years working with him, and we got a lot done.

One person you should interview about this bill is Dick Wegman, who was the staff director for [Senator Abraham] Ribicoff for many years.<sup>17</sup> Ribicoff was the chairman of the Senate Government Operations Committee, which was the key committee for this legislation, and Dick led the committee work on the bill. Dick fully qualifies as an “old war horse.”<sup>18</sup> Dave Schaefer, now a lawyer up in Connecticut, was a key player on this bill.<sup>19</sup> So was Ira Shapiro, who served in the Senate for many years with that committee and also with [Jay] Rockefeller and the Clinton administration.<sup>20</sup> Dick, Dave, Ira, and I, and a few other staffers are the ones who were responsible for enacting this bill into law. We worked on this project intensively over a four-year period—often meeting every day to chart strategy. The law we enacted, eventually called the Ethics in Government Act, includes the Senate Legal Counsel provision.

When S. 495 was introduced, I had just come on the scene with the Separation of Powers Subcommittee. I was the designee for the Judiciary Committee for this bill, a fabulous first assignment.

The Judiciary Committee had jurisdiction over the bill jointly with the Government Operations Committee [now the Homeland Security and Governmental Affairs Committee]. Judiciary had jurisdiction over the special prosecutor provision in the bill and perhaps some other provisions. My first contribution to the effort was to arrange for my committee to waive its jurisdiction over the bill. This meant it was only considered in Gov. Ops. where its chairman, Abe Ribicoff, was a strong supporter of the legislation. So waiving Judiciary Committee jurisdiction was critical.

**RITCHIE:** How did you get the Judiciary Committee to waive its jurisdiction?

**LUDLAM:** Strangely, it wasn't too difficult. Normally committees fight to the death to gain or retain jurisdiction. In fact, there's no legislation that is more contentious than legislation reforming committee jurisdictions!

In this case, [Senator James] Eastland, the Judiciary Committee chairman, didn't believe in ethics reforms or Watergate reforms, but he did not care enough to work to block ethics or Watergate reforms.<sup>21</sup> He wasn't the most active of chairmen. He wasn't looking for work. He was focused mostly on keeping his tenure as chairman of a committee whose membership included many extreme liberals. This is when Democrats were in firm control of the Senate; there were sixty-one Democrats in the Senate in 1975. Judiciary has always been a very liberal committee because that's the kind of member who loves nasty constitutional and criminal law debates and the judgeship confirmation fights. It's always been, and always will be, a very left-leaning committee on the Democratic side, with members like Ted Kennedy and John Culver. On the Republican side it's always been, and always will be, a hard right-leaning committee, with members like Roman Hruska and Strom Thurmond.

Eastland was an old-line Southern racist and right-wing demagogue, a classic Dixiecrat.<sup>22</sup> He was fiercely anti-Communist. He required that all staffers on the Judiciary Committee secure FBI clearances. He feared a Communist might be found to be working on his committee! Eastland probably thought that Joe McCarthy was the greatest patriot in history for attacking supposed Communists working for government.

Eastland was also accustomed to working in smoke-filled rooms. When the Senate passed a resolution requiring committee markups to be open to the public, he came into the markup room and said, "Press can stay but staff gotta go." I guess he blamed the staff for the sunshine rule. So all the staff left and the markup collapsed!

His strategy for retaining his chairmanship of the Judiciary Committee was to delegate vast amounts of power and funding to the subcommittees chaired by the liberal Democrats. It was a bargain for the liberal members of the committee because there was no centralized hoarding of the power or money with the chairman.<sup>23</sup>

Eastland let the subcommittees run wild. For example, Phil Hart ran all his antitrust work out of his subcommittee, Birch Bayh ran all his constitutional rights work out of his subcommittee, and Kennedy ran all his deregulation work out of the Administrative Practices Subcommittee.

This was Eastland's bargain with the liberal members—bribe them with subcommittee funding so he could retain his chairmanship. With the Watergate Reform bill, he delegated to me the authority to waive jurisdiction over the Watergate bill. We knew it'd be easier to move this bill through the Senate if we kept Judiciary quiet, so waiving Judiciary Committee jurisdiction was very important.

Another factor in this was that [Senator] Sam Ervin had served on both the Judiciary and Gov. Ops. Committees and he had the practice of taking bills back and fourth between the two committees depending on where he had the most clout at the time, and the most support.<sup>24</sup> So there had been some tradition through Sam Ervin of the Judiciary and Government Operations working closely together, with Ervin using one venue or the other, but never both. He always managed to keep it at one venue rather than two.

Waiving Judiciary Committee jurisdiction over the Watergate bill was a crucial transaction; it's never easy to work a bill through two Senate committees. We had little or no support on Senate Judiciary for this bill and we had high-ranking support over at Gov. Ops. The Judiciary Committee clearly had jurisdiction over the special prosecutor title of the Watergate Reform Act. It's shocking that the committee didn't fight for its jurisdiction so that it could defend the Justice Department's interests in the matter. It's inconceivable today that the Judiciary Committee would waive its jurisdiction over these issues.

The White House, if it had really wanted to kill this bill, probably could have pressed Judiciary to assert its jurisdiction. The White House never did that—a major oversight or miscalculation. Pat Wald made, or failed to make, this decision. I'll talk more about Pat shortly. She was one of the critical players in this saga. I had a personal relationship with Pat, which involves our common trips on the L2 bus. My relationship with Pat turned out to be rather important as we processed this bill.

So the Watergate Committee had made these reform recommendations, which were quite voluminous. They were all packaged into this one bill. It turned out to take a tortuous

four years to enact these recommendations into law. The Watergate Reform bill in the Ninety-fourth Congress, S. 495, passed the Senate on July 21 of 1976 by a vote of 91-5. Then the bill died at the end of the Congress. The House had no interest in the reforms. The Watergate bill was reintroduced as the Public Officials Integrity Act, S.555, on February 1 of 1977. It passed the Senate 74-5 on June 27, 1977 and finally passed the House (as H.R. 1) by 368-30 on September 27, 1978. This is the bill that became law on October 26 of 1978 as the Ethics in Government Act. All told, it took us forty-six months to enact this bill into law.

Our problem was that as time passed from the Nixon resignation on August 8 of 1974, the momentum for reform dissipated. Worse than that, there were essentially no members in the Congress who wanted to enact the specific reforms the Watergate Committee proposed.<sup>25</sup> There was essentially nobody in the executive branch that wanted any of these reforms.

Basically, this was a staff triumph. We staffers, Dick, Ira, Dave, and I, knew that if we ever got the bill up for a vote in the House or Senate, we would win the vote. The problem was getting that vote scheduled. When we got a vote, the votes for the bill were overwhelming because people were forced to vote for anything called “ethics” or “Watergate” reforms. Getting the bill scheduled was the bitch. In a moment I will tell you about the maneuver that I personally managed with regard to Tip O’Neill which was critical to the scheduling of the bill in the House.

The Senate Legal Counsel proposal was included in both the 1975 and 1977 bills, S. 495 and S. 555. Its enactment was contingent upon passing the larger Watergate Reform bill. It was a hostage in the larger bill. So if the larger bill had failed, we would not have established the Senate Legal Counsel office. We did have some problems with the Legal Counsel proposal, which I will explain, but it was the least controversial provision of the larger bill.

The other titles, especially the requirements for public financial disclosure by high ranking officials, members of Congress, and senior congressional staff, the procedures for the appointments of special prosecutors, and the revolving door restrictions when congressmen and congressional staff leave the Hill to lobby, were all very controversial.

Special prosecutors have proven to be very controversial, especially with the special prosecutors appointed to investigate President Clinton and his administration. The revolving door restrictions and financial disclosure have also been extremely controversial. Over twenty-five years, most public servants have come to accept financial disclosure and the revolving door restrictions, with all of the warts and problems, but at the time the idea that you should disclose your personal finances to the public, and that there would be restrictions on post-Hill employment downtown with a lobby firm, were wildly controversial. These ideas were hated by the members and congressional staff. I mean the members and the staff hated financial disclosure. The members and the staff hated the revolving door restrictions because that forced them to observe a cooling off period of one year before they could lobby their old colleagues or employers on the Hill.

In addition, the Justice Department hated the special prosecutor provision. It clearly implied that the department lawyers were not independent enough to investigate high profile allegations against executive branch officials. The department viewed the special prosecutor proposal as a pejorative statement about its honesty and prosecutorial zeal. The special prosecutor became unavoidable in the case of Watergate when Attorney General [John] Mitchell himself was implicated in the scandal.<sup>26</sup> But, despite this clear need for a special prosecutor to investigate Watergate, the career lawyers at Justice wanted to kill this practice. Institutionalizing the appointment of special prosecutors was anathema to them. It was a slur on their integrity.

The Congress was appalled at the idea that the special prosecutors would be appointed to investigate and prosecute members of Congress. They didn't much mind appointing them to harass executive branch officials. They hated the idea of applying it to themselves.

This was especially true of Tip O'Neill, who at the time was involved with Koreagate, a scandal about his and other members' contacts with some lobbyists for Korea. He was fearful that he would be prosecuted.<sup>27</sup> O'Neill was sitting on the reform bill in the House, partly for fear that it would apply to him and other high ranking Democrats—that there would be a Koreagate special prosecutor.

The purpose of the special prosecutor provision is to avoid a direct conflict of interest when the Justice Department is investigating the president or attorney general or other

higher-ups in the executive branch. There is no conflict in the department investigating a member of Congress, so we never had any sense that the special prosecutor should be appointed to investigate a member of Congress. But O'Neill feared that the Republicans might offer an amendment to the bill that would do that, and cite Koreagate as the rationale. No such amendment was ever offered and the final bill only applied to executive branch officials. Despite these facts, O'Neill feared the worst and was holding up our bill.

So one of the things that I did—and it's one of the rougher things that I've ever done in my career—was to plant a story in the paper that O'Neill was holding up the ethics bill and special prosecutor provision because of his possible Koreagate involvement, because he feared that a special prosecutor might be appointed to investigate him.<sup>28</sup> Planting that one story was sufficient to force O'Neill to take his hold off the reform bill and schedule it for a House floor vote. That one story had an immediate and decisive impact. One article, one reporter, nicely done, sprung the bill in the House. I did nothing more than was necessary to pry the bill loose in the House. It was surgical, elegant.

I'm not sure Dick, Dave, and Ira knew I was planting this story. I'm sure that none of the senators knew about it—they'd have blocked it. Sometimes staff just has to be creative and entrepreneurial! I do not recall feeling terribly at risk in "outing" O'Neill. He was a very popular Speaker and I'm sure if I'd been caught I'd have been summarily fired. I was careful, of course, and didn't get caught. I recall feeling this was something that would help our cause and get the bill unstuck. In fact, I think if I hadn't done this, we might have lost the bill in the House. So it was definitely worth the risk—especially because I didn't get caught and it worked! What did Churchill say, "There's nothing more exciting in life than having a bullet pass by your ear and surviving the experience"?

The political game can get rough and you have to know when and how to take risks. You have to know when they're worth it and how not to get caught. We knew why O'Neill was holding up our bill, so we had to "out" him, and I did. Simple as that. Nothing personal, and leaving no fingerprints. In fact, I rather admired and liked O'Neill. He was a great guy, but he was holding up our bill. I had no choice but to get rough. We knew we'd win if we could only get the bill scheduled for a vote, which was exactly what happened.

The only members in either house that supported the bill were Ribicoff, [Charles] Percy, [Jacob] Javits, and Abourezk. [Peter] Rodino, House Judiciary Chairman, hated it,

absolutely hated it, along with everybody else who counted in the House. If members had to vote on it, they were going to vote for it. As I've said, S. 495 and then S. 555 passed the Senate by a 20 to 1 multiple in 1976 and 1977. In 1978 the reform bill passed the House by a multiple of 200 to 1. The House voted against striking the special prosecutor provision by a vote of 344 to 49, a multiple of 7 to 1. It was clear if we were to get a vote on it, we were going to win. The problem was getting a damn vote on the bill.

One key player was Pat Wald. Her role in this process is largely unknown and unsung. Pat was the head of the Office of Legislative Counsel at the Justice Department during this time. She was the chief lobbyist for the department. She is well-known now as a former member of the D.C. Court of Appeals and judge with the International War Crimes Tribunal.<sup>29</sup> She is a distinguished, brilliant, and wonderful woman.

I'd gotten to know Pat during a six-month internship I'd had in 1971 at the Center for Law and Social Policy, where I worked for the environmental plaintiffs on the Alaska pipeline lawsuit. This was a landmark case because it defined what it meant to prepare an environmental impact statement. More on this later. Pat was a lawyer at the center and a friend. My friendship with Pat is one of dozens of such relationships that have proven to be crucial over my career. This is a small town and relationships can make all the difference. The rule is that you need to be careful with your relationships because you never know when someone will turn out to be on the other side or a crucial ally. The staff who take shortcuts and abuse others find that there are costs to this that cripple their effectiveness.

Pat and I both lived in upper Northwest D.C. and happened to ride the L2 bus together down to the Federal Triangle and the Hill. Probably twenty different times, twenty-five times, she and I rode the bus together. She'd get off at Justice and I'd continue up to Capitol Hill. During those many trips I educated her, or I think the better word is "lobbied" her, on all of the issues relevant to the Watergate Reform bill.

These captive audience educational sessions helped our team a great deal. Pat was instrumental in persuading the Justice Department to back off its opposition to the bill. She didn't push the Judiciary Committee to assert jurisdiction. I think she didn't in part because of our personal relationship and those L2 bus rides. She became convinced that the bill would not lead to the demise of the Justice Department. Pat deserves tremendous credit for the enactment of the Ethics in Government Act.<sup>30</sup>

In addition [President Jimmy] Carter was a moralistic guy, who won against [President Gerald] Ford because of Watergate. Carter was probably the president more interested in ethics than any president we've ever had. So the combination of Pat Wald and Jimmy Carter, and incredible maneuvering by Dick Wegman and the rest of our team, finally got it enacted. Paul Rosenthal was involved. Jim Graham, who's now a D.C. city councilman, was involved as well. He handled the revolving door provision in the bill. Dave Schaefer handled the special prosecutor part. I handled the Senate Legal Counsel title. If there was ever a bill that was driven and enacted by staff, and staff alone, this was it.

**RITCHIE:** Why is the Senate Legal Counsel's office important?

**LUDLAM:** Its importance is easy to explain. Every institution in this country gets involved in litigation—businesses, churches, hospitals, and universities. In every case the powers of the institution can be put at risk. In many cases they are defending immunities and powers. This is also true of lawsuits against government, and lawsuits against the House and Senate. So all of these institutions need vigorous, expert legal representation. This representation is critical if the Congress is to prosper as a co-equal branch of our government in a constitutional scheme based on separation of powers and checks and balances.<sup>31</sup>

The problem is that there was no office in the Congress that was handling this critical litigation function in defense of the separation of powers and checks and balances. Can you imagine an institution in the private sector or an agency of the government with no general counsel, no law firm on retainer, and no strategy for handling litigation? Well, that's what we had here on the Hill. We had a badly flawed, ad hoc system, a patchwork system that left us mostly defenseless against attacks on our constitutional status.

The inclusion of this provision in the Watergate Reform bill arose from a vague reference in the Watergate Committee report on the need for a better system to handle congressional representation in court.<sup>32</sup> That committee had struggled with a massive litigation docket. It was involved in fifty or sixty different legal actions, and had to do all of it from scratch with no Senate institution to help it. James Hamilton, one of the committee litigators, wrote a book on the subject, *The Power To Probe*, which outlines the struggle of the Watergate Committee to deal with the myriad legal and litigation issues that arose in the course of its investigation. The committee couldn't enforce its subpoena for the Nixon tapes and it had to enact a jurisdictional statute to bring this lawsuit. I'll get into this problem later.

The committee had endless litigation problems, and they knew how inadequate the representation of Congress was in court. So they included a vague reference in their final report to the need for someone to take care of litigation involving the Congress.

I was the one who fleshed it in, fashioned it into a workable concept, and made it happen. I used the Watergate bill as the vehicle to get it done. It's hard to believe, but the Justice Department was then serving as legal and litigation counsel to the House and Senate, to the committees, and to the members. With the Watergate Committee investigation, it was obviously inappropriate to ask the Justice Department to handle all the litigation that the investigation spawned. So they'd created an ad hoc law firm in the middle of the committee staff to handle it.

While the Watergate investigation is an extreme example of conflict between the legislative and executive branches of government, it was clear to me that it was never appropriate for the Justice Department to handle the litigation involving members of Congress. Today we would look at that arrangement and view it as ridiculous. It's obvious that the Justice Department represents a separate and often competitive branch of government. The Executive Branch, represented by the Justice Department, is in conflict with the Congress on many subjects. Separation of powers and checks and balances is often a zero sum game. If one branch gains powers, it's often at the expense of the other branch. If one believes that the separation of powers is fundamental to our freedoms, as I do, then having the Congress represented in litigation by the Justice Department is totally unacceptable.

We did not have to set up the Senate Legal Counsel office by statute. We could have set it up informally or by a simple Senate resolution.<sup>33</sup> Indeed, it's very strange that we have a Senate office that's been created by statute. Statutes are rigid, hard to change, hard to amend. Amending them requires the concurrence of the other House and the president.

It's even stranger that the Legal Counsel statute is rather detailed. For example, it has provisions regarding terms of office and removal. This is pretty unusual stuff for the Senate, which does not like to get bound up with statutory requirements. But I thought this was the way to get this office firmly established, to give it stature and power, and to make it permanent. So I wanted to ride this proposal on the Watergate bill. Given the opposition of the Justice Department to the Legal Counsel office, I thought it was especially important to

set up this office in a statute and give it full legal powers and standing.

To establish the rationale for the office, I organized a series of hearings on the issues regarding representation of Congress in litigation.<sup>34</sup> The hearings focused on what the Justice Department was doing and not doing to represent Congress in court. I crafted the hearings as a prosecution of the department, highlighting every instance of conflict or arrogance. I had two goals, to end the representation of the Congress by the department and to set up the Legal Counsel office. To accomplish these goals I had to indict and convict the department. It wasn't personal. It was a necessary and unavoidable strategy.

The hearings we had on this issue in the Separation of Powers Subcommittee were especially interesting because we invited Phil Kurland, who was a consultant to the subcommittee and an expert on separation of powers, to appear on the panel to ask questions. Abourezk had the delightful habit of leaving in the middle of the hearing and letting consultants and staff ask all the questions. In those two days of hearing, I asked 170 questions of the witnesses, with no member present. Other questions were asked by Phil and our chief counsel, Irene Margolis. Basically I chaired the hearing, which was a lot of fun. We certainly don't handle hearings this way anymore now that we have C-SPAN!

The hearings highlighted the obvious conflict of interest in Justice Department representation of Congress. If a member needed legal counsel, he or she either had to pay for it or go begging to the Justice Department. The member could retain counsel at his or her expense and then seek reimbursement, but getting reimbursed required the enactment of a special resolution appropriating Senate "contingent funds" after a debate and vote on the Senate floor—a very cumbersome, intensely public, potentially embarrassing, and uncertain process.

At one point Senator Bill Proxmire had been sued by someone in connection with his Golden Fleece Awards.<sup>35</sup> He was sued by some researcher who felt he was being defamed when he received one of Proxmire's awards. Proxmire had to get a Senate resolution passed to get reimbursed for his legal bills in defending himself.<sup>36</sup> His argument, which I thought was completely valid, was that in defending himself he'd also been defending the constitutional prerogatives of all the members.

The debate on the resolution presented an interesting problem for Proxmire because

he held the record for the longest continuous record of not missing a vote, yet he was being asked to vote on a resolution to cover his legal bills. We explored whether he could vote “present,” but in the end he voted “no” and kept his continuous voting string alive and did not vote for something in which he had a direct financial interest.<sup>37</sup>

I was involved with the debate on this resolution—strongly favoring Proxmire’s claim for reimbursement—and helping him to avoid breaking his consecutive vote string. If we’d had a Senate Legal Counsel at the time, it would surely have handled Proxmire’s case, so he would never have had to front the costs for his attorney and risk that he’d not be reimbursed. His dilemma demonstrated exactly why we needed to establish the Legal Counsel office.

In the executive branch, of course, officials are sued all the time and their cases are routinely handled by the Justice Department. My view was that Congress needed its own Justice Department. This ad hoc scheme for congressional representation was not a small problem. It is common for the Congress, members, and committees to get involved in litigation. In our hearings, we found that the Justice Department had handled fifty-five congressional cases in the previous five years.<sup>38</sup> It had hired private counsel in eight cases because it thought these cases involved a conflict of interest in pursuing the point of view of the congressional defendant, and it had refused to provide representation in five cases.

It was a complete mess. There was no reliable, predictable place where a member or a committee could go to secure legal and litigation services. There was no place to go for advice in crafting a subpoena, in discerning the rights of witnesses in a congressional hearing, and in granting immunity to a witness or handling a grand jury problem. There was no office to give advice to members and staff on how to avoid litigation.

It was an outrageous conflict of interest for the Justice Department to handle these issues. There are natural—and desirable—tensions between the branches of government. Fundamentally, the executive branch is institutionally opposed to a stronger and more powerful Congress. It views the separation of powers as a zero sum game; the more powerful Congress becomes, the less powerful is the executive branch.

The Justice Department opposed the Senate Legal Counsel provision of the Watergate bill, saying there was no need for “drastic measures” such as establishing the Senate Legal

Counsel office. The department said that the bill I'd drafted to establish the Legal Counsel office, S.2731—which was introduced separately from the Watergate legislation to give it more prominence—contained “substantial constitutional infirmities.” It said this even though it admitted, “There is no doubt that in certain instances the Department’s interests and functions are at odds with an expansive view of the speech and debate clause” immunity for members of Congress and their staff.

Few understand the critical importance of the speech and debate clause in preserving the separation of powers.<sup>39</sup> Defending this immunity was one of the critical functions that we could not entrust to the department. The Justice Department asserted that the executive branch must, should, and would control all government litigation, including that of the Congress. The Justice Department completely dominates all the executive branch litigation and has always fought to control the litigation of the independent regulatory commissions, so its position regarding congressional litigation was part and parcel of its larger war to dominate all government litigation. It wanted the Congress to be dependent on the department. This would give it opportunities to limit the power and independence of the Congress. I viewed this as a fundamental threat to the Congress and our whole system of government. I viewed creating the Legal Counsel office as an important strategy in defense of the separation of powers.

Another source of tension was the Justice Department’s assertion that it alone represented the “United States.” Even when its viewpoint was exclusively that of the executive branch and in contradiction to the viewpoint of the Congress, the department asserted that it still represented the “United States.” The executive branch is responsible for taking care that the laws be faithfully executed—that’s what the Constitution says—but that doesn’t mean that only the executive branch can say that it represents the “United States.” As a partisan of the Congress, I found the department’s views to be arrogant.

The Justice Department also opposed the provision I inserted in our bill to provide jurisdiction in the courts to enforce congressional subpoenas. Let me explain why we need this provision. The Watergate Committee had not been able to enforce its subpoenas for the Nixon tapes for lack of standing and lack of court jurisdiction. They had to enact a special statute conferring jurisdiction on the courts to hear the Watergate Committee legal action to enforce the subpoenas against Nixon. But it only applied to that one committee in that one investigation.<sup>40</sup>

To remedy this problem, I inserted a provision in our bill providing for civil subpoena enforcement of congressional subpoenas using the courts—across the board.<sup>41</sup> Originally the provision I drafted applied to any subpoena, including a subpoena to an executive branch official. Of course, the Justice Department hated that! In the end, I was forced to agree to limit that jurisdictional statute for civil enforcement against private citizens and corporations and not the executive branch. It became 28 USC 1365. This was one of the compromises I was forced to make during the consideration of the Senate Legal Counsel proposal.

**RITCHIE:** What is the history of subpoena enforcement for the Congress?

**LUDLAM:** Before I enacted this subpoena enforcement statute, there were very limited and cumbersome ways for Congress to enforce its subpoenas. One way was to refer the matter to the Justice Department to bring a criminal contempt action against an individual who refused to comply with a congressional subpoena. There were times, however, when the department determined not to indict that person. And it had a monopoly over all criminal indictments.

In addition, in criminal enforcement proceedings the courts were often reluctant to send a recalcitrant witness to jail. In many cases the witnesses were claiming what they believed were legitimate constitutional rights and immunities—like in the McCarthy era. As an alternative to criminal indictment, Congress could attempt to enforce a subpoena through “direct contempt.” This involved sending the House or Senate sergeant at arms to arrest somebody and jail them in the Capitol. In the hearings, I went to the Architect of the Capitol and found out where the old Capitol jail was located. There was at one time a jail here in the Capitol where the Congress could imprison citizens who refused to comply with its subpoenas.

**RITCHIE:** Where was it?

**LUDLAM:** The AOC [Architect of the Capitol] reported to me, “Several rooms in the Capitol have evidently been used for detention of offenders. They were called Guard Rooms and it is not always clear whether those rooms were kept strictly for custody of prisoners or whether they were also used as a guard station.” In addition, there’s an article in the [Washington] *Evening Star* on October 6, 1902, that refers to a guard house located

in the “room now occupied as the House of Representatives post office, in the southeast corner of the ground floor of the Capitol.” This is the room that was used by the infamous House bank. There are quite a few other references to guard rooms.

The reason I tried to locate the old Capitol jail was because it was relevant to the subpoena enforcement proposal I was championing. In explaining the “direct contempt” option, it became obvious that we needed to establish a modern system. History has its uses!

With only criminal and direct contempt available, it was very difficult to enforce a congressional subpoena. It’s not always appropriate for Congress to beg the attorney general to indict someone, and it’s not realistic for Congress itself to imprison someone. The Congress should not have to depend on the goodwill of the separate and often antagonistic branch of government. Also, criminal prosecutions are a crude way to pressure a witness to produce documents or testify.

In drafting my proposed civil subpoena enforcement mechanism through the courts, I spent an entire congressional recess researching every case I could find on civil subpoena enforcement in any court, in any context. I took every precedent that was pro-enforcement and put them in the legislative history. In essence, I wrote a brief in favor of the new subpoena enforcement mechanism. I attempted to give the new Senate Legal Counsel every advantage when the new mechanism was used—and challenged. I cited twenty-five cases, all of which would help the Senate Legal Counsel defend the new mechanism, and secure enforcement of the subpoena. I knew that the first enforcement case would be critical.

With the enactment of this law, civil subpoena enforcement through the courts is available to the Senate. This approach has been held to be constitutional and it’s been utilized quite successfully.<sup>42</sup> It would have been used much more if the Senate were serious about launching investigations, which it isn’t. I find it disgraceful that the Congress shows so little interest in its investigations power. I attribute this to the decline in serious, as distinct from political, members on the Hill. For the new, Yuppified members, investigations are just too much work for them!

Another provision in the Senate Legal Counsel title, which was original to me, is the right of Congress to defend the constitutionality of statutes when the executive branch refuses to do so. I was rather amazed that the executive branch, which was supposedly

responsible for taking care that the laws be faithfully executed, was failing to defend the constitutionality of some statute. It had a practice of saying, “The United States believes that this statute is unconstitutional.” There had been five cases in three years where it had failed to appeal a finding that a statute was unconstitutional.

In one case the Justice Department had actually intervened to attack the constitutionality of a statute. It might not like the statute, and it might not defend it quite as vigorously as we would like, or it might use arguments that are not the same arguments we’d make, but it is an outrage for the Justice Department to intervene in a case to attack the constitutionality of a statute. In my view, this completely violates the constitutional duties of the executive branch to “take care” that the laws be “faithfully executed.”

As a congressional partisan, my view is that the executive branch is required to defend the constitutionality of all statutes. I attempted to address this issue in the Senate Legal Counsel bill. Part of this issue focused on the right of Congress to intervene in cases where the constitutionality of a statute was at issue. When a party is permitted to intervene in a case, he gains many rights, including the right to appeal. If you file only an amicus brief, you have none of the rights of a party and no opportunity to appeal. So intervention was critical in cases where the Justice Department failed to appeal a court ruling that a statute was unconstitutional.

The fascinating history here is that there is a jurisdictional statute—section 2403—giving the executive branch the right to intervene “for argument on the question of constitutionality.” It doesn’t say, “To intervene to defend the constitutionality of a statute.” It says to intervene “on the question of the constitutionality.” The Justice Department had interpreted Section 2403 to permit it to intervene either to defend or oppose the constitutionality of a statute. And it had, in fact, relied on Section 2403 to intervene to attack the constitutionality of a statute.

I was curious about the legislative history of Section 2403, so I went down to the Archives to look up the internal Justice Department memos about it. All of the files had been made public. It turns out that Section 2403 was the only part of the Roosevelt court packing plan that became law. Roosevelt’s only purpose in enacting Section 2403 was to intervene to defend the constitutionality of the statute. The reactionary Supreme Court was declaring many New Deal statutes unconstitutional. I looked at all of the memos between the attorney

general and Roosevelt about the whole court packing plan. It was a fascinating story of how they researched the number of justices that had been on the Court, and all the historical precedents for increasing the number of justices.<sup>43</sup>

This history of Section 2403 confirmed that its only intent was to permit the executive branch to intervene to defend the constitutionality of statute, and not to intervene to attack the constitutionality of any statute. But, some staffer screwed up the drafting of the provision! The text of the statute was not written tightly enough to prevent its misuse by the executive branch. The statute should have said the intervention was authorized only to “to defend” the constitutionality of a statute. In this case, congressional staff misdrafted the statute and permitted the executive branch to intervene to attack the constitutionality of a statute. Sometimes staff can make some horrendous mistakes if they aren’t paying attention to the details. This is one of the problems we’re seeing with so many inexperienced staffers here in the Congress.

I wanted to amend Section 2403 to limit its use by the executive branch to intervention to defend the constitutionality of a statute, and I also wanted to give the Congress the right to intervene to defend if the executive branch didn’t do so. My intent was to ensure that someone defended these statutes. I didn’t manage to get this done in the bill. This was a second compromise I was forced to make. The bill says that the counsel office has a right to file amicus briefs—not the right to intervene—and it does that quite frequently.

Another major reason for establishing the Senate Legal Counsel office was to provide legal counseling on how to avoid litigation. How should subpoenas be drafted? What rights of a witness must be observed?

I also wanted to provide an institutional memory on congressional powers and prerogatives, speech-and-debate-clause immunity, and other areas of the law that the average lawyer doesn’t know anything about. We needed somebody who had command of all of the legislative history back to the founders and who would manage a long-term strategy to defend the congressional institutional powers. As I’ve said, speech-and-debate immunity has been attacked, and will be attacked again. Somebody needs to know the precedents and the line of cases and the trends. We need to anticipate test cases and make consistent and tough arguments in defense of the Congress. We need to develop a respectful relationship with the key courts. We need lawyers in the Congress, crack litigators, who are completely ready to

defend the institution in court.

Another key issue was whether it'd be a joint House-Senate congressional legal counsel to represent the whole Congress or just a Senate counsel. I fought every day to make it a joint counsel. My idea was that the Congress as an institution rises or falls as a whole, and the Senate and the House should come together to defend congressional powers, bringing the full weight of the entire institution, with the prestige of both houses, to bear in defending the Congress. These are congressional powers, not just Senate powers. I wanted the Congress to appear in court as a coequal branch of government.

The House had a very different system of litigation support from the Senate because the House Administration Committee and the general counsel of the House Clerk handled litigation as it arose. The House was not quite as defenseless as the Senate in litigation. Right in the beginning of all of this process, Stan Brand arrived to serve as the general counsel to the House Clerk. He is somebody who could give you reams of stories about these issues. I went to see him a couple of weeks after he arrived, and I said, "Stan, you're going to handle all the litigation for the entire House." This was completely new information to him. He had no concept that he would handle any litigation for the House. He turned out to be a fabulous litigation counsel for the House.<sup>44</sup> Steve Ross succeeded him, and did a great job as well. Charles Tiefer worked there with Stan and Steve, and then Charles served in the Senate Legal Counsel office.<sup>45</sup>

They ran a first-rate litigation operation in the House Clerk's office. It's still run out of the House Clerk's office. But it was entirely managed by the Speaker, then by O'Neill. There was no bipartisanship about it. I thought that was dangerous. I did not think they had done anything to abuse their litigation power, to say, "The House" or "The Senate" represents some position that was only the Democratic position. I'd never seen that, but I was worried that one bad case would destroy the bipartisanship, or make it a partisan office, and make it a partisan function.

Because the House had established this system for handling litigation, it wasn't interested in my proposal to establish a joint congressional counsel. I think this was very short-sighted. So establishing only a Senate counsel was a major compromise I was forced to make.

One of the strangest provisions in the counsel law is the conflict of interest provision. Basically we said that we recognize that there may be cases where the client has a point of view that is not consistent with the institution's point of view. If the Senate Legal Counsel is serving as the member's legal counsel, under the canons of ethics the counsel is obligated to defend the client. In the case of congressional litigation, the client could be seen as being both the individual and the institution, and there might be a conflict between their interests. So I wrote a provision in the law that recognizes that possibility and provides ways to deal with it.

Writing this provision into law was getting fairly elaborate. But the conflict of interest issue—between the Justice Department and the Congress—was the core rationale for the office. So it made sense to me that it should address the other conflict of interest issue—between the individual client and the Senate as an institution.

This second conflict of interest issue—between the client and the institution—led to my launching a major investigation of the Justice Department for its defense of the COINTELPRO buggings and break-ins. I'll tell that story in another interview.

In short, conflict of interest issues were a core rationale for the Senate Legal Counsel and an ongoing problem for it once it was established. When the counsel represents a senator or staffer, the individual client might want to raise arguments that are not consistent with the institution's interests. My point is that the Senate is a very unusual and special client. I think the canons of ethics do not always tell us exactly how to handle the conflicts that might arise.

**RITCHIE:** One good thing about Watergate was that it provided a lot of bad examples. There were just a lot of very specific situations in which government was misapplied, and the abuse of power was so obvious that at least when you were drafting the statute you had some specific goals regarding things that you knew could go wrong with the counsel once it was established.

**LUDLAM:** Watergate itself was fairly black and white. It was not gray. But the bill contains many gray issues.

My highest priority was to ensure that the Senate counsel would be seen as a non-partisan office that defended the institution, not the interests of one party. To accomplish this,

I set up strong bipartisan control of the office in the Senate. The mechanism I set up was thought by many to be too cumbersome, but in my view the counsel's office would be effective only if it were seen as non-partisan. To this end, I set up a joint leadership group that oversees the office. It's completely bipartisan. Both parties have an absolute veto over decisions regarding the counsel. The counsel would be authorized to take action only by a two-thirds vote of that group. If you did not get that authorization, you had to get a resolution through the Senate itself.

Everybody kept telling me that this was going to be cumbersome, and bureaucratic, and everything else. I think it has worked beautifully. When the first Senate Legal Counsel, Michael Davidson, survived the change and control from Democrats to Republicans in the Senate in 1981, I think that proved that it had become a nonpartisan post and office.<sup>46</sup> It is now viewed as an institutional post, not a partisan one. The governance structure I imposed on the office is the single wisest element of the legislation I crafted. I do not take its nonpartisan status for granted. The parliamentarian's office has become somewhat of a partisan office. I think they do their best in the parliamentarian's office to be nonpartisan, but there has been some erosion of its independence.

That's never happened with the Senate Legal Counsel. I think there's never been a case where they were viewed as partisan. The cumbersome governance mechanism has proven to be crucial. I fought to keep that mechanism; it was one of my highest priorities. I now feel vindicated. The Watergate Reform law, including my Senate Legal Counsel provision, became law on October 26 of 1978. Michael Davidson was appointed in May of 1979, so this May [of 2003] was the twenty-fifth anniversary of the opening of the office.

I have been pressing the Senate Legal Counsel to organize a day-long conference on the office, its strange clients, its strange history, its strange problems, and the strange area of law it cares about. I thought this was appropriate on the twenty-fifth anniversary of Michael's appointment. I wanted to bring in Michael and the other counsels to talk about what it's been like to lead this strange institution, in this strange context, with these strange clients and issues. Unfortunately, the office has declined to organize such an event. Apparently it's fearful that such a conference might attract too much attention; it wants to remain anonymous. I respect that decision, but I think it would have been fun for the office to spend at least one day in the sun.

**RITCHIE:** When the House backed out of having a joint congressional counsel, was there any opposition in the House to passing something that just related to the Senate?

**LUDLAM:** No, the House went along with the Senate's wishes on how to organize itself. I was concerned about the House opposing a Senate counsel, but there is a strong tradition up here that each house should be able to handle its own internal affairs as it wishes, a live and let live philosophy. I argued that it was none of the House's damn business what the Senate did.

**RITCHIE:** How about within the Senate? What about the Republicans in the Senate, like Senator [Howard] Baker, who was minority leader. Did they have any reservations about this at the time?

**LUDLAM:** We didn't really have any opposition other than from the Justice Department. We had some difficulty with the executive branch on the subpoena enforcement. It was resentful of my setting up the office as a competitor with the department, but I neutralized most of that through Pat Wald. When they looked at the current arrangements, senators thought that the counsel office was a reasonable new institution. Because of the bipartisan control, nobody feared it would get out of control.

**RITCHIE:** How about Senator Abourezk? What was his role in all of this? You said he absented himself from large parts of the hearings.

**LUDLAM:** Well, Abourezk was an unusual member. We would normally brief him for a hearing on the walk between his office and the hearing room. He didn't want to have a briefing before that. He would normally stay for about half of the hearing and then leave, and leave it up to us to run the hearing. He played a minimal role supervising the subcommittee. I mean minimal. Those years were unbelievably active and productive, so he was happy. He was a visionary, not a manager.

In terms of the Senate Legal Counsel provision, he left it to me. It was probably 99 percent me, 1 percent Abourezk. He didn't add any concepts or ideas to the mix. Abourezk was a delightful guy to be around, incredibly bright and funny, and very committed to his causes.

The staff was a very liberal staff, and once, we wrote him a memo on a pending child pornography bill. We told him that we thought the bill was probably unconstitutional, which I think is what the courts eventually determined. We assumed he'd vote for it anyway, but we just told him, "You might want to know that we think it's unconstitutional." One day we started getting phone calls and it turned out that the vote was 99 to 1 on the child pornography bill, and he'd been the one to vote against it. That was the kind of guy he was, principled, courageous, and outrageous.

In another interview, I will recount what he and I did on the Hart-Scott-Rodino Antitrust Improvements Act. I'll also recount some incredible stories about the closing hours in 1978 when Abourezk was retiring and we killed the Airline Noise bill. He got especially wild at the point after he had decided he wasn't going to run for reelection. He's also famous for the natural gas deregulation filibuster with [Senator Howard] Metzenbaum.

Sam Ervin will go down in history as the perfect man at a crucial time in our nation's history. He was unique. The fact that he understood the critical importance of separation of powers, and had even established a "Separation of Powers Subcommittee" in the Judiciary Committee—that couldn't have been more timely given the Nixon abuses of power. He cared about the powers of the Congress as an institution as few have ever cared for them.

In all my years up here, I have seen how members' respect for the institution has declined. When I came here, Carl Hayden was a senator. Men like that, who really cared about the institution, were more common twenty and thirty years ago. Now, so many of the members run for the Senate without ever having held another office. They don't first become mayor, and House members, and then come to the Senate. Some of them do, but a lot of them come straight to the Senate.

Concomitant with this fact is a huge decline in civility, and a huge decline in institutional memory. The staff tends to be increasingly inexperienced, and doesn't know anything about the institution, the legislative branch, administrative law, Senate parliamentary procedure, congressional investigative powers, or the other relevant disciplines.<sup>47</sup> The Senate has really become very much an "ends justify the means" institution—short-termers with no respect for the institution.

Sam Ervin, however, was the kind of man who said, "There are issues that transcend

partisan interests. We need to protect this institution.” He was a unique individual in this institution. He was here at the time when his values and expertise perfectly coincided with the issues that were pending in Watergate. It is unimaginable that anyone else could have so effectively chaired the Watergate Committee. And Sam Ervin deserves tremendous credit for the fact that we enacted these ethics and Senate representation reforms.

**RITCHIE:** He retired at the end of ’74. Did he continue to play any role after that?

**LUDLAM:** No. He was one of the only members who ever went out at the top of his game. Most of them get defeated or go out in a box. You have to admire the few who go out on top, and he did. His retirement opened up the Separation of Powers Subcommittee for Abourezk.

**RITCHIE:** But he didn’t consult with you or anything like that?

**LUDLAM:** No, he believed that retirement meant retirement. We never saw him, never heard from him once. Ervin had left us Phil Kurland, who had worked with him closely, and Phil was a man of stature on these arcane issues.<sup>48</sup> The long and the short of it is that Watergate was a momentous event and we successfully used that sorry chapter in the nation’s history as an opportunity to enact some important ethics and institutional reforms.

The Senate Legal Counsel office has been a success. The statute I wrote has not been amended in any significant way. The office staff tells me that there have been no problems with any of the minutia that I wrote into the statute. The office has proven to be non-partisan and non-controversial. It has intervened or filed amicus briefs in a fair number of cases. It’s provided counseling services on an ongoing basis to the committees. It was critical in helping the Senate prepare for the Clinton impeachment proceeding. I think it’s been a great success and has given the Senate more power to defend itself and its role in the constitutional separation of powers.

The office has published some very useful summaries of its functions and involvement in defending Congress. It’s helped Senate committees on fourteen major investigations. It’s represented the Senate in ninety-seven reported court decisions, including thirteen in the Supreme Court. It’s been authorized by 505 Senate resolutions to represent members, thirteen in 2004 alone and a high of thirty-eight in 1997. I assume it’s handled

hundreds of other matters that have never become public. Indirectly, the House gets represented in these cases as well, because the powers at issue are those of the Congress as a whole.

The office's workload sounds like that of a small law firm. It keeps four lawyers busy, and has a budget of \$1.2 million. I think this is a bargain given what's at stake in these cases—the powers and effectiveness of the whole institution. I don't believe we will ever get a joint House-Senate counsel. We had an opportunity for a joint counsel back then, and will never have one again. Managing a joint House-Senate counsel would have been cumbersome, but I have no doubt it would be worth the effort. But, it'll never happen.

I doubt that the House will ever institutionalize their litigation function in the same degree as we did in the Senate. They handle it much more informally, and that seems to be working fairly well for the House.

Even with the Senate Legal Counsel defending congressional powers, I am fearful about the erosion of these powers by the executive branch. The courts wax and wane on these issues, and it's a litigious society, so the Congress needs to be completely ready, at a moment's notice, with competent counsel, and institutional memory, to defend itself. It may well need to take the offensive to defend itself regarding its constitutional powers. Litigation and bad precedents are a big threat to the Congress.

The bottom line is that I helped one of the branches of the government defend itself, defend its powers, and remain a co-equal branch of government. This is historic stuff that involves the greatest strength of our constitutional system, the separation of powers. I view this one accomplishment as justifying my entire public service career. If I'd never done anything else, this would be sufficient.

**RITCHIE:** This is a very interesting story. You were doing this at the end of a period in which the Democrats had controlled both houses for about a quarter century. It was probably the one time when you had the possibility of enacting all these reforms. Since then, we have had several periods in which the House and Senate have been controlled by different parties and probably would not have wanted to go along.

**LUDLAM:** Yes, on ethics issues this was a critical and unique time. When we passed

this bill, Nixon had just been ousted out of office on ethics charges. The Democrats were completely in control and wanted to prove that, in contrast to Nixon and Ford, Democrats believed in ethics. Carter won because of Watergate—Ford’s pardon of Nixon was a political disaster and Carter was a righteous man. This gave us the pretext and context we needed to enact the Ethics in Government Act.

So I agree, it was a unique opportunity to get this statute enacted. With regard to the Senate Legal Counsel, we had just had this big litigation experience for the Watergate Committee, which was the perfect argument for institutionalizing this function. I can’t imagine any other time they could have gotten the Senate Legal Counsel’s office so firmly established.

**RITCHIE:** Have you kept in contact with the Legal Counsel’s office? You mentioned going up there recently, but have you followed their progression over the years?

**LUDLAM:** The answer is no. Charles Tiefer was working there, and I kept up a friendship with him. I knew Michael Davidson well, but only as a friend. Once I’d set up the office, I moved on to other issues. I had no desire to be a litigator and I played no role in the decisions or work of the office. My work was over.

Shortly thereafter, I left the Senate and moved down to the Carter White House. There I was working on separation of powers issues from the executive branch’s perspective! That’s another whole story I’ll tell later in these interviews. Occasionally I’d hear something about the counsel office and it always sounded to me like the office was doing well. I saw no need to come to its rescue. When I showed up last year, the office counsel didn’t know who I was.

**RITCHIE:** Well, the office seems to have gotten through it’s adolescence stage and seems very well established at this point. The Senate probably can’t imagine operating without a Legal Counsel right now.

**LUDLAM:** That’s right. Today, the idea that the Justice Department should handle all the Senate litigation would be viewed as pretty bizarre. The old scheme would never have lasted. It had to end, but we needed to establish an institution here with the competence and status to take over this function.

The basic question was whether we'd hire a string of private legal counsel, or would they set up an in-house office. I strongly preferred the latter. They could have given the Legal Counsel function to some other office, like the legislative counsel's office, but its function is to draft bills, not litigate. This function could have gone to the Rules Committee, but it has never shown any interest in these issues.

It's hard to imagine that over the last twenty-five years the Congress wouldn't have established an independent capacity to handle litigation on behalf of the institution. But to get it set up so firmly and permanently, on a bipartisan basis, that was my accomplishment. We had a unique opportunity to get this done right, to set up a powerful office, to make it nonpartisan, to give it civil subpoena enforcement power, and give it stature vis-à-vis the executive branch and in the courts. And we took full advantage of that opportunity.

**RITCHIE:** I sat in the galleries during the Clinton impeachment trial and there was the Senate Legal Counsel sitting right down there at his own little table by the door, beside the chief justice. So he was very much a visible part of the institution.

**LUDLAM:** The office helps this institution to stand tall. Even in a partisan context, they provided good legal advice. It's not possible to conduct a serious investigation without this knowledge and legal representation. Unfortunately, committees up here really don't do investigation like they did with the [Senator John] McClellan Permanent Subcommittee on Investigations. They conduct a few small investigations, but there really are very few subpoenas and full-blown investigations. The Congress organized the Iran-Contra investigation, which was a House-Senate committee and a full-blown investigation. Charles Tiefer was detailed to that investigation from the House Clerk's office.

There are cases where the Senate Legal Counsel has not been authorized to represent members. My understanding is that there are not many of those. By and large the attitude of the leadership, which controls the office, is that "there but for the grace of God go I." So-and-so was sued and I may not like what he did, but I do understand why we ought to defend him as a way to defend the institution.

**RITCHIE:** Having completed the story of an early triumph in your career, I'd like to go back and get a little more information about you and how you got here in the first place.

You've gone into some of this, but I want some more details. I know you were born in 1945, but I don't know where. And I know you went to Stanford University but I wondered what went on in between. Where did you grow up, and what was your family like?

**LUDLAM:** Well, I grew up in California in the Los Angeles area. My parents were Republicans. They voted for Goldwater. My grandparents were rabid Republicans. I recall that my grandfather was on the California central committee for the Republicans.

I was sitting around in the winter of 1964 trying to decide what to do the next summer. I had been a summer camp counselor on a cattle ranch in Arizona—the Orme Ranch—and was wondering if I should do that again.<sup>49</sup> My grandmother said, “Why don't you go back and work for Burt?” So I came back here because she knew him. She had actually run his campaign in the Monterey area. He was a conservative Republican.

So they sent me back here as a summer intern, in the summer of 1965, which of course was the summer when the Great Society went through the House. It was a very dramatic time, and there were hardly any interns here. That was back before the intern programs really got going. There were so few that Lyndon Johnson invited all of the interns in the entire town to the White House in the summer of 1965. He referred to us as “fellow revolutionaries” and praised our protests, something he probably later regretted!<sup>50</sup> Of course, in 1967, when I was back here again as an intern, he couldn't invite us to the White House because there would have been a nasty and embarrassing Vietnam War protest.

I came back here at a time when intern programs were just really getting started. There was only one intern in an office, or often no interns. In 1973 there was established an LBJ congressional intern program, which actually paid stipends to all the offices to hire interns. That was abolished in 1994.<sup>51</sup> Stanford had the biggest, oldest, best summer intern program in the country, which is celebrating its fortieth anniversary this year. It started in 1963, and I've been involved with the Stanford intern program for the last thirty years.

**RITCHIE:** Were you actually a Stanford intern or did you just come on your own?

**LUDLAM:** Well, the first summer I actually got the job on my own, but then I glommed onto the Stanford program. During my second summer as an intern, I ran the SIG summer program. We set up meetings with seven cabinet members. Three of them I

remember vividly.

We met with Secretary of State Dean Rusk, the leading defender of the Vietnam War. As the organizer of the event, I sat right next to him. After a long and benign session, I asked the last question. I said, “Isn’t it now clear that the Vietnam War is civil war where we’re the new colonialists?” I’ll never forget how he glowered at me, like he was ready to strangle me. He gave a perfunctory answer and stormed out.

We also met with Tim Wirth, later a U.S. senator, who was then a White House fellow. We met with him in the West Wing. A few days before, an article had appeared entitled, “The Dark Side of Lyndon Johnson,” about the president’s crude way of subjugating his staff. I asked Tim about it. He obviously hated the question and scrambled to change the subject.

We also met with Speaker John McCormick. When President Kennedy had been assassinated, McCormick became second in line to Lyndon Johnson. There existed no way to appoint a replacement as vice president. So I asked him what it was like, in effect, to be the vice president and he said, “I’m the Speaker,” emphasizing that that was much more important than being vice president. Incidents like these made a big impression on a summer intern!

In the decades since my SIG internships, I’ve been endlessly engaged as a mentor to SIG. I am proud to say that the Stanford in Government room at Stanford’s Haas Center for Public Service is named the “Chuck Ludlam Room” in honor of my support for SIG. Every summer I fund two fellowships here in Washington. My father has endowed two other SIG fellowships. I was awarded the Centennial Medallion by Stanford during its centennial celebration, one of a hundred Stanford alums honored for their service to the University and SIG.

I’m a big believer in internships because it made a huge difference to me. I got really interested in politics and eventually came back for two more internships. I got a law degree from Michigan, and then went to the Federal Trade Commission for three years to firm up my legal skills, and then decided to come on up here, and came up here in 1975.

**RITCHIE** When did you first come back here as an intern?

**LUDLAM:** I was first an intern in Burt Talcott's office, and then I was an intern in Glen Lipscomb's office. Talcott knew my grandmother and Lipscomb was my local Congressman in San Marino, California. Then I served as an intern at HEW. Talcott and Lipscomb were Republicans, but it was clear with the civil rights movement and the Vietnam War that I was becoming a Democrat. By 1975 Abourezk was not too liberal for me.

**RITCHIE:** When did you feel that you made the switch from a Republican family to a Democrat?

**LUDLAM:** It was the Vietnam War and civil rights. I was very active in the antiwar movement at the time, so it was clear which party I wanted to go with. Also, I was a Peace Corps volunteer.

**RITCHIE:** At Stanford were you a history major or a political science major?

**LUDLAM:** I was a history major.

**RITCHIE:** Did you have any professors who were particularly influential?

**LUDLAM:** I did. Gavin Langmuir was a Stanford history professor and he specialized in medieval history. He taught a course on medieval anti-Semitism in Europe. I took that course and eventually created a major in the history of anti-Semitism. I took ten courses that I rigged to focus on the history of anti-Semitism.

This subject gives me a lot of ideas about the radicalism we're seeing in so many Muslim communities. Anti-Semitism began during the plagues in the Middle Ages, which was a period of intense paranoia, fanaticism, and irrationality. And anti-Semitism is a core element of the Muslim radicalism. Anti-Semitism is an amazing and critical issue and I still find it compelling.

I was very interested in social causes and political fights. I had often been a class officer. I didn't know it then, but looking back, it's clear I was geared towards politics. When I finally got back to the Hill, this time as a lawyer, everything else followed.

I left the Hill for two years to work in the Carter White House. There I was involved

with executive branch intervention in regulatory proceedings, which was very controversial. Many thought this intervention violated the Administrative Procedure Act, which requires everything to be on the public record. And many others thought it violated the separation of powers.

Strangely, I found myself fighting against Dick Wegman, who was the leader on the congressional viewpoint on the intervention issue. Dick and I basically negotiated a standoff. The bill that we were working on eventually died, and the intervention issue was what killed it.

When I came back to the Hill, I worked with the House Democratic Caucus Chairman, Gillis Long, who was a ranking member on the Rules Committee. Then I worked for Senator Bumpers for eight years, focusing mostly on regulatory and economic issues. After that I served as the principal lobbyist for seven years for the entire biotechnology industry.

Now I've come back up for the last two and a half years with Joe Lieberman, who I've known since the late '80s. He's an old friend for whom I have the greatest respect.

**RITCHIE:** You went off to Nepal with the Peace Corps in the late '60s. What kind of experience was that?

**LUDLAM:** I was the first Westerner that ever visited, let alone lived in, my village in Nepal. I was on my own in the middle of a very interesting culture. I lived with an aboriginal tribal group that had no written language—the Tharus. They were delightful people. Nepalis and Indians had come into the area and were in conflict with the Tharus. The three groups spoke three different languages and had different holidays and customs. It was a fascinating jumble.

Physically it was difficult. I was sick a lot with various kinds of dysentery. I had to walk sixteen miles to get my mail. I had no outhouse, electricity, running water, or hot water. I killed hundreds of rats in my dwelling. I thought it was great! [Laughs]

As I've said, the principal reasons why I was inclined towards the Peace Corps go back to grade school. As a kid I attended a progressive school, the training school for

teachers at U.C.L.A., the University Elementary School. There we spent a whole year studying the Navajo Indians. That was my first exposure to exotic cultures. Then for seven summers, I worked on the Orme Ranch in Arizona where I spent considerable time on the Navajo reservation and learned to love the rugged outdoor lifestyle. The Peace Corps was an extension of these experiences.

I also met my wife, Paula Hirschhoff, through the Peace Corps. She was a volunteer in the late '60s. In fact, as I've said, we are planning to go back into the Peace Corps.

**RITCHIE:** That's terrific. You know, Mike Davidson, the first Legal Counsel was a Peace Corp volunteer.

**LUDLAM:** I didn't know that!

**RITCHIE:** In Kenya.

**LUDLAM:** Oh, Paula was a volunteer in Kenya.

**RITCHIE:** Yes, that was a very important part of his career.

**LUDLAM:** Oh yes, the Peace Corps is the best thing my wife and I have ever done.

**RITCHIE:** So you came back from Nepal and then you went to the University of Michigan Law School. How did you decide to go to law school?

**LUDLAM:** My dad was a lawyer, no better reason than that.

**RITCHIE:** And Michigan?

**LUDLAM:** Well it was the best law school that I could get accepted by. I hated law school and Michigan was not a good law school for me to go to because it was mostly focused on commercial law. I was never destined to be a commercial lawyer.

The best part of it was that I came back here to work at the Center for Law and Social Policy, a famous innovator and leader in the public interest movement.<sup>52</sup> That's where I met

Pat Wald. There, I was one of the lawyers—a legal intern—working on the Alaska pipeline lawsuit in 1970 and '71. A fascinating case.

It was the first big environmental case, and it was the first NEPA case—the National Environmental Policy Act requires the preparation of environmental impact statements.<sup>53</sup> NEPA has wrought a revolution in government consideration of environmental issues. And it was the Alaska pipeline case that first and decisively defined what NEPA meant.<sup>54</sup>

One of my jobs in the lawsuit was to lay out a legislative history of NEPA to find out what the Congress intended it to mean. The legislative history was completely and totally inadequate to answer any relevant questions about what NEPA meant. Even on the basic question: Is it procedural or substantive? Does it mean that you can prepare an impact statement and as long as it has a table of contents and a few sections, then you can go ahead and do whatever you want? Or does it mean that you must pick the least environmentally damaging option for the pipeline? The distinction between procedure and substance is pretty basic! Unfortunately, there was nothing in the legislative history that told us what NEPA meant.

We had argued, of course, that NEPA was substantive, that the government had to pick the least environmentally damaging option. We lost on that argument, lost the NEPA count in our complaint. The Interior Department published a huge NEPA statement outlining all kinds of environmental problems with the pipeline and then went right ahead with its original plan. The courts found that was perfectly acceptable.

Fortunately, NEPA wasn't the only count in the environmentalists' complaint. The government was proposing to grant a right of way to build the eight-hundred-mile oil pipeline. And it needed to comply with the Mineral Leasing Act to grant this right of way.

One night we interns were sitting around the center. We'd been spending all of our time focusing on the NEPA count. Someone said, "Let's spend a few minutes checking out the Mineral Leasing Act count." The Mineral Leasing Act said that the government could grant right of way not to exceed "twenty-five" feet. We wondered if "twenty-five" feet meant "twenty-five" feet. With no exceptions?

We went to work in the law books and stayed up all night finding case after case

saying, low and behold, that “twenty-five” feet meant “twenty-five feet.” Not an inch more. Not an inch for a road next to the pipeline. It was, of course, completely impossible to build this pipeline in a right of way of only twenty-five feet. So in the Supreme Court, we won on the Mineral Leasing Act count. “Twenty-five” feet meant “twenty-five feet.” The Interior Department lost and the right of ways were blocked. That was the winning count, not anything to do with the environmental/NEPA issues.<sup>55</sup>

Then, unfortunately, the Congress amended the Mineral Leasing Act to permit a wider right of way! So the pipeline was built despite the environmental problems. I think it’s fair to say, however, that NEPA and this lawsuit had a massive impact in forcing the government and companies to think about the environmental impact of their actions. The original Alaska pipeline would have been an utter disaster and the final pipeline was dramatically less environmentally damaging. The lawsuit forced changes that raised the cost of the pipeline from about \$1 billion to \$8 billion.

After this incredible experience, I figured my career as an environmental lawyer had peaked and I’d never be involved in a more fascinating environmental case. So I’ve never done any environmental work since then.

This past summer I visited Alaska and, using my Lieberman connections, I asked if the Alaska pipeline company would give me a tour of the oil terminal in Valdez. They agreed and gave me this huge spiel arguing that the Exxon Valdez disaster could never happen again. I never told them of my role back in 1971 in trying to prevent the construction of the pipeline! They noted that I was unusually well informed about the pipeline.

During my six months at the Center for Law and Social Policy, I took a month off to work with Phil Hart and his lead staffer Len Bickwit<sup>56</sup> on the Senate Commerce Committee. I worked with them on one of the first environmental hearings on the Hill focusing on phosphate pollution and eutrication of the northern lakes.<sup>57</sup> What we found was that the environmentalists had completely overstated and misstated their claims that phosphate detergents were the key cause of eutrication. Hart—an avid environmentalist—didn’t blink and laid it out on the record. This proved to be an early black eye for the environmental movement. I’ve had the pleasure of working with Len on a variety of the projects since 1971.<sup>58</sup>

So even when I was in law school, I was already intensely involved with legislative histories, oversight hearings, and public policy debates.

**RITCHIE:** Since we are meeting in the Phil Hart building, could you tell me a little bit about your experience with Phil Hart and what he was like?

**LUDLAM:** Actually, I have an incredible story about him. It involves the Hart-Scott-Rodino Antitrust Improvements Act. We'll talk more about this in the next interview, but let me recount one story that tells you all you need to know about Phil Hart.

Hart was chairman of the Antitrust Subcommittee at Judiciary. Hart cared a lot about antitrust issues. He led the fight for a bill which would dramatically increase antitrust enforcement—eventually named the Hart-Scott-Rodino Antitrust Improvements Act. We faced an unbelievable filibuster by Jim Allen [of Alabama] on the floor of the Senate. I had tremendous affection and respect for Jim Allen, a terrific guy, but he was killing the Hart/antitrust bill with the first post-cloture filibuster. He filed hundreds and hundreds of amendments and was calling them up one after the other after cloture had been imposed. It was a brawl, and it went on for week after week and many dozens of recorded votes. Our Bataan Death March.

Byrd led the charge to enact the bill to prove to the liberals that he could be trusted. Doing a favor for Phil Hart was a way to please liberals, who loved Hart. So Byrd put his considerable talents into it. Murray Zweben [the Senate Parliamentarian] was in the middle of this. We set new precedents on the floor of the Senate almost every day of this prolonged debate.

After we'd reached the precipice several times, we finally worked out a deal with Allen that gave the bill a haircut. We could probably have rammed the original down his throat probably, but the Senate was getting pretty upset about this process and we worked out a compromise. Typical Senate. Phil Hart was then getting chemotherapy treatments for cancer and was too sick to sit in his seat. He would sit on the couch with the staff, day after day. He was very sick, and everybody knew he was dying. It was obvious and very sad, and it animated the debate. There really was an incredible desire on the part of the Democrats to pass this bill to honor Hart before he died.

We were trying to figure out whether we would do this deal with Allen. Considering the offer were Ted Kennedy, Bobby Byrd, my boss, and Hart. We were sitting on the couch in the back of the Senate during a quorum call. We had two or three staffers from the Antitrust Subcommittee, and some of Kennedy's people. Everybody goes on and on about this and that part of the proposed compromise. And then Phil Hart says, "I want you to tell me whether you would do this deal if I wasn't dying?" [Pause]

We all said that we would still recommend accepting the deal. We assured him that we were not inclined to accept the offer as a fig leaf to give Hart a "victory" before he died.

Later I was on floor of the Senate when they named the building after him, when he was still alive. Naming a Senate office building after a living person is certainly not something that they tend to do around here. It was quite a testament to him that they would do that while he was still alive.

**RITCHIE:** A certain irony, because he was the only one that dissented when they named the Russell Building after Richard Russell.

**LUDLAM:** Yes, it's ironic. Can I say Phil Hart had one hundred times the stature of Richard Russell.<sup>59</sup> Hart was an incredible man and obviously was known to be that by everyone here.

**RITCHIE:** Your first official job in the government as a lawyer was at the FTC. What did you do there?

**LUDLAM:** We sued companies for deceptive advertising. My main case was against Bayer for deceptive claims about branded aspirin, claiming it was therapeutically superior to generic aspirin.

But my most interesting project focused on corporate image advertising. We had the energy crisis, so all of the oil firms were stuck with big advertising budgets that they could not spend on promoting gasoline sales given that there were long gas lines. So the oil companies diverted their advertising budgets into corporate image advertising.

All of this occurred long before last July's Supreme Court case in *Nike vs. Kasky*,

which focused on the distinction between “commercial” and First Amendment speech. Indeed, my work on this issue preceded the ruling by the Supreme Court that “commercial” speech was entitled to less protection than other speech.<sup>60</sup>

The issue I faced was whether or not the Federal Trade Commission could sue these companies for false corporate image advertising. For example, there was one ad where they showed a healthy lobster next to an oil-drilling platform. They didn’t tell you that the lobster had come from an aquarium nowhere near the platform. There was another ad showing a fly fisherman landing a huge trout right near a Bethlehem Steel strip mine. They didn’t tell you that the fish was caught upstream. Everything downstream was dead.

The question we asked was whether the Federal Trade Commission could sue these companies for deceptive advertising. The companies would, of course, argue that these were protected First Amendment statements. We argued that the ads were a convoluted form of commercial speech—pressing consumers to buy products from environmentally responsible firms. The companies were taking tax deductions for the ads, which meant that they considered them to be commercial speech. Also, they argued that the FCC “fairness doctrine” did not apply. The “fairness doctrine” required TV stations to grant equal time to present opposing political views. So, again, the companies were, in effect, arguing that this was commercial speech. So in the tax and FCC context, they argued that this was commercial speech, but we were sure they’d argue the opposite if we went after them at the FTC. In fact, I wrote a law review article about this “both ends against the middle” strategy of the corporations.<sup>61</sup>

The Commission voted 3-2 not to issue subpoenas I’d drafted to these companies about the truth of their ads and also about their motives in placing them. I couldn’t get the FTC to take this on. Close but no cigar. The constitutional status of corporate image advertising is still a controversial issue, of course. It’s still a ripe issue twenty-five years later.

**RITCHIE:** You went to work for the FTC when Nixon was president. Did the Nixon administration have much influence over the FTC?

**LUDLAM:** No

**RITCHIE:** It's supposed to be an independent regulatory commission.

**LUDLAM:** Yes.

**RITCHIE:** But Nixon was trying to exert some authority towards——

**LUDLAM:** Oh, nothing like they do now. I mean, I was there in the early days of executive branch aggrandizement. Nixon was a moderate compared to what happened under Reagan and what's happening now under Bush. The issue of White House control of the regulatory process is an issue that I focused on intensively within the Carter White House. It was under Nixon and Ford that the White House began intervening in regulatory proceedings at agencies such as the Environmental Protective Agency and OSHA [Occupational Safety and Health Administration].<sup>62</sup>

It was not clear whether that intervention behind the scenes was legal. Environmental statutes say, "The secretary shall do this." They don't say, "The president shall do it." So it's not clear what role the president has in supervising and restraining the cabinet secretaries. Can the White House intervene to stop a secretary from following the commandments of a statute and intervene secretly off the record? What is the president's power to supervise appointees of his own administration? A pretty fundamental question.

Back in the late '70s, that was a new and very controversial issue. No court had then ruled on it. They hadn't even ruled on whether it was appropriate for the White House to impose a cost-benefit analysis before a regulation could be issued. I was in charge of trying to make sure that the White House didn't get in legal trouble for its behind-the-scenes intervention and I was handling this issue as it arose in the pending regulatory reform legislation.

Part of my job was to keep Jim Tozzi, who was the OMB guy managing the White House intervention, out of jail. That was the glib way we defined my job. Jim went on to manage the Reagan White House intervention in regulatory proceedings and was very controversial. The *Washington Post* interviewed Tozzi and published a picture of him sitting on the edge of his desk, with not a single piece of paper in evidence. He said something like, "We don't keep any paper here." Typical Tozzi.<sup>63</sup>

The issue of White House intervention—an overriding issue with separation of powers connotations—became the key issue in the regulatory reform bill that was pending in the Government Affairs Committee. Dick Wegman was opposed to White House intervention. So here I was, a former defender of congressional prerogatives and the separation of powers, defending the White House intervention. I admired Dick, so it was strange to be opposing him.

The other key issue was “hybrid rule-making,” which was the industry proposal to convert all regulatory proceedings into full blown trials. I was the leader of the opposition to the idea, which I thought was an open invitation to obstructionism against environmental and health and safety regulation. Jim Tozzi has now successfully enacted hybrid rule-making, but it took twenty-two extra years to enact it!<sup>64</sup>

**RITCHIE:** The Congress has always looked at the regulatory commissions as an extension of its commerce powers, while the executive branch has always seen them as an extension of the executive branch. The president names them and therefore one would think that they ought to reflect the president’s policy, but his control over them has always been a gray area between the branches.

**LUDLAM:** Even though I’m a congressional partisan, I think it’s hard to explain how you can set up a regulatory agency that is not subject to presidential control. It’s a little hard to imagine why the independence of these commissions should be constitutional, but it’s been held to be so.<sup>65</sup> I think the Supreme Court ruling on this might some day be overturned.

**RITCHIE:** Watergate had a big influence on the 1974 elections. Democrats won large majorities. They already had the large majorities, but the liberal Democrats in particular got a big edge. How did you wind up then with Senator Abourezk on the Separation of Powers Subcommittee?

**LUDLAM:** Judiciary seemed right because I was a lawyer. I had no idea what “separation of powers” meant. I didn’t know anything about Abourezk. I landed the job because I had a great interview with Jim focusing on photography. Nothing relevant to the job. Typical Abourezk.

Irene Margolis, my boss, was a holdover from Ervin's days and she basically hired me. She was an absolutely superb boss. She turned us loose. She let us have fun. She had very good judgment. She was a kick to be around and had a wicked sense of humor, a contagious laugh. A perfect boss for someone early in their career. A mentor. An editor. A resourceful strategist. And she really cared about the substance of separation of powers. She had keen instincts for the congressional powers that were at risk and knew how to fight to protect the congressional interests.

**RITCHIE:** What was the Senate like when you first got here in '75?

**LUDLAM:** Actually, I have memories that go back before that, because Carl Hayden had gone to Stanford. Back in '67, Stanford, as one of their first political ventures, held a big banquet in honor of Carl Hayden. For some reason, I happened to be in town. I think it was in the spring, and something like sixty senators came. I was a student at Stanford and I sat at the table with seven senators.

By and large the stature of the members has really declined. I see that many of them are simply partisan hacks with no larger view of what's good for the society and what's good for the institution. My boss, Senator Lieberman, is a notable exception to this rule.

**RITCHIE:** The early '70s was also a period when the staff was really beginning to grow. They were putting minority staff on the committees. They were squeezing subcommittees into apartment houses across the street, anywhere they could stick them, because this building hadn't been built yet and there was a tremendous overflow. What was the subcommittee like at that time? Was there much of a staff?

**LUDLAM:** We had five lawyers. Our offices were small; our chairs would bang against each other when we moved. We were shoehorned into an office over in the Russell Building. It was an open area, without any cubicles to give us some privacy. It was really marginal as an office.

In terms of the fighting over space, I have a great story. I've had offices in every building up here: all three main office buildings on the Senate side and House side, and the Immigration Building, and the old O'Neill Building.

At one point, we had a big negotiation with the Republicans about office space. Democrats were in power, but we were forced to give the Republicans some extra space. I'm sure we were hogging most of it.

We were located in the Immigration Building. The Republicans were going to get an office behind the one that we occupied. There was no door between our office and the one they were going to get. We knew that there was a massive closet attached to the office we were going to lose. It was four times the size of your room here. Really large and really useful. There was no door between our office and the closet. But the closet wall did abut the wall of the office we were going to keep. Do you see where this is going?

We brought in the Architect of the Capitol. We closed off the door to the closet in the room the Republicans were getting. And we opened a door from the closet into the office we were keeping. Then, we repainted their room so they wouldn't notice that we'd taken away a door and stolen that closet. So we kept the closet, at some expense to the public. But that's how competitive it was for space at the time. [Laughs] What we did was outrageous, but we really wanted the closet. It was a nice closet!

Actually, I've always enjoyed pranks. Back at Stanford I was involved in a series of pranks. First, we stole the Cal Bears victory cannon—the field piece they fired on the rare occasions when their football team scored a touchdown. Then they stole Stanford's cards for the card section, the Stanford banner, and wrote "Indians [the Stanford mascot] blow dead buffalos" on the bookstore wall. We eventually arranged to exchange everything that we and they had stolen. Of course, we had no intention of returning the cannon, so we made a plaster of Paris replica. We met at the airport, one of our guys firing a tear gas canister into the cab of their pickup truck with all the stolen Stanford stuff, and their guy puts on a gas mask and pulls out a revolver! So much for the exchange.

Eventually they found the cannon and stole it back. The next morning they ran a huge article in the student newspaper about their stunning recovery of the cannon. Unfortunately, the night before the article ran, we went up to Berkeley to see if we could steal the cannon a second time. We found that it was being held in the Student Union in the manager's office. We told the guards that we were the Cal students who had stolen the cannon back, but we had not managed to recover the brackets for the cannon. We said we had a welder ready, on double overtime, ready to make some new brackets. But we needed the cannon to get the

right fit for the brackets. They gave us the cannon!

So Cal ran the article the next morning glorifying in their retrieving the cannon, but we'd re-stolen it! Eventually we gave them back the cannon and all the other stuff was exchanged. We'd had our fun. Do you think this was the end of it? Of course not.

The Big Game against Cal that year was going to be held in their stadium. We had some smart chemists in our dorm and they concocted some methyl mercaptan, the natural substance released from decaying matter. It stunk up the dorm so bad everyone had to evacuate. We put the substance in some small test tubes and sealed them with paraffin. We ran wires around each tube. We then broke into the Cal stadium and wired the entire Cal rooting section with these tubes, with wires laid in the cracks covered by a cement laying team. The wires ran up the hill behind the stadium to some car batteries. With a flip of a switch, the wires would heat up and melt the wax, releasing the stink. Unfortunately, the Cal maintenance people found the whole system and pulled it out before the game. About a month later, they called us and said, "We won't indict you if you will just tell us how to dispose of this stuff."

I almost flunked out of Stanford that quarter, but all this strategizing and organizing, and the pranks, were perfect preparation for working here in the Senate.

**RITCHIE:** We've covered the Senate Legal Counsel history, but you've mentioned several other major fights we can talk about in the next interview.

**LUDLAM:** There are some pretty wild stories connected to the Hart-Scott-Rodino Antitrust Improvements Act and noise bill fights. I've asked CRS [Congressional Research Service] to locate some of the key documents. I have vivid memories of the events, but I need help pinning down some dates and bill numbers and finding the exact language in the *Congressional Record*.

With regard to the noise bill, I will recount how my knowledge of arcane parliamentary procedures provided the margin of victory in a fight worth \$10 billion. It's quite a story.

**RITCHIE:** Well, I'm interested in hearing that and also your observations regarding

Murray Zweben [former Senate parliamentarian] as well. So perhaps in our next interview, we can start with Hart-Scott-Rodino and then cover the noise bill.

**LUDLAM:** Good. The CRS is a critical institution here and now it's got computers to search the databases. I was here when they didn't have computers and it's certainly easier now!

**RITCHIE:** The Senate Library might also be able to help you. They have some very good computerized source materials.

**LUDLAM:** Yes, there are some very helpful professionals there. When I have the records together, we'll meet again. The story about the noise bill parliamentary maneuver was truly outrageous, and perfect, and it was also completely anti-democratic.

**RITCHIE:** What was that bill?

**LUDLAM:** It was the Airline Noise bill of 1978. The bill offered a massive, multi-billion dollar bailout to the aircraft industry to buy quieter planes. I killed that and Murray was right in the middle of it all.

**RITCHIE:** Well it would be a good place to start then next time.

**LUDLAM:** Okay. But first, I want to cover the Hart-Scott-Rodino bill. It was a titanic fight.

**RITCHIE:** Well this is fascinating. I came here in 1976 and my first office was in the Immigration Building, so I can understand exactly what you were describing.

**LUDLAM:** It was not a great office building.

**RITCHIE:** What I remember is that I had my window open all the time because the building was too hot in the winter and too cold in the summer. Whatever the season, you had to let the outside air in.

**LUDLAM:** Up here, you take whatever you can get in the way of offices. No one

works here for the amenities.

**End of the First Interview**

## Endnotes

<sup>1</sup> Burt Talcott was born in Montana in 1920. He graduated from Stanford University and the Stanford University Law School. He served in the United States Army Air Corps, 1942-1945, became a bomber pilot, and on a mission over Austria was shot down, wounded, and held for fourteen months in a German prison camp. He became a lawyer in private practice in Salinas, California and was elected as a member of the County Board of Supervisors from 1954-1962, serving as chairman of the board in 1962. When the Republican candidate for Congress suddenly died, Talcott stepped in—with the help of my grandmother, Bernice Ludlam—and was elected as a Republican to the Eighty-eighth and to the six succeeding Congresses (January 3, 1963-January 3, 1977). He was an unsuccessful candidate for reelection to the Ninety-fifth Congress in 1976, beaten by Leon Panetta. He then served as president and consultant for legislative affairs with Talcott, McCabe and Associates, from 1977-1986 and as associate deputy administrator for congressional affairs, Veterans Administration.

<sup>2</sup> In addition to Medicare, in 1965 the Congress enacted Medicaid, the Voting Rights Act, historic elementary, secondary and higher education legislation, Head Start, food stamps, and many other elements of the Johnson “war on poverty.” In all, in his three and a half years as president, the Congress implemented parts or all of 226 of Johnson’s 252 legislative requests.

<sup>3</sup> Glen Lipscomb was born in Michigan and moved to Los Angeles with his parents in 1920. After attending the University of Southern California and Woodbury College in Burbank, he became an accountant. He served in the Army's Financial Corps during World War II and in 1947 was elected to the California state assembly, where he served until 1953. That year he won a special election to the U.S. House to replace Norris Poulson, representing California's twenty-fourth district. Lipscomb continued to serve in the House for the remainder of his life. He died of intestinal cancer at Bethesda Naval Hospital at the age of fifty-four and is interred at Forest Lawn Memorial Park Cemetery. The submarine USS Glenard P. Lipscomb was named after him.

<sup>4</sup> The John Birch Society, an organization of the radical Right, was established in Indianapolis in 1958 to combat what was perceived to be the infiltration of communism into American life. Its founder, Robert H. W. Welch, a Massachusetts businessman, named the society after a Baptist missionary who had been killed by Chinese Communists in 1945. Starting with only eleven members, the John Birch Society grew rapidly, drawing considerable support from rich conservatives; by the early 1960s it had an estimated annual income of \$5 million and a membership of 60,000 to 100,000. John Birchers placed their principal emphasis on the extent to which communism had established control over the U.S. government; among those they accused of being "dedicated, conscious agents of the Communist conspiracy" were President Dwight D. Eisenhower, CIA director Allen Dulles, and Chief Justice Earl Warren. The society has produced an extensive list of publications, offered cash prizes for college essays on topics like the impeachment of Warren, and

maintained that the United States must become as conspiratorial as the communists in order to combat their subversion of American society.

<sup>5</sup> Since its start in 1882 as a training school on the site of the Los Angeles Central Library, the University Elementary School has come to be recognized as a national educational resource. In its first years, UES was an integral part of the Los Angeles State Normal School, which trained teachers for California's public schools. In 1919, when the Normal School became the Southern Branch of the University of California, UES was made a part of the new university. The school moved to its current home on the UCLA campus in 1947, with its first permanent buildings completed three years later. UES enjoys a proud history of dynamic leadership. During the 1930s and 1940s, it was an outstanding example of progressive education. It was led by Corinne A. Seeds, a student of John Dewey, from 1925-1957. The term "progressive education" has been used to describe ideas and practices that aim to make schools more effective agencies of a democratic society. Although there are numerous differences of style and emphasis among progressive educators, they share the conviction that democracy means active participation by all citizens in social, political, and economic decisions that will affect their lives. In the 1950s, during a time of cold war anxiety and cultural conservatism, progressive education was widely repudiated, and it disintegrated as an identifiable movement.

<sup>6</sup> Concerned by the lack of communication between the races and wondering what "adjustments and discriminations" he would face as a Negro in the Deep South, the author, John Howard Griffin, a journalist and self-described "specialist in race issues," left behind his privileged life as a Southern white man to step into the body of a stranger. In 1959, Griffin headed to New Orleans, darkened his skin, and immersed himself in black society, then traveled to several states until he could no longer stand the racism, segregation, and degrading living conditions. Griffin imparts the hopelessness and despair he felt while executing his social experiment, and professional narrator Childs renders this recounting even more immediate and emotional with his heartfelt delivery and skillful use of accents.

<sup>7</sup> When I met Al that summer of 1967, I was living in the "Stanford house" on McComb Street in Cleveland Park. Al had a Stanford connection, having been a dean of students there. Al was one of the most important American political figures of the 1960s and 1970s. Aside from his brief tenure as a congressman (1968-1970), he was involved in every major reform campaign of those tumultuous decades: the civil rights movement, the anti-Vietnam War movement, the student movement, the movement for political party reform, South African anti-apartheid actions, and the Biafra War, among others. He is most famous for his role in 1967 in launching the "dump Johnson" movement and many credit him with deposing a sitting president. He turned the antiwar movement into a mainstream movement. I had become very active in the antiwar movement at Stanford and organized the protest at the Stanford graduation that June—I think it was the first protest in the history of Stanford graduations. Al is credited with bringing a generation of young activists—the famous "'60s generation"—into an electoral process that had until then seemed to us too closed and corrupt to bother with. After attempting unsuccessfully to recruit Robert Kennedy and others to run

against Johnson, Al convinced then U.S. Sen. Eugene McCarthy, D-Minn., to make the run in the Democratic primaries against Johnson. When Johnson scored a narrow victory over McCarthy in the New Hampshire primary, Robert Kennedy joined the race. Just a few days before the Wisconsin primary, President Johnson dropped out. I was then working in a McCarthy storefront in the Polish ward of Milwaukee and all of us felt we'd personally deposed Johnson. Four days later, Martin Luther King was assassinated in Memphis, sparking massive riots across the country. In June Robert Kennedy was assassinated in Los Angeles after winning the California primary. Then in late August, we suffered through the "police riot" at the Democratic Convention in Chicago. At that point I was in Peace Corps training and desperate to leave the country. Tragically, Al was assassinated in his NYC law offices by Dennis Sweeney, a former acquaintance, on March 14, 1980. Sweeney had been a civil rights volunteer in Lowenstein's voter registration drives in Mississippi in the mid-1960s and a Stanford graduate. During his trial, Sweeney testified that Lowenstein and others controlled him through radio receivers planted in his teeth. He was diagnosed as a paranoid schizophrenic and found not guilty by reason of insanity. The inscription on Lowenstein's headstone is from a note to him from his hero, Robert F. Kennedy: "If a single man plants himself on his convictions and there abide, the huge world will come around to him."

<sup>8</sup> Peter Hoagland was born in 1941 in Omaha. He served in the U.S. Army during the Vietnam War; and as a law clerk for U.S. District Judge Oliver Gasch (1969-70); public defender (1970-1979); senator in the Nebraska unicameral legislature (1979-86); and U.S. representative (1989-95). He was a member of the Ways and Means Committee. He was defeated in the Gingrich revolution of November 1994 by Jon Christensen, who was awarded "Moron of the Month" for campaigning for election as Nebraska governor on the ground that he was about to get married to a virgin bride, who has been saving herself for these twenty-five years, just for him. The virgin bride-to-be was Tara Dawn Holland, Miss America 1997. Christensen got only 28 percent of the vote, ending his political career.

<sup>9</sup> My biggest project was an attempt to bring suit against companies for deceptive "corporate image" ads. The issue was whether these image ads—which made claims about the environmental performance of the companies—were commercial ads or political free speech. The FTC decided 3-2 that the ads were free speech and ruled against my proposal to sue them. I was also involved with a number of other deceptive advertising cases, the biggest of which was against the aspirin makers for deceptively claiming that their branded aspirin was superior to unbranded, generic aspirin. I also secured a consent decree for deceptive reliability claims in an ad, the first such FTC case.

<sup>10</sup> Jim Abourezk was born in Wood, South Dakota, in 1931. His parents were Lebanese traders on the Rosebud Reservation. He graduated as a civil engineer from the South Dakota School of Mines and the University of South Dakota Law School. He commenced practice in Rapid City and served in the United States Navy, 1948-1952. He was elected as a Democrat to the Ninety-second Congress for one term (1971-1973) and to the United States Senate for one term (1973 to 1979). He was the first Arab-American to be elected to the Senate. He didn't run for reelection. When asked what he missed most about the Senate, he

said, “My WATS line” (A WATS line is a long distance service at fixed rates for fixed zones and an acronym for wide area telephone service.). In 1980, Abourezk founded the American-Arab Anti Discrimination Committee, a grassroots civil rights organization committed to empowering Arab-Americans and encouraging a balanced U.S. foreign policy in the Middle East. He was referred to as “Ayatollah Khomeini’s lawyer,” for his support for Arab causes and criticism of Israel. He wrote a biography: *Advise & Dissent: Memoirs of South Dakota and the U.S. Senate* (Lawrence Hill Books, 1989).

<sup>11</sup> Irene Margolis, later Irene Kaplan, started with the Separation of Powers Subcommittee in 1970 and stayed on with the Judiciary Committee until 1981. She then went on to a distinguished career with the American Bar Association until she retired in 1999. She did all this despite the fact she had no law degree. With Irene, it made no difference. She had great analytical and writing skills, and honed instincts as a negotiator.

<sup>12</sup> Si Lazarus served as associate director of President Jimmy Carter’s White House Domestic Policy Staff (1977-81), as a partner in Powell, Goldstein, Frazer, and Murphy LLP (1981-2002), and as senior counsel to Sidley Austin Brown & Wood LLP (2002- ). He is a trustee of the Center for Law and Social Policy, and writes frequently on issues of law and policy. His articles on federal rights have appeared in the *Atlantic*, the *Washington Post* Outlook (Sunday opinion) Section, the Democratic Leadership Council’s magazine *Blueprint*, and *The American Prospect*. His *Atlantic Monthly* article, “The Most Dangerous Branch?” has been re-published in two anthologies, *The Best American Political Writing 2003* by Royce Flippin, ed. (Avalon Press 2003), and *Principles and Practice of American Politics: Classic and Contemporary Readings*, 2d ed., Samuel Kernell and Steven S. Smith, eds. (CQ Press 2003). He graduated from Yale Law School, where he was Note & Comment editor of the *Yale Law Journal*.

<sup>13</sup> Gillis Long was a cousin of Louisiana Governor and Senator Huey Long and Governor Earl Long. Gillis was born in Winnfield, Louisiana, in 1923, and his family lived in a chicken coop during the depression. He graduated from Louisiana State University with a B.A. in 1949 and from the law school of the same university with a J.D. in 1951. During the Second World War he served in the infantry as a private and rose through the ranks to captain. He was awarded the Purple Heart and was with the Internal Security Detachment at the Nuremberg war trials. He served as legal counsel to the Senate Select Committee on Small Business, 1951-1952; and chief counsel to the House of Representatives Special Committee on Campaign Expenditures, 1952-1954, and 1956. He was elected as a Democrat to the Eighty-eighth Congress (January 3, 1963-January 3, 1965). He supported President Kennedy and paid the political price, suffering defeat in the next election. He was an unsuccessful candidate for the Democratic nomination for governor of Louisiana in 1963; assistant director, Office of Economic Opportunity, 1965-1966; resumed the practice of law 1970-1972; president, board of commissioners, Louisiana Deep Draft Harbor and Terminal Authority, 1972; and an investment banker. Finally, after many years in the political wilderness, he was elected to the Ninety-third and to the six succeeding Congresses and served from January 3, 1973, until his death in Washington, D.C., on January 20, 1985.

President Reagan paid tribute to him in his second inaugural address, held in the Capitol Rotunda due to inclement weather. He said, "There is...one who is not with us today: Representative Gillis Long of Louisiana left us last night. I wonder if we could all join in a moment of silent prayer. (Moment of silent prayer.) Amen." Gillis was the chairman of the House Democratic Caucus and led the strategy for the Democrats to recover from the Reagan landslide, an effort that led to the founding of the Democratic Leadership Council. Gillis was succeeded by his widow, Cathy Long. In 1985, Congress provided Loyola University with federal funds to create an endowed Poverty Law Center in the name of Gillis, who had been known for his commitment to poor people of Louisiana. His district was one of the most impoverished in the nation. The U.S. treatment center for Hanson's Disease (leprosy) is named for Gillis and located in his district.

<sup>14</sup> Senator Dale Bumpers was born in Charleston, Arkansas, in 1925. He attended the University of Arkansas, Fayetteville, and graduated from Northwestern University Law School. He served in the United States Marine Corps 1943-1946; and as Charleston city attorney 1952-1970; special justice, Arkansas Supreme Court 1968; and two-term governor of Arkansas 1970-1974. He was elected as a Democrat to the United States Senate in 1974 for the term commencing January 3, 1975. He was reelected in 1980, 1986, and again in 1992 for the term ending January 3, 1999. He returned to the Senate as the lead defender of President Clinton during his Senate impeachment trial in 2000.

<sup>15</sup> Jeanne first came to Stanford in 1983 and for more than twenty years has overseen the John Gardner Fellowship, Stanford in Government, and Stanford in Washington programs. She couldn't have a better touch with the students and has an impressive background in public policy, having served as staff director for a presidential advisory committee on juvenile justice and delinquency prevention, and worked at the Metropolitan Washington Council of Governments, the National League of Cities, National Urban Coalition, and at Westinghouse administering a Department of Justice contract.

<sup>16</sup> Suzanne came to the Haas Center in 1995, after spending over a decade as the founding director of a public museum of art, history, and anthropology in Mendocino County, California. Prior to becoming a Californian by moving to the North Coast, she lived in Costa Rica for several years, where she worked for the National Museum of Costa Rica and the Associated Colleges of the Midwest Tropical Field Research program. She has a longstanding interest in native peoples of the Americas and in U.S.-Latin American relations. She's also lived in the former Yugoslavia, India, and the U.K. Her father was the distinguished print and broadcast journalist Ellie Abel.

<sup>17</sup> Abe Ribicoff was born in New Britain, Connecticut, in 1910. He graduated from New York University and the University of Chicago Law School. He served as a member of the Connecticut legislature from 1938-1942; judge of Hartford Police Court, 1941-1943 and 1945-1947; chairman, assembly of municipal court judges for the State of Connecticut, 1941-1942; member of the Charter Revision Commission of the city of Hartford, 1945-1946; and hearing examiner, Connecticut Fair Employment Practices Act, 1937-1939. He was elected

as a congressman to the Eighty-first and Eighty-second Congresses (1949-1953). He ran unsuccessfully for election to fill a vacancy in the United States Senate but served as governor of Connecticut from 1955-1961. He served as the secretary of the Department of Health, Education, and Welfare in the cabinet of President John F. Kennedy. Then he was elected to the United States Senate in 1962; reelected in 1968 and 1974 and served until 1981. He was chairman, Committee on Government Operations (Ninety-fourth and Ninety-fifth Congresses), Committee on Governmental Affairs (Ninety-fifth and Ninety-sixth Congresses). He died in 1998.

<sup>18</sup> Dick Wegman is now a partner in the law firm of Garvey Schubert Barer. He's been in private practice since 1981. He served as a legislative assistant to Senator William Proxmire; an appellate attorney in the Antitrust Division of the U.S. Department of Justice, staff director of the Subcommittee on Executive Reorganization of the Senate Committee on Government Operations; and chief counsel and staff director of the Senate Committee on Governmental Affairs (1975-1981). During the period he directed the work of the committee, the panel focused on regulatory reform, administrative law, civil service reform, and national energy policy. More than one hundred pieces of legislation handled by the committee were signed into law, including Department of Energy Act, Energy Research and Development Act, Nuclear Non-Proliferation Act, Regulatory Flexibility Act, Department of Education Act, Civil Service Reform Act, Ethics in Government Act, Government in the Sunshine Act, Federal Paperwork Reduction Act, Inspector General Act, and the Energy Conservation and Production Act. In 1979, Dick was appointed by President Jimmy Carter to direct the president's Commission on a National Agenda for the Eighties, a blue-ribbon panel of corporate chief executives, university presidents, former governors and cabinet officers, and other national leaders. President Carter asked the Commission to develop a ten-year agenda of international and domestic priorities for the United States. During the Ninety-fourth and Ninety-fifth Congresses, the Senate Committees on Commerce and Governmental Affairs were chartered to conduct a U.S. Senate Study of Federal Regulation. On the local level, Dick chaired the Commission on Efficiency and Effectiveness for Montgomery County, Md., a twelve-member panel appointed by the county council to develop recommendations on programs and budget priorities for Montgomery County government. The commission's report was presented to the county council and county executive in December 1991. He also served as vice chairman of the Montgomery County Commission on the Future. The commission's final report, "Envisioning Our Future," was submitted to the Montgomery County Council in June 1988. Dick graduated from Brown University with a B.A. in applied mathematics (1960, Sigma Xi), and from New York University's Graduate School of Arts and Sciences with an M.S. in mathematics (1962). He received his J.D. from Harvard Law School in 1965.

<sup>19</sup> After his service with Senator Ribicoff and the Government Operations Committee, Dave moved to Boston to work for Foley, Hoag and Eliot and then to Brenner, Saltzman and Wallman in Connecticut, where he's the managing partner. He's an active member of the Federal Bar Council, a member of the National Executive Committee of the Anti-Defamation League and its National Civil Rights Chair, and chairman of the Town of Hamden

Farmington Canal Commission, which is building a linear park on the abandoned Farmington Canal Railway Line. David is past president of the New Haven County Bar Association, past president of the Greater New Haven Jewish Federation, and past president of Congregation Mishkan Israel, in Hamden, Connecticut. He received his B.A. (1971) from the University of Wisconsin at Madison and his J.D. (1973) from New York University School of Law, where he was chosen the outstanding graduate of his law school class and was elected to the Order of the Coif.

<sup>20</sup> Ira served in the Office of the United States Trade Representative (USTR), 1993-1997; general counsel, 1993-1995; and chief negotiator with Japan and Canada, 1995-1997, with rank of ambassador (nominated by President Clinton, and unanimously confirmed by the Senate, in June 1995.). From 1988 to 1992 he practiced international trade law. On the Hill he'd served as chief of staff to Senator John D. Rockefeller IV, January 1985-December 1987; minority staff director and chief counsel, Senate Committee on Governmental Affairs, January 1981-January 1985; staff director and chief counsel, Senate Subcommittee on the District of Columbia and Government Efficiency, June 1979-January 1981; counsel to the Senate majority leader, February 1979-June 1979; counsel, Senate Committee on Governmental Affairs, January 1979-February 1979; staff director and chief counsel, Senate Special Committee on Official Conduct, January-April 1977; legislative legal counsel to Senator Gaylord Nelson, October 1975-December 1977. He started his legal career with Jenner and Block from 1973-1975. Since 1997 he's resumed his practice in international trade law, now with Greenberg, Traurig.

<sup>21</sup> Jim Eastland was born in Mississippi in 1904. He graduated from the University of Mississippi, Vanderbilt University, and the University of Alabama. He was a member, state house of representatives from 1928-1932; and appointed in 1941 to the United States Senate to fill the vacancy caused by the death of Pat Harrison. He successfully ran for election to the Senate in 1942; and was reelected in 1948, 1954, 1960, 1966, and again in 1972, serving until 1978. He served as president pro tempore of the Senate during the Ninety-second through the Ninety-fifth Congresses; and Chairman, Committee on the Judiciary (Eighty-fourth through Ninety-fifth Congresses). He died in 1986.

<sup>22</sup> In 1948, the Democratic National Convention was splintered by debate over controversial new civil rights planks that had been proposed for addition to the party platform. Adoption of the planks, urged by a group led by Hubert Humphrey of Minnesota, was resisted by delegates from southern states. In the middle, trying to hold together the New Deal coalition he had inherited from Franklin D. Roosevelt, was President Harry S. Truman. As a compromise, he was prepared to settle for the adoption of only those planks that had been in the 1944 platform. But Truman's own civil rights initiatives, including the formation of the Committee on Civil Rights and the Fair Employment Practices Commission, had advanced the civil rights debate to a new level, and he could not turn the clock back. The planks were adopted, prompting thirty-five southern Democrats to walk out. They formed the States' Rights party, which came to be popularly known as the Dixiecrats. Meeting in Birmingham, Alabama, the Dixiecrats nominated South Carolina governor Strom Thurmond

as their candidate for president. In the November election, Thurmond carried four states: Alabama, Louisiana, Mississippi, and South Carolina. He received well over a million popular votes, and his thirty-nine electoral votes represented more than seven percent of the total. The Dixiecrat episode was one of the most significant third-party efforts in America's history. Truman won reelection, but the strong showing put forth by the Dixiecrats signaled impending changes in electoral politics. It was the most visible sign of the postwar erosion of the New Deal coalition.

<sup>23</sup> The decentralization of the money came to an abrupt end when Kennedy became chairman and he held all the money and power at the full committee.

<sup>24</sup> Sam Ervin was born in North Carolina in 1896. He graduated from the University of North Carolina at Chapel Hill in 1917 and from the law school of Harvard University in 1922. During the First World War he served in France with the First Division 1917-1919. He practiced law in North Carolina and was elected as a member, North Carolina general assembly in 1923, 1925, and 1931; and as a judge of the Burke County criminal court from 1935-1937; and judge of the North Carolina superior court from 1937-1943. He was then elected as a congressman to the Seventy-ninth Congress to fill the vacancy caused by the death of his brother, Joseph W. Ervin. He served from 1946 to 1947. He didn't run for renomination in 1946 and resumed the practice of law. He became an associate justice of the North Carolina supreme court from 1948-1954. In 1954 he was appointed to fill the vacancy caused by the death of Clyde R. Hoey for the term ending January 3, 1957. He was reelected in 1956, 1962, and again in 1968 and served from June 5, 1954, until his resignation at the end of 1974. He was chairman, Committee on Government Operations (Ninety-second and Ninety-third Congresses), the Select (Watergate) Committee on Presidential Campaign Activities (Ninety-third Congress). He died in 1985.

<sup>25</sup> I believe the Watergate hotel and office building is named after features of the old C & O and Washington City Canals, perhaps a gate that permitted water from the Potomac River to enter the canal. In 1810 work began on converting Tiber Creek into the Washington City Canal, a feature in L'Enfant's 1791 plans for the Capital. It followed what is now Constitution Avenue, then turned in front of the Capitol, and connected the Potomac and Anacostia Rivers. It provided a convenient way for canal traffic to dock and unload their goods close to the commercial center of the town. Eventually it was connected in 1832-33 to the C & O Canal, which runs two hundred miles to Cumberland, Maryland, connecting the Chesapeake Bay with the Mississippi River. The Lockkeeper's House is the only remnant of the C & O Canal extension. The lockkeeper of the canal collected the tolls and kept records of commerce on the canal. The C & O Extension was built between 1832 and 1833 to connect the Washington City Canal with the C & O Canal. These canals served as major thoroughfares until railroads became the dominant form of transportation in the nineteenth century. The Washington City Canal was beset by problems of poor maintenance, was subject to tidal and seasonal flooding, became a fetid swamp, and was filled in 1872 to become Constitution Avenue.

<sup>26</sup> The first special prosecutor, Archibald Cox, was appointed in May of 1973 as the Watergate scandal spun out of control. He was appointed by Attorney General Elliot Richardson, a former law student of his at Harvard. When the Senate investigation revealed the existence of audio tapes of Oval Office discussions, Special Prosecutor Cox subpoenaed them from his employer. The president offered to give the Senate and Cox written summaries of what was on the tapes. Cox turned down the deal. On October 20, 1973, in an event termed the Saturday Night Massacre, U.S. President Richard Nixon ordered that Cox be fired as Watergate scandal special prosecutor, upon Cox's insistence on enforcing the subpoena for the tapes. Rather than comply with this order, both Attorney General Elliot Richardson and Deputy Attorney General William French Smith resigned. The order was ultimately carried out by the Solicitor General, Robert Bork. The firing of Cox illustrated the need for independent counsels—prosecutors specifically appointed to investigate official misconduct.

<sup>27</sup> It's easy to see why Koreagate made it difficult for us to pass the special prosecutor provision in the House. The scandal revealed dozens of congressmen who had taken money or gifts from agents of the South Korean government. The key player for the Koreans was a Korean CIA agent and rice dealer, Tongsun Park, who had for a number of years been making large payments to members of Congress, above all to Democratic members of the House of Representatives who opposed Richard Nixon, in order to secure their support for legislation that was of interest to Park Chung Hee, the South Korean leader. The goal was first and foremost to reverse Richard Nixon's troop withdrawal strategy, and then to nip in the bud any other problem that got in the way of business as usual between Washington and Seoul. There was a wave of hysteria in the House when the story broke because literally hundreds of members of Congress had attended parties organized by Park, who had become the Perle Mesta of the 1970s when it came to entertaining congressional bigwigs. Park also had a stable of call girls available, and could provide other services. The Rev. Sun Myung Moon, whose "Unification Church" has struck deep roots into the American system over the past quarter-century was also implicated. Moon is, of course, best known for converting thousands of young Americans to his faith and for serving U.S. prison time for income tax evasion. The U.S. House investigation of Koreagate demonstrated that the KCIA gave all kinds of help to Moon's activities in the U.S. as part of this scheme. Several congressmen were investigated, including Bob Leggett and Joseph Addabbo, for allegedly accepting bribes from the Korean government. Both men were linked to Suzi Park Thomson, who had been hosting parties of the Korean Embassy. Later it turned out that Speaker of the House Carl Albert had kept Suzi Park Thomson on his payroll for all of the six years that he had been Speaker. Congressmen Hanna, Gallagher, Broomfield, Hugh Carey, and Lester Wolf were all implicated. The names of Tip O'Neill, Brademas, and McFall also came up. The *New York Times* estimated that as many as 115 congressmen were involved. In reality the number was much lower, but former Watergate Special Prosecutor Leon Jaworski was brought back from Houston to become special prosecutor for this case as well. This underlined the press line that "the Democrats' Watergate" had finally arrived. Eventually Congressman Hanna was convicted and sent to jail, while Congressman Otto Passman of Louisiana was acquitted, largely because he had had the presence of mind to secure a venue in his own state. A number of other congressmen quit, and it is thought that the principal reason for the decision

by Democratic Speaker of the House Carl Albert to retire at the end of 1976 was the fact that he had been touched by the breath of this scandal, which would go into the chronicles as "Koreagate." See Boettcher, Robert. *Gifts of Deceit: Sun Myung Moon, Tongsun Park, and the Korean Scandal* (New York: Holt, Rinehart and Winston, 1980).

<sup>28</sup> The purpose of the special prosecutor provision was to avoid a direct conflict of interest when the Justice Department is investigating the president or attorney general or other higher ups. There is no conflict in the department investigating a member of Congress, so we never had any sense that the special prosecutor should be appointed to investigate a member of Congress. But O'Neill feared that the Republicans might offer an amendment to the bill that would do that, and cite Koreagate as the rationale. No such amendment was ever offered and the final bill only applied to executive branch officials.

<sup>29</sup> She's now been appointed to the Bush Iraq War intelligence panel.

<sup>30</sup> Later Pat was Clinton's first choice to be attorney general, but she took herself out of the running for the job because she and Clinton could not agree on who her assistants would be—Pat wanted the authority to appoint her own assistants, and Clinton refused to give it up. She served for twenty years on the U.S. Court of Appeals for the District of Columbia, the most important federal appeals court in the country, and certainly was on every Democrat's short list to be appointed to the Supreme Court. She served for two years on the International Criminal Tribunal regarding war crimes in Yugoslavia.

<sup>31</sup> Of the doctrine of the separation of powers, the Constitution says not a word. Yet the framework of government outlined in the Constitution of 1787 presupposes the separation of powers, gives expression to it, and in so doing further refines the meaning of the doctrine. Much of the controversy over drafting and ratification turned on this question of meaning. At issue was not whether the proposed Constitution embodies the separation of powers to some extent (few denied that), but whether its separation is sufficient. Among Americans reflecting on new political arrangements in the latter half of the eighteenth century, no political authority was invoked more often than "the celebrated Montesquieu." Thanks in some measure to those Americans themselves, the name of Montesquieu is firmly attached to the doctrine of the separation of powers. John Adams's early *Thoughts on Government* confirms the high expectations held for the separation of powers and the broad spectrum of ills that it would guard against: passionate partiality, absurd judgments, avaricious and ambitious self-serving behavior by governors, and the inefficient performance of functions. The experiences under the early state constitutions and the Articles of Confederation reinforced the belief in separation. Jefferson's critique of the Virginia constitution raised the familiar concerns with safety and efficiency; both to establish free principles and to preserve them once established required a division and balance that went beyond those embodied in existing arrangements. Despotism is no less despotic because "elective." The Philadelphia Constitutional Convention usually discussed the adequacy and proper degree of the separation of powers in terms of the ends to be achieved: stability (Dickinson), defense (Gerry, Madison, G. Morris, Wilson), independence (King), and proper function (Gerry). No

less worrisome, however, was whether the means available to the several branches of government to defend themselves against the others might not be excessive (Franklin). Those who opposed the unqualified ratification of the Constitution thought that not enough had been done to secure the proper degree of separation or that the means of defense would be ineffectual. Against these Anti-Federalist contentions Madison launched the most extensive and theoretically coherent discussion of the doctrine of the separation of powers.

<sup>32</sup> For a discussion of earlier proposals on this general subject, see the Senate Government Operations Committee report on S. 495 at pages 13-14. See S. 1384, introduced by Senator Vance Hartke on March 23, 1967; the vote on Senator Hartke's amendment to S. 355 on May 3, 1967 (amendment defeated 66-16); S. 2569, introduced by Senator Mondale on October 11, 1973; S. 3877, introduced by Senator Javits on June 4, 1974; and S. 4277, introduced by Senator Ervin on December 11, 1974. See Senator Hartke's statement during consideration of S. 495 on July 19, 1976 (22677-82) for an excellent history of earlier interest in the congressional representation issue. See Senator Abourezk's statement during the same debate regarding the 1818 House resolution authorizing hiring of private legal counsel to represent the sergeant at arms (July 20, 1976, at 22793).

<sup>33</sup> Statutes must be enacted by both houses and signed by the president or enacted over his veto. A simple Senate or House resolution need only be passed by one house. Such resolutions are often used to regulate the activities of that one house.

<sup>34</sup> See *Representation of Congress and Congressional Interests in Court*, Hearings of the Subcommittee on Separation of Powers, Senate Judiciary Committee, Ninety-Fourth Congress, Second Session, December 12, 1975, and February 19, 1976.

<sup>35</sup> William Proxmire was a Democratic senator for Wisconsin for three decades. The death of Senator Joseph R. McCarthy in 1957 brought Proxmire into the special election held to fill the seat for the balance of the late senator's term, he won the primary and then won the election. Proxmire's years as a senator were characterized by an independent, often idiosyncratic, stance. To highlight government practices that were costing taxpayers millions of dollars, Proxmire established a monthly "Golden Fleece" award in 1975 for "the biggest or most ridiculous or most ironic example of government waste." The awards received a great deal of publicity, but critics thought they diverted attention from larger, more substantial issues. He did not miss a roll call between 1966 and 1985. See *Proxmire* by Jay Sykes (1972). He won the lawsuit against him by one of the Golden Fleece Award winners in a case upholding congressional speech-and-debate-clause immunity. See *Hutchinson vs. Proxmire*, 443 U.S. 111 (1979). It was a critical case and it was left to Proxmire and private counsel he retained to defend immunities critical to the entire Congress. This was a perfect example of why we needed to establish the Senate Legal Counsel office.

<sup>36</sup> See August 9, 1976, *Congressional Record*, 26359-70 (S.Res. 463).

<sup>37</sup> Proxmire didn't miss a single vote for more than twenty-one years, the first and only senator in the history of the Senate who achieved that feat. See 134 *Congressional Record* 12527 (September 15, 1988). He gave daily speeches calling for the ratification of the Genocide Convention for nineteen years and it was finally ratified.

<sup>38</sup> It later provided a list of thirty-two cases where the department had represented Congress, nine in which representation was not requested, and three in which representation had been declined.

<sup>39</sup> Article I, section 6, clause 1 of the Constitution provides: "The Senators and Representatives shall...in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place." This clause represents "the culmination of a long struggle for parliamentary supremacy. Behind these simple phrases lies a history of conflict between the Commons and the Tudor and Stuart monarchs during which successive monarchs utilized the criminal and civil law to suppress and intimidate critical legislators. Since the Glorious Revolution in Britain, and throughout United States history, the privilege has been recognized as an important protection of the independence and integrity of the legislature." *United States v. Johnson*, 383 U.S. 169, 178 (1966). So Justice Harlan explained the significance of the speech-and-debate clause, the ancestry of which traces back to a clause in the English Bill of Rights of 1689 ("That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 W. & M., Sess. 2, c.) and the history of which traces back almost to the beginning of the development of Parliament as an independent force. "In the American governmental structure the clause serves the additional function of reinforcing the separation of powers so deliberately established by the Founders." *Id.* "The immunities of the Speech or Debate Clause were not written into the Constitution simply for the personal or private benefit of members of Congress, but to protect the integrity of the legislative process by insuring the independence of individual legislators." *United States v. Brewster*, 408 U.S. 501, 507 (1972). This rationale was approvingly quoted from *Coffin v. Coffin*, 4 Mass. 1, 28 (1808), in *Kilbourn v. Thompson*, 103 U.S. 168, 203 (1881).

<sup>40</sup> The jurisdictional statute was made necessary by the decision of the District Court in *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 366 F. Supp. 51 (DDC. 1973) finding that it had no jurisdiction to enforce the committee's subpoena for the Nixon White House tapes. The Congress then enacted Public Law 93-190 (December 18, 1973) to confer jurisdiction on the court to "enforce or secure a declaration concerning the validity of any subpoena" of the committee. See the legislative history of S. 2641 and H.R. 11189 (Senate debate on November 9, House Report 93-661, and House debate on December 3, 1973).

<sup>41</sup> The history of congressional efforts to enforce their subpoenas is found in the report of the Government Operations Committee on S. 495, at page 15. The history goes back to 1857, a

Supreme Court case in 1928, and legislation introduced on May 4, 1953, by Congressman Kenneth Keating (H.R. 4975). Four days of hearings were held on the Keating bill in 1954 and 1955.

<sup>42</sup> The statute has been successfully used by the Senate in the following cases (with cites to Senate resolutions and reports): *Senate Permanent Subcomm. on Investigations v. Cammisano*, Misc. No. 80-0102 (D.D.C. Dec. 29, 1980), aff'd, 655 F.2d 1232 (D.C. Cir. 1981)(S. Res. 502, 96th Cong., 2d Sess. (1980), 126 Cong. Rec. 25284 (1980) and S. Rep. No. 899, 96th Cong., 2d Sess. (1980)); *Senate Permanent Subcomm. on Investigations v. Accardo*, Misc. No. 84-0053 (D.D.C. Nov. 16, 1983, Mar. 29, 1984)(S. Res. 293, 98th Cong., 1st Sess. (1983), 129 Cong. Rec. 34559-60 (1983), 130 Cong. Rec. 3139 (1984), and S. Rep. No. 354, 98th Cong., 2d Sess. (1984)); *Senate Select Comm. on Secret Military Assistance to Iran and the Nicaraguan Opposition v. Secord*, Misc. No. 87-0090 (D.D.C. Apr. 16, 1987)(S. Res. 170, 100th Cong., 1st Sess. (1987), 133 Cong. Rec. 6413 (1987), and S. Rep. No. 16, 100th Cong., 1st Sess. (1987)); *Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings v. Borders*, Misc. No. 89-129 (D.D.C. Aug. 22, 1989)(S. Res. 162, 101st Cong., 1st Sess. (1989), 135 Cong. Rec. 18474-75 (1989), and S. Rep. No. 98, 101st Cong., 1st Sess. (1989)); *Senate Select Committee on Ethics v. Packwood*, 845 F. Supp. 17 (D.D.C. 1994), stay denied, 510 U.S. 1319 (1994)(S. Res. 153, 103d Cong., 1st Sess. (1993), 139 Cong. Rec. S14832 (daily ed. Nov. 2, 1993), and S. Rep. No. 164, 103d Cong., 1st Sess. (1993); and William Kennedy: (authorized by Senate, but not filed)(S. Res. 199, 104th Cong., 1st Sess. (1995) and S. Rep. No. 191, 104th Cong., 1st Sess. (1995).

<sup>43</sup> On March 9, 1937, President Franklin Delano Roosevelt sent to Congress a bill to reorganize the federal judiciary. It was soon dubbed the "court-packing bill." In his fireside chat about the bill, Roosevelt stated, "We have...reached the point as a nation where we must take action to save the Constitution from the Court and the Court from itself." He specifically decried the many Supreme Court decisions invalidating key elements of the New Deal. Roosevelt's proposal was "whenever a judge or justice of any federal court has reached the age of seventy and does not avail himself of the opportunity to retire on a pension, a new member shall be appointed by the president then in office, with the approval, as required by the Constitution, of the Senate of the United States." There were then six justices of the Supreme Court over seventy. Roosevelt's motive was clear, to save the New Deal legislation from being invalidated by the Supreme Court. Roosevelt's proposal met with fiery opposition. Many accused the president of seeking to subvert the Constitution and destroy the independence of the judiciary. Even some of those sympathetic to the president's purposes felt that the changes he sought should be made only by constitutional amendment. In addition, Roosevelt antagonized potential supporters within his own party by refusing to consult with them on the bill or consider changes in it. Pressure for passage of the bill was weakened by the retirement of one conservative Supreme Court justice; by the death of Senator Joseph Robinson, who had been leading the fight for the plan; and by the fact that several major pieces of New Deal legislation (including the Social Security Act and the National Labor Relations Act) were upheld by the Court between March and May 1937. The votes in these cases saw "the switch in time that saved nine." In August, the Judicial

Procedure Reform Act was passed instead, incorporating some of the president's recommendations but leaving the number of federal justices unchanged. Over the next four years, a combination of deaths and retirements enabled Roosevelt to make seven appointments to the Court that ended the legal threats to the New Deal.

<sup>44</sup> From 1976 to 1983 Stan served as general counsel to the U.S. House of Representatives under Speaker Thomas P. "Tip" O'Neill, Jr., and was the House's chief legal officer responsible for representing the House, its members, officers, and employees in connection with legal procedures and challenges to the conduct of their official activities. He represented the House and its committees before both federal district and appellate courts, including the U.S. Supreme Court, in actions arising from the subpoena of records by the House, in contempt proceedings in connection with congressional demands, and in landmark cases (two of which he argued before the Supreme Court) involving the legislative veto, congressional chaplaincies, immunity of congressional employees, separation of powers, and constitutional and common law tort suits, including defamation, discrimination actions, and state and federal wiretapping statutes. When he left the Hill in 1983, he founded a law firm, now Brand and Frulla, which has "specialized in cases at the intersection of politics, criminal law and communicating in the Washington echo chamber," according to former client George Stephanopoulos in his best-selling autobiography, *All Too Human: A Political Education* (Little Brown and Company, 1999). These cases have included representing corporations, trade associations, labor unions, and individuals in major Justice Department, grand jury and independent counsel investigations and trial proceedings, including Whitewater, HUD, the savings and loan crisis, and the campaign finance task force investigations. In addition to Stephanopolous, Stan has represented a succession of high profile clients in political and public corruption cases, including former Congressman and Gore 2000 Chairman Tony Coelho, former House majority whip Bill Gray, and Congressmen Dan Rostenkowski and Joe McDade. In addition, he has served as counsel to the International Brotherhood of Teamsters for twenty years and as parliamentarian and counsel to the Democratic National Convention. Last year he served as counsel to Arthur Andersen in the government's various investigations of and charges against the company. In 1999, Stan was named by the *Legal Times* to the magazine's white collar crime "Top Gun" list for knowing "when to fight and when not to fight." Since 1992, he has served also as vice president of the National Association of Professional Baseball Leagues, the governing body of minor league baseball. Stan received his B.A. from Franklin & Marshall College in 1970 and his J.D. from Georgetown University Law Center in 1974, where he has also taught administrative law and appellate advocacy as an adjunct professor.

<sup>45</sup> Charles Tiefer has written an excellent law review article on the Senate Legal Counsel Office, reviewing some of the more interesting issues it's faced. See "The Senate and House Counsel Offices: Dilemmas of Representing in Court the Institutional Congressional Client," *Law & Contemporary Problems*, 47 (Spring 1998), 61. Charles is a close friend and has had a distinguished career including expert representation of the House and Senate. He's now a professor of law, University of Baltimore. He was assistant Senate Legal Counsel, 1979-84; solicitor and deputy general counsel of the House of Representatives, 1984-95; and acting

general counsel of the House of Representatives, 1993-94.

<sup>46</sup> Davidson's nonpartisan style so satisfied the Senate's requirements that he served sixteen years under Majority Leaders Robert Byrd (D-W. Va.), Howard Baker (R-Tenn.), Robert Dole (R-Kan.), Byrd again, George Mitchell (D-Maine), and Dole again, consistently building the office's reputation for being above controversy. Mike Davidson now serves as minority counsel to the Senate Select Committee on Intelligence. He graduated from Cornell and the University of Chicago Law School. He served as Peace Corps volunteer in Kenya from 1964-1966. From 1966 to 1973—with a year's break while he and his wife lived and traveled in South America—Mike served as assistant counsel, NAACP Legal Defense and Educational Fund. He also served as director, Housing Litigation Bureau, Housing and Development Administration, New York City; and chief staff counsel, United States Court of Appeals for the District of Columbia Circuit. From 1979 to 1995, he served as Senate Legal Counsel. Upon leaving that post he served as acting general counsel, Library of Congress; counsel to the Senate Government Affairs Committee; co-director, Campaign Finance Reform Project with The Aspen Institute; counsel to the Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China (minority); and counsel with the House Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence. He served as counsel to Senators Byrd, Moynihan, and Levin in litigation on the constitutionality of the Line Item Veto Act, 1997-98, and as a member of the advisory board for the A.B.A. Central and East European Law Initiative, 1991-2001, where he helped draft the draft constitutions of Albania, Armenia, Bulgaria, Lithuania, Romania, Russia, and Ukraine

<sup>47</sup> The Congressional Management Foundation has published surveys of Senate staff tenure: [http://www.cmfweb.org/SupportingFiles/documents/CMF\\_Senate\\_Salary\\_Study.pdf](http://www.cmfweb.org/SupportingFiles/documents/CMF_Senate_Salary_Study.pdf) This study found that the tenure of Washington-based Senate staff has decreased during the last decade. The time an average Senate staff member remains in his or her position has dropped 29 percent to 2.2 years; the average time the staff remain in the same office has dropped 21 percent to 3.1 years; and the average time staff remain in Congress dropped 12 percent to 5.0 years. This is partly due to the pay gap. The report found that the gap between the pay of Washington-based Senate staff and executive branch staff has nearly doubled in the last decade, with Senate staff now earning about two-thirds of federal government employees. The average Senate staff member earned 18 percent less than an executive branch employee in 1991—that gap increased to 32 percent in 2001.

<sup>48</sup> Phil Kurland was an internationally renowned scholar of the U.S. Constitution and a University of Chicago faculty member for more than forty years. He is credited with fundamentally reshaping our understanding of the U.S. Constitution, particularly its system of checks and balances, the separation of church and state and the importance of judicial restraint. Gerhard Casper, former provost and dean of the Chicago Law School, portrayed Kurland in words Kurland himself had used to describe U.S. Supreme Court Justice Felix Frankfurter: "A truly civilized man, confident in the strength and security derived from the inquiring mind, unafraid of the incertitudes." Kurland began his legal career after graduation

from Harvard Law School, where he was president of the Harvard Law Review. From 1967 to 1976, he was chief consultant to the U.S. Senate Subcommittee on Separation of Powers, which was charged with, among other duties, studying the Watergate break-in. He died in 1996.

<sup>49</sup> I'd spent seven summers at the Orme Ranch. It was a forty-thousand acre working cattle ranch. I loved it. I rode every day, we learned to shoot, work with leather, and handle the outdoors. I rode cows in rodeos and roped as well. This outdoor life was perfect preparation for the Peace Corps.

<sup>50</sup> See Johnson's remarks at <http://www.presidency.ucsb.edu/ws/index.php?pid=27134&st=&st1> (August 4, 1965: Remarks to College Students Employed by the Government During the Summer). He said, "I am proud this morning to salute you as fellow revolutionaries. Neither you nor I are willing to accept the tyranny of poverty, nor the dictatorship of ignorance, nor the despotism of ill health, nor the oppression of bias and prejudice and bigotry. We want change. We want progress. We want it both abroad and at home—and we aim to get it." He said, "I am not disturbed by what some describe as the restlessness among young Americans today, because I share that feeling with you. I want to clear off and clear out the agenda of the past. I want to get ready for the works and the promises of tomorrow. And I know you want to, too....If you feel like protesting, I hope you will. I have been protesting all my life—protesting against poverty, protesting against illness, protesting against ignorance, protesting against injustice and discrimination, and against waste, and above all, against war. And I expect to continue, and I expect you to continue, until all of these evils are overcome in our land and around the world."

<sup>51</sup> See H. Res. 420, 1973. It permitted each office to hire two interns. After 1994, offices could use their regular office accounts to pay interns but only if they had not reached the limit of twenty-two staff.

<sup>52</sup> CLASP was founded as a public interest law firm in 1968 by Charles Halpern and three other young lawyers, with the assistance of Justice Arthur Goldberg. For fourteen years, CLASP helped develop new areas of legal work on women's rights, mental health, environmental protection, international human rights, health care for the poor, international trade, employment rights, and mine health and safety. Several prominent organizations, including the National Women's Law Center and the Bazelon Center on Mental Health Law, began their work as part of CLASP. In 1981, the CLASP board of trustees decided to focus on issues affecting low-income and disadvantaged persons.

<sup>53</sup> The National Environmental Policy Act of 1969, Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970.

<sup>54</sup> In 1968, large crude oil reserves were discovered at Prudhoe Bay by the Atlantic Richfield Company (ARCO). ARCO joined with BP Oil and Humble Oil to form the Trans-Alaska Pipeline Systems (TAPS). TAPS was proposed to ship crude oil to the southern Alaska

seaport of Valdez (an ice-free port), from where it would be shipped to refineries by tanker. Pipeline construction from Prudhoe Bay required transiting a route where much of the right-of-way was on federal and state lands. The Wilderness Society and others sued to stop the pipeline; they were our clients. We thought the key issue was compliance with the just-enacted National Environment Policy Act (NEPA) that the government issue environmental impact statements (EIS). The EIS for the pipeline was the first major EIS and the litigation regarding its adequacy was the first major test of what was required. I was in charge of preparing a legislative history of the statute. The key issue was whether the law was substantive—requiring that the government select the least environmentally damaging option—or procedural—simply requiring that the government review the options before making its choice. The courts eventually ruled that NEPA was procedural and we lost our claim on that issue in the Supreme Court. But the plaintiffs had also sued claiming that the pipeline violated the Mineral Leasing Act, which limited the right of way for pipelines to twenty-five feet. They needed a much wider right of way than that to build the pipeline. We won on this issue in the Supreme Court, but then the Congress enacted legislation to overturn the decision and the pipeline was built. See the Trans-Alaska Pipeline Authorization Act, P.L. 93-153. The first oil moved through the pipeline on June 20, 1977, and on March 24, 1989, the Exxon Valdez ran aground on Bligh Reef in Prince William Sound. It was a privilege to be involved in this landmark case.

<sup>55</sup> See the Trans-Alaska Pipeline Authorization Act, P.L. 93-153. The first oil moved through the pipeline on June 20, 1977, and on March 24, 1989, the Exxon Valdez ran around on Bligh Reef in Prince William Sound. Since it was constructed, 550 billion barrels of oil have been transported on the pipeline and 17,000 tankers have picked up oil in the southern terminal at Valdez. About 20 percent of U.S. domestic production comes from this pipeline.

<sup>56</sup> From 1979 until he joined Miller & Chevalier in 1983, Len served as general counsel to the U.S. Nuclear Regulatory Commission, where he had lead responsibility for all commission litigation and for legal advice regarding the agency's adjudications, rulings, and proposed legislation. From 1975 to 1979, Mr. Bickwit served as chief legislative assistant to Senator John Glenn. Mr. Bickwit also served, from 1983 to 1984, as the national issues director of Senator Glenn's presidential campaign. From 1969 to 1974, Mr. Bickwit served as counsel to the Subcommittee on the Environment of the U.S. Senate Committee on Commerce, where he supervised staff support for Senator Philip Hart, the subcommittee chairman, and participated in the development of many of the principal pieces of environmental legislation of the 1970s. He graduated from Harvard Law School in 1966, Oxford in 1963, and Yale in 1961.

<sup>57</sup> Eutrophication means, simply, an artificial enrichment of the water, just like gardeners enrich their soil with manure. That may be good for vegetables but it can mean death to the tiny insect larvae that live in water and form the base of the aquatic food chain for fish and birds like heron, kingfishers, and dippers. What happens is that this enrichment causes huge blooms of algae that, in some parts of the world, can be poisonous in their own right: they have been known to kill drinking cattle in Africa.

<sup>58</sup> Len can be absentminded. There's a story that he was driving his car by the Kennedy Center when the engine died. So the story goes, he pushed it off the road and didn't think to be ready to set the brakes. The car went right into the river! Also, in another story, he kept coming into the office looking very tired. He explained that the switch on his ceiling bedroom light was broken and he couldn't turn off the light. Apparently, it never occurred to him to get on a stepladder and unscrew the light! I don't know if these stories are true; they were told to me by people who admire Len.

<sup>59</sup> Richard B. Russell, Jr., was born in 1897, served as governor of Georgia and U.S. senator. In 1938 he led the opposition to anti-lynching legislation. The Declaration of Constitutional Principles, also known as the "Southern Manifesto," was released to the press in 1956. Russell wrote the final draft of the Manifesto, which attacked the Supreme Court ruling on *Brown v. Board of Education Topeka*. Only three southern senators refused to sign it: Estes Kefauver, Albert Gore (Sr.), and Lyndon Johnson. In 1959 he made the following statement, which typifies his deep-seated racism: "I can only deplore the invasion of our state by conscienceless agitators from abroad who encourage such litigation and thereby divert our courts from their proper function. I hope that the Atlanta school board will use every means at their command to resist this effort of the itinerant lawyers of the colored people's association to enforce an abhorrent alien doctrine on a people who are proud of their belief in the right of the several states to control their local affairs."

<sup>60</sup> The Supreme Court dismissed an appeal by Nike Inc. on technical grounds. The shoe and apparel giant was appealing a California state supreme court decision that it can be sued for false advertising over a publicity campaign it used to defend itself against accusations that its footwear was made in Asian sweatshops.

<sup>61</sup> See Chuck Ludlam, "Abatement of Corporate Image Environmental Advertising," 4 *Ecology Law Quarterly* at 247-278.

<sup>62</sup> The history of White House intervention began in the Nixon White House in 1971 with a little known review group called the "Quality of Life Review" program. The program focused solely on environmental regulations to minimize burdens on business. These reviews did not utilize analysis of the benefits and costs to society. The controversy that resulted from the program began a debate about both presidential review of regulations and the use of benefit-cost analysis that would continue for two decades and to some extent continues today. Soon after Gerald Ford became president in 1974, he held an economic summit that included top industry leaders and economists to seek solutions to the stagflation and slow growth that the nation was then facing. Out of that summit came proposals to establish a new government agency in the Executive Office of the President, called the Council on Wage and Price Stability (CWPS), to monitor the inflationary actions of both the government and private sectors of the economy. It also led President Ford to issue Executive Order 11821, requiring government agencies to prepare inflation impact statements before they issued costly new regulations. The innovative aspect of the Ford program was the creation of a

specific White House agency to review the inflationary actions, mainly regulations, of other government agencies. CWPS was staffed primarily by economists drawn from academia and had little authority beyond the influence of public criticism. The economists at CWPS quickly concluded that a regulation would not be truly inflationary unless its costs to society exceeded the benefits it produced. Thus the economists turned the inflation impact statement into a benefit-cost analysis. This requirement, that agencies do an analysis of the benefits and costs of their “major” proposed regulations—generally defined as having an annual impact on the economy of over \$100 million—was adopted in modified form by each of the next four presidents. The Administrative Procedure Act requires agencies to give the public and interested parties a chance to comment on proposed regulations before they are adopted in final form. The agency issuing the regulation must respond to the comments and demonstrate that what it is intending to do is within its scope of authority and is not “arbitrary or capricious.” CWPS used this formal comment process to file its critiques of the agencies’ economic analyses of the benefits and costs of proposed regulations. CWPS would also issue a press release summarizing its filing in non-technical terms. The CWPS analyses attracted considerable publicity. But while this system was effective in preventing some unsupportable regulations from becoming law, it had little success in preventing the issuance of poorly thought out regulations that had strong interest group support. Nevertheless, one of the legacies of this approach was that it slowly built an economic case against poorly conceived regulations, raising interest particularly among academics and students who began to use the publicly available analyses in their textbooks and courses. When benefit-cost analysis was first introduced, it was not welcomed by the political establishment, especially the lawyers and other non-economists who comprised many agencies and congressional staffs. But over time, as these analyses became standard fare in textbooks, the value and legitimacy of benefit-cost analysis became evident, and it slowly gained acceptance among the public. After President Carter came to office in 1977, the regulating agencies argued that the Executive Office of the President should not have a role in reviewing their regulations. On the other hand, the president’s chief economic advisers argued that a centralized review program based on careful economic analysis was necessary to assure that regulatory burdens on the economy were properly considered and that the regulations that were issued were cost effective. Rapidly escalating inflation in 1978 convinced President Carter of the need to act. In March of 1978, he issued Executive Order 12044, “Improving Government Regulations.” It established general principles for agencies to follow when regulating and required regulatory analysis to be done for rules that “may have major economic consequences for the general economy, for individual industries, geographical regions or levels of government.” President Carter also set up a new group, called the Regulatory Analysis Review Group (RARG), with instructions to review up to ten of the most important regulations each year. The RARG was chaired by the Council of Economic Advisors (CEA) and was composed of representatives of OMB and the economic and regulatory agencies. It relied on the staff of CWPS and the CEA to develop evaluations of agency regulations and the associated economic analyses and to place these analyses in the public record of the agency proposing to issue the regulation. The analyses were reviewed by the RARG members and reflected the views of the member agencies, including the agency that proposed the regulation. In this way, the Carter administration helped to institutionalize both regulatory review by the Executive

Office of the President and the utility of benefit-cost analysis for regulatory decision makers. Also, in an important legal ruling, the U.S. Court of Appeals for the District of Columbia in *Sierra Club v. Costle* (657 F. 2d 298 (1981)) found that a part of the president's administrative oversight responsibilities was to review regulations issued by his subordinates.

<sup>63</sup> See "Paralysis by analysis: Jim Tozzi's regulation to end all regulation," *Washington Monthly* (May, 2004) by Chris Mooney. Jim is the flamboyant head of an industry funded, for-profit think tank called the Center for Regulatory Effectiveness. He's made his career in the decidedly unflamboyant field of government regulation. In the three decades or so since the Environmental Protection Agency, Occupational Safety and Health Administration, and other agencies were formed, industry has become adept both at weighing down the rule-making process with years of preliminaries and at challenging regulations once promulgated. And for years, Jim—thanks to official contacts and regulatory expertise gleaned from two decades in government—has been a master of the game, gumming up the regulatory works and, as he puts it, giving environmentalists and consumer advocates "gastronomical pains."

<sup>64</sup> Tozzi's new baby, the "Data Quality Act"—conceived by Jim and passed with little debate by Congress three years ago—allows businesses to challenge not just government regulations, but the taxpayer-sponsored science which agencies rely upon to formulate these rules in the first place. This is the essence of "hybrid rule-making." See Section 515 of Public Law 106-554.

<sup>65</sup> The independence of certain federal agencies from the executive branch dates to the 1935 decision of *Humphrey's Executor v. United States* 295 U.S. 602 (1935). The Supreme Court there held that the distinctive expertise and impartiality of certain agencies justified the power of Congress to insulate agency officers from removal at will by the president. The case was part of a general acceptance of a practical and flexible, or 'functional,' approach to separation of powers—an approach that has led to independent agencies being considered a 'veritable fourth branch' of government.

**HART-SCOTT-RODINO**  
**Interview #2**  
**Wednesday, December 10, 2003**

**RITCHIE:** In our last interview, you mentioned several major legislative fights we should talk about, including the Hart-Scott-Rodino Antitrust Improvements Act. You indicated that you had more to say about it because it really was your trial by fire on the floor of the Senate. Exactly what was it all about, what was your role in it, and what does it say about the Senate as an institution? Then we can talk about the Airline Noise bill and other matters.

**LUDLAM:** It's been fun for me to go back and to review the record of that bill and to match it with my memories of what happened. The Hart-Scott-Rodino bill was a titanic struggle. The floor fight on this bill occurred in 1975, less than a year after I arrived in the Senate. The debate went right to the character of the Senate—focusing intensively on the rights of individual senators to thwart the will of the majority.

I doubt if there is any other struggle in Senate history where one individual attempted so strenuously to stop action on legislation supported by a very determined majority. At several points, the struggle led the Senate to a precipice. It was an incredible drama for a young staffer like me, new to the Senate, to witness this brawl from a front row seat.

In terms of statistics, we were on the floor for sixteen days. There were eighty-four roll-call votes. It's hard to imagine a fight today where they would take up that much time and endure that many votes. In fact, the Senate has changed the filibuster rules since then, so some of the post-cloture filibuster tactics that were used against this bill could not be utilized now.<sup>66</sup> During this brawl, we made hundreds of formal and informal parliamentary inquiries. Murray Zweben, the parliamentarian at the time, told me that he retired early because of the fight with Senator Jim Allen, the leader of this filibuster.

**RITCHIE:** Do you have any idea why it got so intense on this particular bill, the antitrust bill?

**LUDLAM:** The antitrust bill was very threatening to the business community. This was the first big fight for the Business Roundtable, which has become a formidable lobby for the business community. This bill basically empowered all of the state attorneys general to file class action antitrust lawsuits on behalf of consumers against businesses for price fixing and other antitrust violations. The antitrust law calls for treble damages, so the liability was potentially very large.

We all know that state attorneys general tend to be very ambitious and aggressive—witness Elliot Spitzer in New York. So the bill was going to lead to an awful lot of trouble for the business community. By current standards, this was a very left-wing bill—and it’s inconceivable that it’d be given serious consideration today.

**RITCHIE:** Although the Republican minority leader was a co-sponsor of the bill.

**LUDLAM:** Yes, Hugh Scott was involved with the bill and supported it. Some conservative Democrats had heartburn about the bill, led by Jim Allen, and Peter Rodino hated the bill. Rodino eventually went along with the bill because his committee was more liberal than he was and he settled for getting his name on it. In the Senate, there were some Republicans supporting the bill and President Ford eventually signed it into law. That didn’t persuade Allen not to fight nearly to the death to kill it.

Jim Allen was an absolutely fabulous individual for whom I had and have great respect.<sup>67</sup> He was very kind, very bright, and very principled. He knew the Senate rules because he had been president of the Alabama senate, and the Alabama senate used the U.S. Senate rules. So he already knew the Senate rules before he got here. He didn’t learn them here. Allen was a typical Dixie senator, very pro business. He was a Democrat, but a very conservative Democrat and he saw that the antitrust bill would be very tough on the business community.

Despite the fact that I was fighting to pass the bill and Allen was trying to kill it, I came to revere him. I remember one incident with Allen that shows what kind of man he was. I was working on some issue—I don’t recall the substance—and Allen had an interest in it. He asked to meet with the staffer who was handling it—not to meet with another senator, but to meet with the staffer. I went over to his desk on the Senate floor. He had a desk on the aisle and we started talking. It didn’t seem right for me to stand next to him when

he was sitting, so I sat down on the floor next to his desk, in the aisle. We had an extended discussion of the matter. This was before TV came to the Senate. No staffer would sit on the floor now! We talked for a very long time, perhaps an hour. I was partially blocking the aisle. He didn't mind negotiating with a lowly—literally lowly—staffer. He was not a man with the usual arrogance of senators in this institution. I don't recall if I satisfied his concerns, but I vividly remember what a kind and engaging person he was. I admired him greatly as a human being. I was very sad when he died. On the antitrust legislation, however, he was our mortal enemy.

The fight on this bill basically was between Bobby Byrd, who then aspired to become majority leader to succeed Mike Mansfield, and Senator Allen. Byrd wanted to prove to the liberals that he could be trusted.<sup>68</sup> Passing Phil Hart's antitrust bill at a time when Phil Hart was dying of cancer was one of Byrd's political strategies to ingratiate himself within the Democratic caucus. It pitted Byrd's superb knowledge of the Senate rules against Jim Allen's superb knowledge of the rules.

I was involved because my boss, Jim Abourezk, was one of the champions for the bill in the Judiciary Committee. Jim was a liberal and anti-business, so he was a natural supporter of a bill to increase antitrust enforcement. The other leaders were Phil Hart and Ted Kennedy. Other members were involved, but it was Phil Hart's bill with Kennedy and Abourezk serving as his principal assistants. Hart was chair of the Judiciary Committee's Antitrust Subcommittee. Jim Allen was very pro-business, so he led the opposition to the bill. The bill was considered to be Phil Hart's swan song in the Senate. And of course, Hart was beloved, absolutely beloved, by his colleagues.

I'm not sure Byrd had any firm views on the antitrust issues in this bill, but he was the assistant majority leader and he was going to pass Hart's bill if he died trying—and he almost did die trying. Let me describe a series of dramatic events I witnessed during those sixteen days.

The first major confrontation occurred on May 28, 1976. Jim Allen was holding the floor tenaciously to prevent Byrd from bringing up the bill and filing a cloture petition on it. Allen's strategy was to run out the Senate clock on the session. Byrd needed to get recognized to bring up the bill and file a cloture petition on it to stop the filibuster. Allen was filibustering Byrd even bringing up the bill, so Byrd couldn't file the cloture petition. A bill

has to be made the “pending matter” before cloture can be filed.

At one point Allen innocently asked for unanimous consent for something trivial, and Byrd used that as an excuse to take him “off his feet,” to secure the recognition of the chair, bring up the bill, and file the cloture petition. It was an incredibly dramatic moment. Recognizing Byrd was probably not appropriate as a parliamentary matter, but Byrd forced the chair to recognize him so that he could do what he needed to do. This event and Jim Allen’s response to it is printed in the May 28 *Record*.

When the Senate got around to the cloture vote on June 2, Jim Allen put in a long, pained statement explaining how aggrieved he was, personally, that his friend Bobby Byrd had screwed him on this parliamentary maneuver. Three months later this event still rankled with Senator Allen. He was engaged in a second filibuster on the antitrust bill and said, “I trust that the substitute [amendment he was offering] will appear in the *Record*. However, I am not going to ask unanimous consent that it appear in the *Record* because I recall all too vividly that on one occasion in the Chamber, the Senator from Alabama, as the rules allow, did make a unanimous consent request and the Chair ruled that the Senator from Alabama lost the right to the floor by making that unanimous consent request. That was clearly in contravention to the rules, but what could the Senator from Alabama do?”

On August 27 Allen commented in amazement that he’d managed to get recognized at a time when Senator Byrd was also seeking recognition. Allen said he had approached the senator who had been the presiding officer and said, “I thought you had been sent to the Chair to do the day’s dirty work” (of recognizing Senator Byrd over Senator Allen, as had happened on May 28). Senator Allen explained that he’d used that “indelicate expression”—“dirty work”—because “the Senator from Alabama had not been recognized on a number of occasions when the rules would have required him to be recognized.” Senator Allen refused to name the individual, referring to him as “a faceless, nameless entity.”

All of this, of course, refers back to May 28 when Senator Byrd had taken Senator Allen “off his feet” in order to make the antitrust bill the pending business and file the cloture petition.

**RITCHIE:** Were they arguing that if he asked for unanimous consent, it was the second speech on that issue?

**LUDLAM:** No, the bill wasn't pending and we hadn't invoked cloture on it. The issue was whether Allen in making this unanimous consent request had lost his right to the floor. When Allen made the unanimous consent request, Byrd jumped, he asked for recognition, got recognition, brought up the antitrust bill and filed the cloture petition on it—all in about five seconds.

Doing this at this time was critical to the passage of the bill. Allen was trying to prevent Byrd from getting the floor to bring up the bill and file the cloture petition. Then he asked for unanimous consent to print something in the *Record* and that was Byrd's opening. He pounced.

I don't know if Senator Byrd and Murray Zweben had talked about this strategy in advance, and had a friendly senator posted in the chair poised to recognize Byrd, or whether this just happened spontaneously. Murray was there advising the chair on how to rule. The chair is required to recognize the majority leader or his substitute—but only if the floor is open. The chair is required to protect the rights of individual senators who are holding the floor. Senator [Gale] McGee, a reliable supporter of the legislation and of Senator Byrd, was in the chair at that crucial time on May 28, and he was the one who recognized Byrd instead of letting Allen continue his filibuster.

Despite Senator Allen's suspicions, I think that this event occurred spontaneously, without any plan set in advance. Byrd is a forceful man, he's quick on his feet, he sensed an opportunity, he demanded recognition, and then McGee recognized him. Bam, bam, bam. McGee was the "faceless, nameless entity."

Allen's protests were to no avail. Allen was screaming for recognition and demanding his rights, but McGee had the power of recognition and he used it to recognize Byrd. This proves that the chair's power of recognition—who to recognize as next to speak—is truly a critical power. In this case it saved the bill.<sup>69</sup> So Phil Hart's bill became the pending business and the Senate then invoked cloture on it to bring the debate to a close. However, this turned out to be only the bare beginning of the fight.

Allen launched into an unprecedented post-cloture filibuster. This sounds like a contradiction in terms—a vote for cloture is supposed to end filibusters. But in this case Allen had a strategy for filibustering after cloture was invoked—by calling up amendment

after amendment, making repeated motions and appeals, and engaging in other obstructionist and dilatory tactics. There were supposed to be only one hundred hours of debate, but this didn't count the time it took to take a vote. So he'd use five seconds of his time and then the vote would take twenty to thirty minutes. This tactic could tie the Senate in knots for months, all within the "one hundred hour" post-cloture debate limit.

When they'd written the "hundred hour" rule, everyone thought that after cloture was invoked, the senators would let the bill pass. No one imagined that invoking cloture would be the bare beginning of the fight. The Senate is a gentle body and everyone just thought that the senators would be gentlemen when a sixty-vote margin for a measure was established in the cloture vote. So they didn't write the rule so that it'd prevent the type of post-cloture filibuster Allen launched. He was operating within his rights, but there is no doubt that he was pushing his literal reading of the rule to the point of absurdity. If his interpretation of the rule was permitted to stand, the whole cloture procedure for limiting debate would become a sham and meaningless.

As I will explain in a minute, Allen's tactics several times led the Senate to the precipice as it moved to crush his very small group, which was thwarting the will of the overwhelming Senate majority.<sup>70</sup>

The second dramatic event occurred on June 7. We had an incredible turn of events in connection to an amendment from Senator [Quentin] Burdick.<sup>71</sup> This was one of many amendments Allen and his group proposed to the bill after cloture had been invoked. Burdick was not a noted legislator of substance during his career, but the industry folks who didn't like the antitrust bill got him to offer an amendment that would have prevented the use of contingent fees by plaintiffs in private antitrust cases. This would have pretty much killed the type of antitrust litigation we hoped to spawn. The plaintiff's antitrust bar file these cases on a contingent fee basis, where the lawyers are paid only if they win a judgment for their client. The Burdick amendment was popular because nobody likes contingent fees. Burdick was—shall I say—the "shill" for this amendment. [Laughs]

Burdick offered the amendment, and we knew the whole bill was a risk. We knew this amendment would kill the bill. The Senate voted on this amendment on June 7, vote number 227. We're sitting there, and we don't know whether we are going to win or lose this vote. It was razor thin.

Then, in a total surprise, the chair announced that it was a tie vote on tabling the Burdick amendment. A tie vote meant that we had failed to table the amendment. To win a vote, you need a majority. A tie means you don't win. The vice president was nowhere to be found. We guessed that he'd support us, but he was nowhere in sight. All of us were looking at each other trying to figure out what happens now. We hadn't tabled the amendment, it was still alive. Burdick didn't have a majority to pass his amendment, but he wasn't dead. Myriad calculations flowed through our heads on what to do next.

Do we hold things up and try to bring in the vice president to help us? Can we do that? If we could find him, would he take our side? Should we move to reconsider the vote on the motion to table? Only a senator who votes in the majority can make the motion, so that option wasn't available.

As our brains scrambled to figure out what to do next, there was a long and pregnant pause. For about a minute nobody said a word. Everybody was stunned as we tried to figure out what this meant for the bill and what would happen next. No one asked for a quorum call to suspend the action. Everyone was silent. Then the chair announces that the legislative clerk had miscounted the vote. I have never seen this!

The chair announced that the announced vote was a mistake and we had won the vote and tabled the amendment. The announcement that they had miscounted the vote is at page 16836 of the June 7 *Record*. The chair was so embarrassed by the situation that he ordered a "recapitulation" of the vote, a second vote. This is the only time I've seen this in the Senate. So the Senate voted a second time. It was a tabling motion against a motion to reconsider the vote, vote number 228. This is in the *Record* of June 7. And we won the second vote, the recapitulation. Not before or since have I heard of a "recapitulation" of a vote. It was a very unusual situation!

I've never seen the clerk miscount before. And the miscount was on the single most threatening amendment to the bill.

**RITCHIE:** It was an honest mistake?

**LUDLAM:** Yes, an honest mistake, totally honest mistake, and it occurred when the bill's fate was in jeopardy. They had counted one member twice—Senator [Thomas]

McIntyre.<sup>72</sup> Senator McIntyre later explained what had happened. He said he'd voted "no" on the Burdick amendment. He said that it was "the understanding of the Senator from New Hampshire that the motion was to reconsider and I voted 'no.'" He learned of his mistake and "came to the floor and changed my vote" before the vote was announced. You can change your vote before the vote is announced, but thereafter you can only change your vote by unanimous consent if it doesn't change the outcome.

We'd had so many different types of votes. We'd had votes to table, votes to reconsider, votes to table motions to reconsider, and other votes. So it's not surprising that McIntyre was confused. He explained, "I think an error was made at the desk in failing to expunge my original vote on the motion to table." So McIntyre was counted as voting both "yes" and "no," which yielded the initial "tie" vote. When his duplicate vote was deleted, we won on the vote to table the Burdick amendment. But we still had to endure the "recapitulation," which was nerve-wracking.

The third series of dramatic events began on June 8. As the debate proceeded, we all become increasingly stressed. We had endured an incredible numbers of votes, live quorums, motions to table, motions to table motions to reconsider. Just bizarre stuff. So as was his practice, Senator [John] Pastore started a series of speeches as only he could do, saying, "It's six o'clock and we should be home with our children and our wives. We are embarrassing ourselves." There was a fabulous speech of Pastore's on June 8 at 1639-16941 and another one on June 9 at 17241. He even threatened to make some unprecedented points of order against what he considered to be dilatory tactics. It got wild. You can hear the emotion when you read the *Record*.

At one point, there was a vote on a motion to adjourn, and then there was a motion after that on a motion to recess. You can see in the *Record* that the members were saying "Why? Why?" The level of frustration was rising to the point of real anger.

Then we came to the fourth incident, one that completely inflamed the situation. This occurred on June 9. Senator [Bill] Scott of Virginia was part of the Allen group filibustering the bill. Cloture had been invoked so each member is supposed to be able to speak for only one hour before the final vote.

Early in the day, Senator Helms had helped his fellow North Carolinian, Senator [Robert] Morgan, one of the managers of the bill and a very strong proponent of it, to secure for Morgan an extra hour to debate the bill. As a manager of the bill, Morgan needed some additional time.<sup>73</sup> This was accomplished when Senator Glenn and Senator Bentsen got unanimous consent each to give Morgan a half hour of their allotted hour.

At another point that day, Senator Helms asked unanimous consent that Senator Brock be permitted to transfer thirty extra minutes to Scott so he could extend his speech.<sup>74</sup> Objection was heard to that, from my boss. Given that Helms had helped Morgan secure some extra time, it was not very kind of my boss to object when Helms tried to secure some extra time for Scott. But tempers were short, Abourezk could be pretty temperamental, and he had objected. Scott then said, “I would like to see more senators to be in the chamber while I am making this talk” so he called for yet another live quorum call.<sup>75</sup> This offended us, but lots of the actions of the opponents were offending us at this point. After the live quorum call, Abourezk hit Scott with a tabling motion on his pending amendment, which passed 51-35.

When everyone was settling back to hear the rest of Scott’s incredibly dilatory and whining speech—his speeches were always boring, so nobody was listening—he said, “I think there are very important matters that are being brought to the attention of the Senate. I have only 37 minutes remaining. I ask unanimous consent that I have thirty extra minutes under cloture to debate the bill.” None of us heard what he’d said. What he said was lost in the droning. We were tired and busy doing other things. Cloture had been invoked. He had an hour, and he asked for thirty extra minutes. This is at the June 9 *Record* at 17254.

It’s probably no coincidence that Jesse Helms was in the chair. Back then, even when Democrats were in power, both Democrats and Republicans would serve as president pro tempore of the Senate.<sup>76</sup> Helms quickly mumbled, “Is there any objection? The chair hears none. Without objection, it is so ordered.” All done in a few seconds. Mumbled.

When this occurred, I was sitting there down in the well at the majority leader’s desk.<sup>77</sup> I hadn’t heard what Scott and Helms had said. Hart wasn’t there. Abourezk wasn’t there. Kennedy wasn’t there. Morgan wasn’t there. No Democratic senator was there at the time—which is not an unusual situation in the Senate. I was distracted. We staff were always busy—figuring out what the next amendment might be, figuring out who we could get to

Speak against the next amendment, and myriad other elements of managing a monstrous debate.

The Scott unanimous consent for thirty extra minutes had been granted before we had any chance to do anything to stop the UC. Staff can't stand up and object! Only members can do that. Our view was that Helms—a Republican sitting as the chair when Democrats controlled the Senate—had gaveled this through only to help Scott and frustrate the majority. Helms had been trying unsuccessfully to give Scott some extra time and here he abused the power of the chair to get it done.

To my knowledge, no member of the minority caucus has sat in the chair since then. I believe that this was the last time a member of the opposition party sat as the presiding officer of the Senate. It was Bill Scott and Jesse Helms who ruined the institution of bipartisanship for the president pro tempore of the Senate. This means that the burdens of presiding fall entirely on the majority and are not shared with the minority. This has helped to make the life of freshmen senators—who are required to preside—even more miserable. It's relieved freshmen senators in the minority from any presiding time.

**RITCHIE:** That Scott unanimous consent would have set a dangerous precedent for cloture as well, if you could extend the post-cloture debate by unanimous consent.

**LUDLAM:** Absolutely. The reaction to the Allen-Helms abuse of the power of the presiding officer was swift and dramatic. You can read the *Record* to see the flavor of the response. It jumps right out of the page. It focused on moving to majority cloture, a dramatic break with Senate traditions and precedent.<sup>78</sup> Scott said that he had made the request in jest. He said, "I fully anticipated that there would be an objection. None having been made, I do want to take the opportunity to complete my remarks." He said, "I thought someone would object" and nobody did.

Mansfield took the floor that day (see the June 9 *Record* of 17254 to 55, and again at 17274 to 75) and he went completely nuts. He said that there had never been an event like this in the history of the Senate. He was truly outraged about what had happened. Scott responded in a very lame sort of way and Mansfield just went on and on about how angry he was.

To this point in the debate, we had suffered fifty-four votes. We had had votes on twelve amendments, eighteen votes on motions to table amendments, eight votes on motions to table motions to reconsider previous votes, two votes on motions to reconsider previous votes, one vote on a motion to table appeal of the ruling of the chair, seven votes on motions to instruct the sergeant at arms [live quorums], four votes on motions to recess and adjourn, and one vote on cloture. This is what it means to suffer a “post-cloture” filibuster. The senators were furious. And then Bill Scott pulled this stunt to get extra time. Basically, it was the last straw for Mansfield, normally a very patient man.<sup>79</sup>

Before I complete the story of the aftermath, let me offer a few observations about Bill Scott. Unlike Mansfield, Scott was not noted to be one of the brightest members who ever served in the body. He’d once called a press conference to denounce—and effectively publicize—a charge that he was the “dumbest” senator. It’s still cited around here as an example of when not to hold a press conference!

During the tortuous debate on the antitrust bill, I was riding in the elevator with Scott and a number of other senators. Some senator—I think it was Bentsen or Bayh—made a comment about the brawl on the bill and said it was like the Senate was “going through male menopause.” Bill Scott pipes up, “Yeah, but it only happens once a month” (confusing menopause with menstruation). Everybody on the elevator was completely dumbfounded and fighting hard not to laugh out loud. [Laughs]

There was another incident right about the same time. I had known a guy named Jim Carty when we were both lawyers at the Federal Trade Commission. During this debate, I ran into him and he introduced himself as “Pat Carty.” I asked him why he changed his name, and he said he was working on Bill Scott’s staff and they had two “Jims” on the staff. Bill Scott couldn’t keep them straight, so Jim Carty changed his name to “Pat Carty.” Anyway, that’s Bill Scott. You can see why we weren’t listening when he pulled his unanimous consent trick.

The Scott and Helms trick had profound ramifications. At that point, Byrd—obviously with Mansfield’s support—threatened to move to suspend the rules of the Senate to use the majority’s power to crush this pesky minority. Cloture requires sixty votes out of one hundred, but Byrd threatened to crush their shenanigans with fifty votes—effectively majority cloture. This was on June 9 at *Record* page 17273. Mansfield

said he'd support majority cloture and he filed the motion to suspend the rules. His motion was printed in the *Record* at 17280 to 82.

Mansfield and Byrd were so angry at what was happening on this bill that they were ready to invoke majority cloture. They threatened Allen and his small team with dire and precedent setting consequences for their obstruction. That is how raw the feelings were about what was happening to Phil Hart's antitrust bill.

Despite this threat to suspend the rules, on June 10 the Allen/Scott shenanigans continued. We had a live quorum, a tabling vote, another live quorum, a tabling vote, a vote on the sense of the Senate about dilatory actions, another tabling vote, a tabling vote about the Helms amendment, another tabling vote, blah, blah, blah. It went on and on and on the next day.

The issue of majority cloture is now front-and-center again as Republicans consider the "nuclear option" of using their control of the Senate to secure a ruling from the presiding officer, presumably Vice President Cheney, that filibusters of judicial confirmations are dilatory or unconstitutional. That ruling might be appealed and the vote on the appeal is a majority vote, not a super majority. This would mean that you don't need sixty votes to stop a filibuster of a judicial nominee; you only need a simple majority. This would end filibusters of judicial nominees and it would radically change the Senate.<sup>80</sup>

Filibusters or the threat of filibusters are a daily fact of life in the Senate. The tradition of "extended debate" goes back 160 years. Columnist George Will argues that filibusters are a conservative mechanism that prevents precipitous and unwise policy making. Others argue that a simple majority should be able to "work its will." The potential risks to minorities from majority mob rule is an issue that goes back to the *Federalist Papers*. So the anger and response we saw from Mansfield and Byrd went right to the heart of the Senate as an institution, nothing less.<sup>81</sup>

With the Mansfield and Byrd motion to suspend the rules hanging like a Sword of Damocles over the Senate, and over Allen, he came to us to talk about a compromise. We were angry, but we knew also that the Senate was about to implode, so we entered into negotiations with Allen. They were tense and exceedingly arcane, but eventually we reached an agreement, a compromise.

Finally Senator Byrd offered the compromise to end the debate and get it passed. This was amendment number 274. The negotiations that led to the Byrd compromise amendment resulted directly from the Scott unanimous consent gambit and the Mansfield motion to suspend the rules and invoke majority cloture. This led both sides to talk about how to end this brawl. There were endless meetings, offers, counteroffers, and posturing.

In the end, when we had the best deal we could get, we had our meeting on the couch with Phil Hart. Phil was suffering terribly from radiation and chemotherapy. As I mentioned in our last interview, during that fateful meeting on the couch in the back of the Senate, Phil Hart said, “Just tell me that we are not agreeing to this compromise because I’m dying.” We said it was a reasonable deal and we agreed to it. And that became the Byrd compromise amendment.

Later, on August 31, my boss explained the basis for the compromise. He said, “Due to the illness of Senator Phillip A. Hart, who was no longer physically able to keep up with the pace at that time...[B]ecause this is Senator Hart’s bill, a number of us who are involved in the legislation then agreed to go ahead with the weakening process.”

We were all determined to pass the bill before Phil Hart died. He was not physically able to sit in his chair in the Senate during the debate. He would often sit with staff back on the couches in the rear of the chamber—this was before TV cameras. No senator would do this today.

Eventually, as a result of this vote on the Byrd compromise, we did pass the bill in the Senate. As you can see, it took several trips to the precipice to get the compromise done and pass it. With this compromise, we thought we had an agreement that that would end the filibusters. But, to our shock, when the House version of the bill came over to the Senate, Allen entered into another filibuster. This was in late August.

We were completely livid, having gone through sixty-seven votes on the first debate on this bill. We were not happy at the prospect of another filibuster-by-amendment. This next round of the fights started on August 27 when Byrd attempted to take the Senate bill to conference with the House-passed bill.

To put this second filibuster and the whole fight in context, right in the middle of this second filibuster, on August 30, the Senate voted to name the building in which we are sitting the “Philip A. Hart Building.” Right in the middle of this vicious and bitter debate. It’s in the August 30 *Record* at page 28423.

Two of the members who spoke vehemently in favor of the idea were Jim Allen and Roman Hruska, who were leading the opposition to Phil’s antitrust bill. This was very dramatic, very sentimental. All this just goes to show how much the stature of an individual—Phil Hart—can affect the course of what happens in this institution.

So with Byrd attempting to take the Senate bill to conference with the House, Allen insisted on amending the Senate bill. As is the typical case, Byrd had taken up the House bill and offered the Senate-passed bill as an amendment to it. This is the way you set up a conference. You have a House version of a bill and a Senate version. At the moment Byrd offered the Senate-passed bill as an amendment to the House-passed bill, the Senate amendment was fully amendable. So Allen was moving to kill the conference by offering endless amendments to the Senate amendment to the House bill.<sup>82</sup> He was offering the same amendments he’d offered to the Senate bill itself. It was maddening.

We then suffered seventeen votes on Allen’s amendments to the Senate amendment to the House bill. At one point Allen asked that the entire House bill be read, and at another that an entire substitute amendment be read. Allen also offered an amendment, got it divided in six parts, and got votes on all six parts. Our blood was boiling.

Some remarkable wit was evidenced in the debate on August 27, 30, and 31. For example, Senator Allen said, “I did not understand the Senator, but I am not going to ask him to repeat it. I believe I will be as well off without hearing it. I doubt that it was a comment that would give a great deal of comfort to the Senator from Alabama (laughter).” Senator Abourezk kept pestering Allen. At one point Abourezk said, “It does not hurt to ask even though I get turned down every time. It does not hurt to ask, does it?”

At another point Senator Allen was warned by the chair against permitting another member to give a speech rather than ask a question. Allen protested this ruling. Then Senator Byrd said he was “touched by the expressions of self-pity by the distinguished Senator from Alabama.”

As the tensions rose during the post-cloture filibuster, Senator Pastore made another of his impassioned 6:00 p.m. speeches. Senator Mansfield gave a series of impassioned speeches. Much of the debate focused on whether there had been an agreement when the bill first passed the Senate that the filibusters would end. We'd compromised to end the first filibuster and we didn't want to compromise again to end the second one.

Senator Mansfield said, "There was no written agreement, there was no oral agreement. But I am quite sure that all of us who were involved at that time thought there was an understanding." He said he feared the Senate might become a "second-rate body subject to emotionalism, degradation, and demeaning."

Senator Byrd took the floor to say that there were seventy-nine amendments and thirty-four motions pending at the desk and he'd be offering a motion to strike all of them as dilatory—this again would be the equivalent of majority cloture. Back to the precipice. Back to World War I.

Again, this caused the opponents of the bill to blink. On August 31 a unanimous consent agreement was reached to schedule a vote on September 8 to finalize action on the bill. Senator Abourezk gave a long explanation of what had happened to the substance of the bill that I wrote for him.<sup>83</sup> Pursuant to this agreement the bill passed on September 8 by a vote of 69-18 and it became law.

Actually what happened is that the Senate ended up adopting an amendment to the House bill and sending it back to the House, rather than go to conference. We backed off of going to conference to avoid a third Allen filibuster when we'd take up the conference report! We organized a rump meeting with the House—a substitute for a conference—to resolve the issues so there would be no need for a conference and no third debate in the Senate.

All told there were eighty-four votes on this bill and two major filibusters. The Senate had several times come to a precipice in relationships among the members and the Democratic leaders threatened to use the rules to bring debate to a close on a majority vote. Jim Allen had taken the rights of an individual member to the absolute extreme, which everybody believed was perfectly within his rights, but after a while the Senate was rethinking how many rights it wanted to give to Allen!

I invite you and other historians to go through and to look at this debate, because it was a defining moment in the Senate on a crucial question that has dominated the institution throughout its history. That crucial question weighs the rights of an individual against the rights of a determined majority. This question goes right back to the *Federalist Papers*—about the rights of minorities—and other fundamental values in our democracy. The right of the majority to crush a minority—this is an overriding issue in human history—and we played this issue out on the stage of the U.S. Senate.

It is a testament to the values in our democracy that the Senate would permit one individual, Jim Allen, to tie up the upper body of the national legislature for that long without simply crushing or jailing him. The respect that our society has for individuals, not just in the Senate but in general throughout our society, is the defining characteristic of America. No country has more respect for the rights of individuals to be different, and to be powerful, and to express themselves, than we do. We are nation of immigrants and no country is more tolerant of diversity or less racist.

I have traveled in about sixty-five countries and have gained a good deal of perspective about the issue of tolerance. This debate on Phil Hart's antitrust bill was an incredible lesson in how a determined majority deals with a very stubborn, resourceful, smart, arrogant, and capable dissident. Fundamentally, we respected the dissident and only when incredibly provoked did the Senate majority threaten to crush him by a majority vote. It didn't do it, it just threatened to do it, and that persuaded Allen to compromise. He got something in the compromises. He didn't lose everything.

Would Byrd and Mansfield have suspended the rules to go to majority cloture? Were they bluffing? What would have happened if that precedent had been set? What would the Senate be like today? Was it worth this risk to Allen and his group? Why did they decide to compromise?

I would love to have been an insider to the discussions of Allen and his group. I wonder why they compromised, why they blinked. What was the ultimate fear that led them to blink? Did they fear the precedent of majority cloture as it might be applied to other legislation? Did they think about this much as Richard Russell thought about his dealings with Lyndon Johnson in passing the Civil Rights Act—as is so brilliantly described by

Robert Caro in *Master of the Senate*? If the Senate adopts majority cloture, will it become a less conservative body and is that a good result?

A related issue that dominates this debate is the respect for rules and laws. Here Allen was using the rules to his advantage and even though he was stalling a major bill, the majority had to respect the institution's rules. Rules and laws are a dominate force in our society. We believe strongly in rules and laws, not men. This is why we rely on a constitution rather than an individual. We threw over a monarch in favor of a constitution. When Byrd and Mansfield finally went ballistic, they were moving to *suspend the rules*. Given our nation's preference for rules and laws, suspending them is a major, even a revolutionary idea.

As one who has enormous respect for our political institutions, I care very much about these issues. I am not solely focused on the immediate legislation. I care about process and the integrity of the institution, which may ultimately be much more important than whether you win or lose in a specific legislative fight.

**RITCHIE:** This fight occurred just following the revision in the cloture rule that reduced the required vote to invoke cloture from two-thirds to three-fifths [67 to 60 votes]. Was Allen thinking in the long-term beyond the bill, in terms of establishing precedent? The Senate had tried to make cloture easier and Allen was trying to make it harder.

**LUDLAM:** This was the first and second post-cloture filibuster. Allen invented the idea of a post-cloture filibuster. He saw that as long as you file amendments before cloture is invoked, there was no limit on the number of amendments you can file. Then you can simply call them up and run the clock on the votes. Then you can add motions and quorum calls. That happened repeatedly in this thing, with one vote immediately following another. So it's clear that he was, in effect, trying to reverse the cloture vote reform. He was trying to see if he could undermine the impact of the loosened threshold for invoking cloture. He undoubtedly wanted cloture to be less effective in shutting down debate.

In fact, sitting down in the well by the majority leader's desk right in front of the presiding officer, we had so many votes that when members would walk through the door of the chamber, they would look at me and I would give them a thumbs up or a thumbs down, depending on whether it was a tabling motion or an up-or-down vote. They did not care about the substance of the amendment. It became an automatic, machine voting exercise.

We developed a thumbs-up, thumbs-down system. Now that we have TV on the floor, we would never dare be so indiscrete. The cameras might catch it! But back then we didn't have TV, so we were giving them hand signals on how to vote. That's pretty crude by current standards. They'd ask, "Is it a tabling vote or up or down vote?" They didn't ask about the substance. I guess McIntyre didn't look for our thumb!

**RITCHIE:** I think they do that out by the elevators now [telling senators what the vote is about].

**LUDLAM:** They can't do this on the floor anymore in front of the cameras. In fact, I've seen a lot of changes arise due to the cameras. Staff sitting on the couches in the back of the chamber have to be very careful now. I am always aware of when I might be on TV. And I often move to another place so that I won't be on camera.

I also find that it's much more tiring under those strong TV lights. It used to be rather pleasant to sit on the floor hour after hour. The lighting was subdued. Now with the cameras, the members do a lot more posturing. The members with bald spots sit in the back row so the camera angles don't show their bald spots. Others get desks in front of marble columns, which provide a better backdrop for the cameras. I like the old Senate before TV cameras. It was more subdued, more respectful. It could be wild, but we didn't see all the posturing to the cameras.

Later there was another post-cloture filibuster by Abourezk and [Howard] Metzenbaum against the Natural Gas bill, where Abourezk was filibustering and Allen was on the majority side. Allen had taught Metz and Abourezk how to run a post-cloture filibuster! I was not involved with that fight, but it was another massive post-cloture filibuster.

Eventually these post-cloture filibusters led to reforms of the rules, because obviously if you get cloture with a sixty-vote supermajority, that should be enough to pass a bill. Allen proved that the rules were not tight enough, and that once you get cloture, that's only the beginning of the problem, not the end of the debate.

**RITCHIE:** Senator Byrd used the Abourezk filibuster as an excuse to stop the post-cloture filibuster. He brought in the vice president to rule all of those amendments out of

order.

**LUDLAM:** Correct. That was a powerful move in the direction of majority cloture. It's all a very slippery slope. During the antitrust bill debate, there were many debates and motions trying to define which amendments or tactics are "dilatatory." It didn't prove to be easy to define. Dilatory tactics were being used against motions about defining something as dilatatory—round and round. There were fifty different parliamentary debates in the middle of this bill about whether or not a motion to table or a motion to reconsider was or wasn't dilatatory. There were debates about whether filing an amendment that was similar to another amendment was dilatatory. In one case, there were two amendments that had been combined as one amendment and the question was whether or not it was dilatatory given the fact that each half of it had previously been rejected. It's a very slippery concept to define.

During this brawl, Murray Zweben was in the hot seat all of the time. It is amazing how many rulings of the chair there were. There were extended dialogues between members and the chair about the appropriate parliamentary standard. It is a glorious, fascinating record to read.

**RITCHIE:** Did you spend much time with the parliamentarian between acts trying to figure out what the next step was in the process?

**LUDLAM:** Oh, absolutely. Every single night when the Senate had adjourned, which was often late, we would sit around for hours trying to figure out the next move. We were cataloguing all of these amendments and analyzing the substance. We were scheming about the parliamentary situation. Murray was in the middle of all of this.

But a lot of the parliamentary rulings were spontaneous. The motions and maneuvers were coming in a machine gun style at the chair. The members were angry. They were peppering the chair with motions. It was a riveting debate. The chair even refused to rule sometimes. It was often bordering on the hysterical or absurd.

On another occasion I remember that Dan Quayle came to the Senate to preside, and the Democrats decided to have some fun with him. They started peppering him with motions, demands for explanation of the chair's rulings, and appeals of his rulings. Quayle wasn't the smartest guy around, so he was making confusing statements that deepened the morass. He

wanted to run away, but that would have been unmanly. So he hung in there. I recall he looked like he was riding a bucking bronco and about to fall off. It was a form of hazing and it was rather mean-spirited.

**RITCHIE:** Back with Murray [Zweben], that was before the parliamentarian had a computer up there to be able to remind him of the proper precedents.

**LUDLAM:** Murray was an incredibly smart, capable guy. He didn't really need a computer. He handled it very well. Brilliantly. He was also very sardonic and funny. I thoroughly enjoyed his company.

I think if you look back at the *Record*, there weren't any rulings that he made that were wrong. The recognition of Senator Byrd on May 28 was clearly wrong, but I don't know if Murray was a conspirator on that. There were two or three cases where he submitted a ruling to the body because he said there was no precedent on this subject matter whatsoever and the body would have to decide the matter.

It was always clear to me that Murray was trying to rule correctly and not just help Byrd and the majority. In recent years, there have been increased tensions about the role and status of the parliamentarian, but back then I can say that Murray tried to rule correctly, based on precedent.<sup>84</sup>

**RITCHIE:** Senator Mansfield had been the one who stood against majority cloture vote back in '75. He convinced them to go to three-fifths, so if he was going to stand up and say maybe we need a majority vote, maybe that was the frightening moment.

**LUDLAM:** I think it was. I think this debate is a testament to Mansfield's stature as well as Hart's. If you think about it, the most important point here is that it took unbelievable provocation—repeated and tortuous provocations—to stir Mansfield and Byrd finally to threaten to crush the Allen group with majority cloture to shut off their delaying tactics.

This says something very powerful about the Senate and about our society's respect for individuals and dissenters. What other society would put up with the provocation that came from Allen and his small group? One thinks about the current feelings in the Senate about the confirmation of judges and the threat that has been made by the Republicans to

nuke the Senate to confirm them. What would Jim Allen think of that? He'd support the Republicans on the judges, but he would hate the idea of crushing a minority. What would Russell Long feel about this? What would Jim Eastland, or John Stennis, or Richard Russell think about this? How would they weigh the immediate fight vs. the precedent? Ultimately, there are institutional issues here that completely transcend the immediate substantive issue.

In the case of Phil Hart's antitrust bill, ultimately the minority blinked. They saw that consequential precedents were about to be made. They saw how majority cloture would apply in many other contexts. So they blinked. But what if Allen hadn't blinked? What if Byrd and Mansfield had followed through with their threats? What kind of Senate would we have today? If it hadn't been Phil Hart, would we have come this close to these momentous rulings and precedents? I think not. I think this was all about Phil Hart, a man of stature. This shows how much personalities count in the Senate. It shows that the members have very personal and emotional feelings that can dominate what they do. It shows that personal relationships—in this case with a beloved man who was dying—can dominate the institution.

Despite the tension and warfare, during this debate there are some just incredibly funny exchanges. This says to me that the institution can use humor and wit to defuse the terror. There was a time when—I can't remember the exact exchange—but Bill Scott made some comment that sounded negative about Mansfield, and then Scott said he hadn't meant to refer to Mansfield. Mansfield said, "I looked at my shoes and I thought I fitted it." [Laughs]<sup>85</sup> I mean, there were some very witty comments here. At several points, some member would ask unanimous consent that their statement appear uninterrupted by some colloquia, and people would object to that.

Because of the May 28 incident, members started taking incredible care when they asked for unanimous consent for anything, UC for some staffer to have leave of the floor, anything. They would have to check to make sure the UC wasn't a ruse or a parliamentary maneuver. It was very tense and very tough.

It's unimaginable today that we would spend sixteen days and have eighty-four votes on anything. There may be some bloody times in the backrooms trying to work out a bill like the Medicare drug benefit bill that just passed, but they would never air their dirty linen on the floor like that. But it was a unique time. Carter was the president. He would have signed the bill. And the Democrats were in control, and Phil Hart——

**RITCHIE:** This was '76 wasn't it? The election was that year, so Gerald Ford was still president.

**LUDLAM:** Yes. You're right.

**RITCHIE:** But the Ford administration supported the bill.

**LUDLAM:** Ford supported it and signed it, but it was a very tough time for him. Ford was very much on the defensive, going into that election, so he was weak.

The key to understanding this whole episode is the stature of Hart, Byrd, Mansfield, and Allen. The personalities had more to do with this bill than the substance. Hart was on the verge of death. It was Byrd showing his mettle, trying to control Jim Allen. Mike Mansfield finally lost his normal equanimity about the process, and Murray Zweben was on the hot seat. Abourezk was his usual, zany self. It was fascinating to watch.

**RITCHIE:** What was your impression of Senator Byrd as a legislative strategist in those days?

**LUDLAM:** Well, he was certainly at the height of his powers, and he did become majority leader—partly due to his success in this fight. The liberals didn't trust him much, but in fighting for Phil Hart's bill, Byrd gained a good deal of respect from the liberals. They saw that he'd fight for liberal ideas.

Byrd's tactics on this bill were completely brilliant, totally focused, and utterly ruthless. His knowledge of the rules, his innovative way of thinking about the rules, and the extreme situations that could arise in the rules, Byrd was completely brilliant. Jim Allen was also brilliant, and I can't imagine anybody around here who had as much knowledge and understanding of the rules, of how to use the rules to accomplish a goal, than Allen. Allen and Byrd—the two giants of parliamentary procedure in the history of the Senate.

It was a privilege to participate in all of the endless meetings with Byrd, Kennedy, Abourezk, Phil Hart, Phil Hart's staff, Kennedy's staff, and Murray Zweben. We were struggling hour-by-hour to survive. It was basically World War I. [Laughs] I mean, we were totally exhausted. We were working untold hours and with incredible aggravation. And we

all loved Phil Hart. There was no question that we were all doing this out of our love for Phil Hart.

**RITCHIE:** Given that you did make that one big compromise, when it was all over with, did you feel that the fight had been worth it?

**LUDLAM:** Well, the Supreme Court made a terrible ruling in the *Illinois Brick* case, which basically gutted the core concept in the law, the class action antitrust suits by state attorneys general.<sup>86</sup> The pre-merger notification elements of the bill are still effective, but the attorneys general antitrust lawsuits, the class action suits, they were invalidated by the Supreme Court. I was later involved with the efforts to overturn the Supreme Court. But Phil Hart was gone and that was never possible. So it turned out that the core of the bill never worked.

**RITCHIE:** Do you think that the Court turned it over because they were dealing with a particularly bad case or that the bill really was flawed?

**LUDLAM:** *Illinois Brick* was a political decision by the Court. The state attorneys general antitrust class action suits were based on a novel theory. The Court, defending the business community, just wouldn't tolerate it. I wonder if the Supreme Court ruled this way in part due to the tenacious way in which Allen fought. The legislative history of this law, which the court obviously consulted, was wild!

*Illinois Brick* was a massive victory for the business community, massive. State attorney generals are very ambitious, aggressive people, so they'd have loved to bring these cases—all treble damage cases. The business community dodged a bullet here—a nuclear missile. I've become rather pro-business in my career, but I still think that these suits would be a major deterrent against collusive and other anti-competitive activity. I'm delighted we fought so hard and sad that the Supreme Court invalidated much of our work product.

Fortunately Phil Hart did not live to see his baby eviscerated by the court.

**RITCHIE:** Tell me about the Airline Noise bill fight.

**LUDLAM:** The noise bill fight was two years later. In this oral history, that fight appropriately follows this one because it also relates to Murray Zweben. That bill also focuses on the rights of a determined minority, which in this case was Senator Abourezk and me, acting alone. We were the determined minority this time. This just shows that what “goes around, comes around.” The rights Jim Allen asserted as a minority were relevant to our rights as a minority!

The story of what happened to the Airline Noise bill is a story of how the Senate can be a “game of inches.” This is a tale of how you can lose a bill because you do not know physically where a bill goes when it comes over to the Senate from the House. This is where you need to know not just the rules but you also need to know the actual location—the physical location—of a bill as it moves through the legislative process. This is why I won this one—I simply knew more than my opponents about the mechanics of the Senate.

I beat the majority on this one. There wasn’t enough time for Bobby Byrd and Mike Mansfield to gang up on us. We were only up against the entire airline industry and they weren’t as formidable! Here’s the setup. Carter was the president. His administration supported deregulation of airline routes and fares. This was a big initiative of Senator Kennedy out of the Judiciary Committee, out of Administrative Practice and Procedure Subcommittee, where he’d been chairman in the mid ’70s. Lots of deregulation bills became law during this period—for the airlines, trucking, and railroads. Lots of rates and routes were deregulated.

The airlines were not at all happy with the idea of competing over routes and fares. They had their routes and fares set by the Civil Aeronautics Board and it was a cozy relationship. All of us have seen the impact of competition among the airlines since the 1978 deregulation. There has been wild competition in the airline industry, with many airlines going bankrupt and other new entrants. The airlines by and large have become a very unprofitable industry. I think you could probably trace it back to the deregulation when they were forced to compete.

In 1978, the airlines saw this coming. They did not like the Carter/Kennedy deregulation bill, but they didn’t think they could stop it. So they sought to extract a quid pro quo for not opposing it. They were then facing a new regulatory requirement that was forcing them to buy quieter airplanes to lessen the noise around airports. It was going to be expensive

to comply with the rule. So they offered Carter and Kennedy a deal. The airlines said, “We will not oppose airline deregulation if you will bail us out on the cost of buying these quieter planes.” They basically asked Carter and Kennedy to pay them a massive bribe.

The *Wall Street Journal* on July 20, 1978, said, “The airlines and their allies on Capitol Hill insist that unless Congress provides the money for quieter planes they’ll block deregulation, a bill on which the industry has mixed views.” So they said, “We’ll stand back as long as you give us some money, a lot of money.” The way they were going to get the bribe was they wanted a portion of the proceeds of the tax on airline tickets to be funneled directly to them—directly into their corporate coffers—rather than go to the Airport Trust Fund to pay for airport improvements.

A few of us thought it was a terrible precedent. If the cost of a regulation is too great, then maybe it’s useful to give the affected industry some grants or maybe a tax credit to offset some of the cost of compliance. But we hated the precedent of imposing a tax which never touches the hands of the U.S. Treasury and goes directly into the pockets of a private entity. We thought this was an abuse of the government’s tax power.

We’re talking about a large bribe here. In today’s dollars it was a \$10 billion bribe. At the time it was \$4 billion. The inflation adjustment means the bribe would now amount to \$10 billion. United Airlines alone was getting \$600 million in 1978 dollars. More than \$1 billion today. Eastern Airlines was getting \$200 or \$300 million, which is at least twice that today. Pan Am was getting \$350 million, at least twice that today.

Despite the massive size of the bribe and the unprecedented way in which it’d be paid to the airlines, Carter and Kennedy agreed to it. For them, it was a small price to pay. The House passed the airline deregulation and noise/bribe bills on September 14. The bribe noise bill was HR 8729 and it passed the House by a margin of 270 to 123. Everybody who was anybody had been bought off in favor of this bribe. The liberals—led by Kennedy—supported deregulation because they thought this would be good for consumers. The conservatives liked deregulation, plus it had this bailout for the airline industry to comply with a government regulatory requirement. This broad group all supported the noise bill bribe as a necessary quid pro quo to secure passage of the airline deregulation bill.

So the House passed both bills—deregulation and the bribe—by margins of more

than two to one. In the Senate, there was no question but that both bills would pass by even greater margins. It was a done deal, or so the airlines thought. I recall that in the House they debated the deregulation and bribe bills under an unusual rule that provided that if only one of the bills passed, the vote on the other would be vitiated! They had umbilically tied the two bills together. The airlines were paranoid about the possibility of passing one bill and not the other. They wanted both or neither.

This is when it got interesting and intricate. The Senate noise/bribe bill, S.3279, was reported out of the Senate Commerce Committee on July 11. When the Commerce Committee reported the noise bill on July 11, the bill was re-referred to the Finance Committee because it included the ticket tax provision. When the House bill came over on September 19, Finance had not yet reported the Senate version of the noise bill to the Senate. Finance did eventually report the noise/bribe bill to the Senate on October 5.

I saw all this coming in slow motion. And I had a plan. Murray and I had bonded during the antitrust bill brawl. In early September, I went to Murray and I said, “Senator Abourezk hereby puts in an objection to any unanimous consent agreement<sup>87</sup> or request to hold the House Airline Noise bill at the desk.” I pointed out, “The Senate bill is not on the calendar yet.” What I said was precisely accurate. The bill had been reported from the Senate Commerce Committee, but it had been re-referred to the Senate Finance Committee. So it wasn’t on the Senate Calendar on September 19 when the House bill came over. The Senate bill was still “in committee.”

To be clear, Jim had no idea that I’d put in the objection with Murray on holding the noise/bribe bill at the desk. Jim wanted to kill the bill and left the details to me. It is not uncommon for staff to invoke a member’s name as authority for something without actually checking with the member. Of course, staff take a risk when they do this, but it’s the only efficient way to run the institution. If we kept checking with members every time we did something, the members would be bogged down and never get to be senators. The better members hire great staff and delegate, delegate, and delegate.

The objection I filed with Murray was based on the fact that when bills are finally reported from committees, they go on the Senate Calendar. Then and only then can they be called up on the floor of the Senate. The only other way is by unanimous consent.

So on September 19, when the House-passed noise bill arrived in the Senate, Murray referred it to Senate Commerce Committee. This is noted in the September 19, 1978, *Record* at page 30087. There is a little sentence in here, in very small type, saying HR8729 followed by “is referred to the Committee on Commerce and Transportation.” That referral—accomplished quietly by me behind the scenes and off the record—cost the airline industry *\$10 billion*. Let me explain how.

The clerk of the Commerce Committee and the staff of the Commerce Committee did not notice that the House-passed “HR” bill had been referred to their committee. They weren’t looking for it. They weren’t watching. They hadn’t taken care to make sure that it was held at the desk and put directly on the Senate Calendar. They’d missed that crucial issue. I was sitting in my office knowing that the “HR” bill had been referred to the Commerce Committee. I was not saying anything to anybody. Silence was golden.

A few weeks later the Senate bill, the “S” bill, was reported by the Finance and went onto the Senate Calendar on October 5. The Finance Committee didn’t notice that the “HR” bill had been sent to the Commerce Committee. So the Senate “S” bill was on the calendar and the House “HR” bill was in committee—precisely the opposite of what the proponents needed. When one wants to get a bill to the president, both houses have to pass one bill. It’s either an “HR” bill or an “S” bill. If it’s an appropriations or tax bill, it has to be an “HR” bill under the Constitution, which requires that the House originate all “revenue” measures. If the House has passed a bill, the easiest thing is for the Senate to take up the “HR” bill and pass it. Then it goes directly to the president. Or if the Senate has passed a bill, the easier route to enactment is for the House to pass the “S” bill and then it goes directly to the president.

In this case, if the Senate passed the “S” bill, it would be ignoring the House bill that had already passed the House. Then the House would have to act again as if it’d never acted before. And maybe the Senate would have to act a second time also when the bill came back from the House. At any rate, the proponents of this bill wanted the “HR” bill on the calendar—not stuck in committee—so that they could just pass it and send it to the president.

Ralph Nader was a violent opponent of the noise bribe bill. He hated the airline industry bailout. He started screaming at me—his only supporter—saying that I had no strategy for killing the bribe. He wanted me to line up allies, line up speakers, start a

filibuster, something. He was vile and abusive. I was his only friend on this issue and he was vilifying me. I told him that I had a strategy I thought would work but I refused to tell him what it was. This enraged him. He didn't trust me. Of course, I didn't trust him either. I figured if I told him what my strategy was, he might leak it. I knew he wouldn't understand it.

I knew that the only way my strategy would work was for the Commerce Committee not to notice that the "HR" bill had been referred to the committee. Time passed. The proponents didn't see the mess they were in. Their inattention to this was utter incompetence. I was incredulous and excited. I saw the noose tightening.

Finally, in the closing days of the Congress—this was the second session right before final adjournment—the Senate got around to taking up the deregulation and noise bills. Then suddenly they discovered that the bill they wanted to work off, the House "HR" bill, was stuck in the Commerce Committee, not on the Senate Calendar. They asked unanimous consent to discharge the committee from consideration of the "HR" bill. We objected. They asked unanimous consent for the committee to meet while the Senate was in session so it could report out the "HR" bill. We objected.

**RITCHIE:** Senator Abourezk?

**LUDLAM:** Yes. Again and again we objected to discharging the committee or permitting it to meet during the Senate sessions. Committees can't meet when the Senate is in session except with permission. This is an arcane rule that gives the Senate debate priority over committee debates. I don't know when this rule was adopted, and now it's mostly obsolete. In fact, the priority should probably be given to committees over the Senate floor debates! The rule is rarely used. Permission for committees is normally granted automatically. But in this case, we objected again and again to the committee meeting.

Not having permission to meet when the Senate was in session—and we were putting in long hours on the Senate floor given the impending adjournment—meant that the committee would have to meet and secure a quorum very early in the morning or very late at night. Not surprisingly, this proved to be impossible for it to do. Given the heavy schedules of senators, it's hard in the middle of the day for committees to secure a quorum, but getting a quorum early in the morning or late at night is utterly impossible.

We had them. They had the wrong bill on the Senate Calendar. They needed the “HR” bill and all they had was the “S” bill. Once it’d been referred to a committee, it had to be reported or the committee had to be discharged—those were the only two options. And neither option was possible given our objections. Eventually, on October 12, Bobby Byrd filed a cloture petition on the Senate version of the bill, but, of course, that wasn’t going to accomplish anything because they needed cloture on the “HR” bill.

I continued to get calls from Ralph Nader attacking me. I was also getting calls from Ted Kennedy’s staff. Kennedy had formally endorsed the noise bailout because he was trying to pass the deregulation bill. Kennedy’s people are telling me, “You’re doing a great job. Keep it up. Don’t stop.” It was complete duplicity. Kennedy hated the bailout and had only agreed to it so he could pass his deregulation bill.

The Senate was in the closing days of the second session, just prior to final adjournment. At the end, the Senate was in session for thirty-six hours straight. I sat on the Senate floor for thirty-six hours straight, enjoying the quiet drama that was unfolding. This was October 14, 1978. I was getting repeated calls from the Commerce Committee chief counsel telling me that he was going to murder me. I was getting hysterical calls from the airline lobbyists.

It was surreal. They were putting every type of pressure on me, one anonymous, thirty-three-year-old staffer working for a first-term senator who had announced his retirement. Of course, I was enjoying this immensely. I never wavered. I knew my rights. Even if I was a minority of one, I had rights. Jim Allen taught me that! To get unanimous consent, you need unanimous consent. In this case, they needed Abourezk to consent and we were never going to consent.

The irony of this situation was quite apparent to me. Two years before, I’d seen how Byrd and Mansfield had eventually forced the Allen group to blink and buckle. But in this case, the pressure had only begun to be applied. Byrd and the others had no time to play out their pressure tactics. They had no time left to apply the thumb screws to me. Then the Senate passed the airline deregulation bill. When that happened, Abourezk forced the Commerce Committee chair to explicitly state that it was no longer tied to the noise bill. Abourezk explained that he’d asked this because the two bills had been “tied together” in the House.<sup>88</sup>

When the deregulation bill passed, no longer could anyone blame me for killing it. At that point they had zero leverage on me. None. If I'd been holding up both bills, and we were being blamed for killing the deregulation bill, it would have gotten tense! But I was only killing the noise bill, the tail of the dog. We had no objection to the deregulation bill.

I kept reviewing the situation—me and myself—and kept concluding that there was nothing they could do to me, and no way to get around me. Abourezk was solid. I felt invulnerable. I just sat there hour after hour on the Senate floor waiting for the other side to offer me a deal. Eventually, they came to me on the floor and asked, “What do you want to let us bring the ‘HR’ bill out of committee.” I said, “You have to agree to delete section 305, 306, 307, and 308—the tax provisions.” All the ticket tax stuff had to go. Ten billion dollars.

They were furious and they pissed and moaned, but they had no choice. We went in the back room and with some scissors we cut out \$10 billion for the airline industry. We taped the remaining bill together and renumbered the sections. With this agreement, we let them discharge the committee and take up the amended “HR” bill. That is the bill—finally the “HR” bill—that the Senate passed.

Senator [Howard] Cannon, chairman of the Commerce Committee, said we still needed to pass the noise bill, even without the bailout. He acknowledged that “it is a far different bill than had been reported” by the committee! Not knowing how I'd eviscerated the bill, several senators put in statements praising the bailout. Senator Javits was obviously confused about this. Senator Abourezk didn't say a thing during this debate. He didn't need to gloat. Cannon didn't want the bill to die in the Senate and get blamed for killing it. He certainly didn't want to admit that they'd royally messed this up and had shown themselves to be utterly incompetent. They were furious, but more important, they were embarrassed by how I'd hung them out to dry.

The House was so outraged by all of this that they tried twice to take up the returned House bill and failed each time.<sup>89</sup> Strangely, one of the players on the House side was Congressman John Rousellot, who was the John Bircher who represented me in San Marino, California, my home district. Rousellot had succeeded Congressman Glen Lipscomb, with whom I'd been an intern in the summer of 1967. I'd actually registered as a Republican to vote against Rousellot in the primary; I knew whoever won the Republican primary would win the seat forever.

So in 1978, in the closing day, I killed the ticket tax diversion, the bribe. It never came back. Deregulation passed, the noise/bailout died. Forever. Dead. Ten billion dollars. We'd defeated the proposal to divert tax revenues directly into the pockets of a private entity—what we believed to be a dangerous precedent. Our maneuverings weren't sport; they were necessary to prevail on an issue of principle about federal tax revenue.

Legislation is truly a game of inches. The key here was knowing at all times precisely where a bill must go and where it must be, and knowing how the parliamentarian makes a decision on whether a bill is held at the desk or put on the calendar or referred to committee. The committee staffers didn't ask the right questions, they made assumptions that did not prove to be true and then they failed to notice my trap in time.

There's one "small town" postscript to this story. Much later I learned that one of the key administration officials in this fight was Bill Bonvillian, who was then in the congressional liaison office in the Transportation Department. Bill is a dear friend and serves as the brilliant legislative director for Joe Lieberman. Bill is now my boss and I love him dearly and respect him enormously. At any rate, when I'd finished killing the noise bill, Bill got reamed by his boss downtown! Little did he know then that later we'd be friends and he'd hire me to work for Joe and become my boss.

The objection I put in to hold the House bill at the desk was registered with Murray, person to person. I was not required to reveal my conversation with Murray to anyone. It is the practice in the Senate that holds—pre-filed objections to unanimous consent agreements—are secret. I knew that the other side would not know what I'd said to Murray, and that Murray would not tell them. The point is that a knowledgeable minority of one can kill a bill. I had successfully run out the clock and killed a bad idea.

**RITCHIE:** When Murray made that decision do you think he knew what the impact was going to be?

**LUDLAM:** No.

**RITCHIE:** He just did it because the "S" bill wasn't on the calendar and you had a legitimate argument?

**LUDLAM:** Yes. The companion Senate bill was not on the Senate Calendar. The general rule was that you don't hold the House bill at the desk unless the companion Senate bill is on the Senate Calendar.

Now in this case, the other side could have argued that the "S" bill had been reported by the Commerce Committee and was simply waylaid in another committee. They might have tried to override my objection. I don't really know what would have happened if they'd seen this coming. But they weren't looking. They weren't thinking. They were asleep. They never went to Murray to check out what would happen to the House bill when it arrived in the Senate.

They probably had an argument to make with Murray in favor of putting the House bill on the calendar. But they never showed up to make that argument. They failed to pay attention to the details. You can lose everything here if you don't pay attention to the details.

**RITCHIE:** So when you went to the parliamentarian, who has the responsibility to refer bills to committees, you had this whole strategy in mind?

**LUDLAM:** Yes, from the first day.

**RITCHIE:** That was your goal from the start?

**LUDLAM:** That's right. I knew it was the only way to kill the bill. I knew we would never win if this came to a vote on the Senate floor. Abourezk would have voted against it, and maybe a few other members might have voted against it, but Kennedy would have voted for it and so would ninety or more of the rest of the body.

You can make an argument that what Abourezk and I did was completely undemocratic. If you believe that majorities should govern and that minorities should lose, especially minorities of one of one hundred senators, then what we did was a complete violation of democratic ideals.

As a matter of parliamentary procedure, what we did was totally legitimate. But in this case, we were a caucus of one intent on killing this bill. Allen had many more supporters in the Hart-Scott-Rodino fight than we had! The committee had full written notice of the

situation. There was that statement in the *Record* on September 19 that the bill had been referred to the Commerce Committee. The committee clerk was given notice of this in writing. My “trick” was totally visible, in black and white. But, to them, my gambit was totally invisible until it was too late.

Our right to object to the committee meeting during the Senate session was totally legitimate. Our right to object to discharging the committee was totally legitimate. Everything that we did was totally compliant with the rules of the Senate, but our exercising those rights meant that a major political deal between the airlines and the administration regarding airline deregulation and the Airline Noise bill was nuked.

I am able to say that my strategy was 100 percent of the cause of the demise of the bailout. Not 99 percent of the cause, 100 percent. And I’m proud of it, because I think the bribe was absolutely the wrong policy in terms of the diversion of tax revenues directly to a private entity and bribing a firm to comply with government health and safety regulations. I didn’t just do this to have fun. This was a deadly serious policy fight.

**RITCHIE:** What you had going for you was that the Senate does so much of its business by unanimous consent. Unanimous consent puts an enormous amount of power into the hands of every single one of the one hundred senators. But you have to have a senator who is willing to buck the other ninety-nine and say “I object,” and to do it repeatedly.

**LUDLAM:** We raised many objections at various times to unanimous consent to discharging the committee or its meeting during the Senate sessions. One objection means that there’s no unanimity and no consent.

**RITCHIE:** Part of that is you had a senator, James Abourezk, who didn’t mind that people really hated him.

**LUDLAM:** Abourezk had announced his retirement. He was leaving after one term in the Senate, and he was a rather unusual individual. He was well liked, but he didn’t care about public pressure, especially from the business community. He rather liked being controversial. Let me recount some wonderful stories about what happened during those crazy thirty-six hours on the Senate floor.

In the midst of this, Abourezk looked up at the gallery and saw Dick Tuck, the famous prankster during the Nixon era.<sup>90</sup> Abourezk asked unanimous consent that “Richard Tuck” have leave of the Senate floor during the closing debate.<sup>91</sup> This was back at a time when to get staff permission to work on the Senate floor you had to make an oral request for unanimous consent. Nobody on the floor knew who “Richard Tuck” was. They assumed he was a Senate staffer, and so the unanimous consent went through without any objection. So Dick Tuck came down to Jim Abourezk’s desk on the Senate floor as a private citizen, not as a Senate staffer. I’ve never seen this done, before or since. It was clearly a disrespectful stunt.

Then for five or ten hours, Abourezk and Dick Tuck held court, cracking jokes and having fun, and mocking the institution, just going completely wild. [Laughs] They had this huge crowd around Abourezk’s desk in the back row of the Senate. Everyone was exhausted and ready to go home, so we were getting punchy. All this was quite outrageous by the standards of an institution like the Senate.

[Daniel Patrick] Moynihan saw this situation and he was just completely outraged. He stood up on the floor and he said, “No legislative body has been ever been so disgraced since Caligula rode his horse in the Roman Senate.” I don’t think this appears in the *Record*, but that’s what he said. So Moynihan went wild about this situation. He was appalled.

At another point, Senator [Thomas] Eagleton got up and was going to give a tribute to Abourezk because Jim was retiring. Tom had written a six or seven page statement, and he showed it to Jim. He leafed through it and nodded his head with appreciation. Then Eagleton stood up and asked unanimous consent that the tribute appear in the *Record* as if he had actually presented it out loud. There’s a different typeset in the *Record* for spoken verses submitted statements. Abourezk objected to this UC request and forced Eagleton to read the whole statement aloud! [Laughs]

I mean, this went on for thirty-six hours. We were sneaking food on the floor of the Senate. All night. Physically, we were hanging by a thread. As the pressure mounted on the noise bill, the other side tried to put pressure on Abourezk by holding up funding for the Senate Indian Committee of which he was chairman. They were taking hostages. We didn’t blink and eventually they did. It was very dramatic, but also it was very quiet. Much of what happens in the Senate is never visible. You see the end result, but you may have no idea how

it happened, why compromises were reached, and why one side blinked before the other one did.

**RITCHIE:** One of the things that made Senator Abourezk so different was that he was coming from the left. Those who ran up against the institution tended to be the likes of Jesse Helms or Jim Allen, who were coming from the right. Except for Metzenbaum, there really weren't many other Democratic senators who were willing to take on the institution and offend their own president and majority party. Abourezk was quite remarkable in his one term in being such an independent.

**LUDLAM:** Yes, Abourezk was very independent, and also very funny and sweet. He had almost no pomposity about him at all. Let me tell some other stories about Abourezk.

Jim had been raised on the Rosebud Indian Reservation. His parents, I think, were traders on the reservation. So he was very close to the Indians in South Dakota. At one point, he brought in an Indian shaman to give the opening prayer of the Senate. It's too bad this was before television. The shaman came in wearing a war bonnet. He gave the opening prayer in his native tongue. You could see the poor debate reporters trying to transcribe this phonetically. As I recall, it was given in the Sioux language and was quite a show. Typical Abourezk.

There was another time when Jim introduced a bill to compensate the survivors of the Wounded Knee massacre, which had occurred in South Dakota. This is right about the time that Dee Brown's book came out, *Bury My Heart at Wounded Knee*. So Jim organized a hearing in the Judiciary Committee. We actually found a survivor of the massacre, a woman who had been a child at the time. The issue at the hearing was whether the survivors deserved compensation. Dee Brown was a witness. And in the most poignant turn, the army testified that it had acted reasonably in killing all the women and children! This was the kind of show that Abourezk loved to produce.

There was another time—and I'm actually not going to mention the name of the member here—when Jim was on the floor holding forth as the only opponent of the legislation to implement the Sinai agreement between Israel and Egypt. The bill provided funding for the U.S. troops who were going to be stationed in the Mitla Pass in the Sinai to enforce the cease-fire, the pullback, and the agreement. Jim had discovered his Arab roots

at that point and was opposed to the Sinai agreement. He was holding a big fight trying to stop the bill.

At one point, this senator stood up and said publicly, "I would like to note that the three staffers who were working for Jim against this Israeli-Egyptian agreement are all Jewish." And he named them. They were, in fact, all Jewish, and they were staffing Jim because they were Jim's staff. They were not especially happy with Jim's position, but they were staffing him in his effort to stop the implementation of the Sinai agreement.

We were appalled, absolutely appalled at the insensitivity of this "outing" of Senate staffers. This member, who I have always thought was a jerk, was basically making a joke out of the fact that these staffers were in a very uncomfortable personal position. One of the Jewish staffers went over to this member and physically grabbed him by the collar and said, "You ----- . You're going to go in and take that comment out of the *Record*." And the member did strike it from the *Record*. Of course, if this had happened post C-SPAN, it'd be much harder to strike it.

Jim was an exceptional guy. Very independent and irreverent. We loved working for him. I hesitate to tell one final story about Jim, but it fits in here and says a lot about him. We had staff holiday parties and invited Jim. We all pitched in to give him a small present. It was a pornographic calendar of an obese couple fornicating, each month in a different sexual position. Jim was rather obese himself and so was his wife Mary. He opened the calendar, held it up, and without missing a beat he said, "That looks like Mary and me." He loved the porno calendar and we gave it to him twice more at subsequent holiday gatherings. Now, in the history of the Senate, which other senator would think that this calendar was a thoughtful gift from his staff?

Also during this time I worked for Jim, we established the right of women to wear pantsuits on the floor of the Senate. Something really important! My chief counsel was a woman and one of the first women chief counsels of a Senate subcommittee. Another woman, who was the chief counsel of the subcommittee chaired by [Senator] John Tunney, was Jane Frank. She later won a seat in the House under her new married name, Jane Harman. They were breaking barriers and the pantsuit issue was another barrier. The '70s was a big time for breaking barriers and our group decided that this was a barrier that had to be broken.

So we had quite a few meetings planning how this would happen, going to such questions as: Which woman would do it? What would she wear? Which doorkeeper would we prefer to be sitting at the desk admitting the staff? And what bill did we want pending when the barrier breaking would occur?

Basically, we put together a whole battle plan. We knew if we asked in advance whether a woman could wear a pantsuit in the Senate, the answer would be absolutely never, no. It was a male chauvinist institution, deeply so. Of course, now women, including senators, wear pantsuits on the floor of the Senate, but back then it was a big deal.

As I recall, our chosen woman was a Birch Bayh staffer and the pending matter was abortion rights. This was before *Roe v. Wade*, as I recall, or about that time. Our designated staffer wore white. We had picked the right doorkeeper, and the doorkeeper didn't say anything. I don't know if he even saw that she was wearing a pantsuit. Now they have women doorkeepers, but not back then. Lots of us were waiting on the Senate floor to see whether she got through.

We didn't say anything about it at the time, so obviously it never appeared in the *Record*. There were no speeches, but a few weeks later we made it widely known that it was now perfectly legitimate for women staffers to wear pantsuits on the floor of the Senate. We'd established a precedent and in the Senate precedents are important! It was a funny plot, and it typified the era.

**RITCHIE:** What else were you covering for Senator Abourezk?

**LUDLAM:** Let me mention a few other projects. During my last two years with Senator Abourezk, I wrote and enacted the first law on the subject of organizational conflict of interest (OCI). OCI is different from individual or personal conflict of interest. It arises when a firm has a conflict of interest in the subject matter of something it's been asked to study for the government. For example, a study might recommend a certain policy which, if implemented, would financially benefit the firm. So in the interest of receiving objective advice, the government looks to the possible bias of the firm in preparing the study. It's a both ends against the middle problem. It's a very interesting issue and I'm proud to have written the first law on the subject.

As I got involved with this issue, somehow I found and recruited Gil Cuneo, a legendary government contract lawyer, to help me. Gil was then disabled and wheelchair bound. He had strong personal feelings that organizational conflict of interest was a problem and he wanted it fixed, even if that wasn't in the interest of some of his clients. Gil was one of the giants I've had the privilege to work with during my public service career.

We eventually passed the organizational conflict of interest law as part of Public Law 95-70, an energy bill. It had first been part of the Reauthorization Act for the Energy Research and Development Agency, but we couldn't get that passed in 1976, so we inserted it into another energy bill six months later.<sup>92</sup> The law says that the government must look for OCI and then take actions to minimize the potential bias that might appear in the study.

The bill and law arose from a major investigation I led of Bechtel Corporation and its ERDA-sponsored study of a coal slurry pipeline, a South Dakota interest. Back then the only department that checked for organizational conflict of interest was the Defense Department. Since 1990 there's been a government-wide regulation on OCI and it is based on the same principles that I enacted thirteen years before.<sup>93</sup> I believe I had something to do with the fact that the whole government is now concerned about organizational conflict of interest issues. Incidentally, my history with Gil back in 1976-1977 has proved to be absolutely critical for my work on bioterrorism preparedness. I'll tell that story in my next interview.

Let me relate one last story about those four years with Abourezk. I led the charge to defeat the confirmation of Earl Silbert, who was up for confirmation as the U.S. attorney for the District of Columbia. Silbert had been the Justice Department attorney who handled the investigation of the Watergate break-in. Some thought he'd been less than aggressive in pursuing all the leads—most people give Judge John Sirica and the *Washington Post* the credit for cracking the case. There'd been nine days of hearings in 1974 on the nomination—as the Democrats used it as an excuse to relitigate the entire Watergate scandal. Why President Ford wanted to give Democrats that opportunity is beyond me, but he did.

At any rate, as I was pursuing our campaign against Silbert's confirmation, I had many meetings with Daniel Ellsberg, the famous leaker of the Pentagon Papers. Early on, Silbert had possession of Howard Hunt's casing photos of the office of Ellsberg's psychiatrist, but Silbert didn't follow up on that. Hunt and Gordon Liddy and the other

“plumbers” had broken into the office to try to find dirt on Ellsberg. In fact, I think the “plumbers” unit was set up initially because of the Pentagon Papers and only later focused on McGovern and the Democratic National Committee. Had Silbert pursued the casing photos, he might have uncovered the “plumbers” unit and the full range of its activities much earlier. At least that was our charge against Silbert.

Ellsberg was totally paranoid—justifiably so—and it was fascinating trying to work with him. He hated Silbert. In the end, I couldn’t stop Silbert’s confirmation, but I had fun trying! You never know in public service when some nutty issue like this will fall in your lap. Dealing with Phil Hart and Daniel Ellsberg—now that’s a pretty interesting mix.

**RITCHIE:** What did you work on at the White House?

**LUDLAM:** After Senator Abourezk retired in 1978, I went to work in the Carter White House with Si Lazarus on regulatory policy. I’d done quite a bit of work on that issue on the Senate Judiciary Committee, which had jurisdiction over amendments to the Administrative Procedure Act.

My biggest accomplishment with the White House was eviscerating the Regulatory Flexibility Act, which was enacted as Public Law 96-354. The original version of the bill would have amended the substantive mandate of every regulatory agency—including EPA and OSHA—requiring that they grant exemptions to small businesses. This would have had a devastating impact on the government’s ability to protect health and safety and other priority concerns. My goal and accomplishment was to turn the statute into a procedural mandate, like the drafting of an environment impact statement, and delete the substantive requirement that these agencies grant exemptions to small businesses.

My team at the White House all agreed we needed to eviscerate this legislation before it was enacted. Unfortunately, John Culver, a powerful Democrat, wanted the bill to become law; it was an important part of his re-election effort in 1980 in conservative Iowa. So we couldn’t just kill the bill. We had to gut it and let it become law so Culver could have a White House signing ceremony. This is not as strange as it may sound. It’s common that we pass bills as gestures that don’t mean very much.

I was tasked to go up to the House Judiciary Committee, which was marking up

legislation. I had some friends there from my days working on the Senate Legal Counsel and Hart-Scott-Rodino Act. I arranged for them to attach some amendments to the bill that basically gutted it, turned it into a purely procedural statute that did nothing to amend the underlying substantive regulatory priorities. The amendment I drafted said that the agencies would only have to grant small business exemptions if the agency found it was in the public interest to do so. A minor amendment! My amendment gave the agencies an open ended opportunity to refuse to grant these exemptions after they'd done their impact analysis.

This procedure vs. substance distinction was the same one I'd faced ten years earlier when working on the Alaska pipeline case where we were asking whether NEPA was procedural or substantive. These issues keep recycling in different guises. In the middle of the markup, where I had just successfully accomplished my legislative surgery, a conservative Democrat on the committee, Andy Ireland [who later changed party affiliations and became a Republican], called Frank Moore at the Carter White House. He was the legislative liaison. Ireland complained to Frank that "your boy is screwing up a Carter administration priority." Frank Moore didn't know a thing about the Regulatory Flexibility Act and the threat it posed. But Frank immediately took a White House limousine up to the Hill to pull me out of the markup and fire me on the spot.

Si just happened to be there—he had just dropped by from some other appointment on the Hill—when Frank Moore arrived. Moore was all in a huff. He yanked me out of the markup. Then Frank and Si, with me literally in the middle, started screaming at each other about whether or not I was going to be fired on the spot. This happened over in the Rayburn Building. During the shouting match, I was having an out of body reaction, like it was interesting and didn't apply to me! Si protected me, unequivocally. I wasn't on Frank's staff, so he didn't have authority to fire me.

I'll never forget Si's loyalty and toughness. He's a prince. I have the greatest affection and respect for him. He's a truly great human being. I think this not just because he saved my ass on this one, but because he's a totally dedicated public servant, he's sweet and funny, and he's incredibly effective in fighting for progressive causes. It's one of the great privileges of my career to have worked on so many projects with Si. It was a very dramatic incident in my career. I remember it vividly, the setting, the voices, the tone, and the threats. I had just accomplished a great victory, engineered with considerable political skill, and I was about to get fired for it! As I will explain later in regard to the stem cell fight, this was not the last

time I was almost fired right after achieving a major legislative victory.

The ultimate victory for me came when the original sponsor of the bill that became the act, Congressman Tom Kindness, took the floor of the House to denounce the final bill as “meaningless” and voted against it. That gave me the definitive legislative history I needed regarding the meaningless of the legislation! This is as close to perfection as it gets in politics.

So we enacted the Regulatory Flexibility Act, with my eviscerating amendment included. We organized a big White House signing ceremony for Culver. He lost his re-election anyway in the 1980 Reagan landslide, but he was happy with the signing ceremony. He didn’t care that the act was meaningless. It was a win-win situation for us and him.

Although I didn’t get fired, Frank Moore pursued me with a vengeance for another six months. He found out that I was actually on the OMB [Office of Management and Budget] payroll, not on Si’s payroll, so Moore got OMB Director Jim McIntyre to jump on me. McIntyre tried to reassign me to handle non-regulatory issues, so they set up an office in the New Executive Office Building and gave me some projects focusing on the Carter energy plan. I kept this second office for awhile until the coast was clear and continued my work for Si on the Regulatory Flexibility Act and other regulatory projects. For six months I had to take a circuitous path around the New Executive Office Building so that my enemies at OMB didn’t see that I was still working for Si. OMB’s lobbyist, Herky Harris, was constantly on the lookout for me and I had to dodge him dozens of times.

I must say I am proud of what I accomplished in gutting the Regulatory Flexibility Act. I pushed the envelope, accomplished my goal surgically, and survived to fight another day. I think it’s not too far fetched to say that I saved the regulatory system from an onslaught of the far right anti-regulatory small business community.

**RITCHIE:** I have a question at this point: you worked for Senator Abourezk and then you went to the Carter administration. Now Abourezk was not President Carter’s favorite senator. He had come up against him on a number of occasions, in particular the deregulation bill. How did you make the leap from him to the Carter White House?

**LUDLAM:** Well, this goes back to the Senate Legal Counsel bill. Si Lazarus had

been a witness at a hearing on the Senate Legal Counsel bill. He had written an article in the *Washington Post* about the conflict of interest the Justice Department was experiencing in representing members of Congress. It was exactly on point with the gist of the bill. I called Si as a witness and I got to know him.

Then Si was the one who brought me down to the Carter White House. And he's the one who saved my job in this fight with Frank Moore. Si was a wonderful boss, zany, brilliant, funny, principled. A fabulous guy. And recently we've been able to work together again on the bioterrorism legislation. I'll get to that in a subsequent interview.

**RITCHIE:** What exactly was your position at the Carter White House with Si?

**LUDLAM:** I staffed the regulatory reform effort of the Carter administration, which was to amend the Administrative Procedure Act (APA) to provide for greater balance in terms of costs and benefits.<sup>94</sup> This focus of mine explains how I got involved with the Regulatory Flexibility Act. It was one of the many pending regulatory reform proposals. In fact, this act is the only one of these regulatory reform proposals that became law. The administration's regulatory reform bill died.<sup>95</sup>

In addition to the threat posed by the Regulatory Flexibility Act, other anti-regulatory forces were pushing to convert rule-making proceedings to a sort of mini trial, where the industry could call witnesses to testify against a rule and they could, in effect, cross examine the regulatory agency. This was called "hybrid rule-making" and basically it would have ossified the rule-making process. I managed to kill that idea completely.

I also managed to kill the proposal of Senator Dale Bumpers to mandate de novo court review of agency rules.<sup>96</sup> This would have eliminated the presumption of regularity [legality] that applied to agency rules when they were challenged in court. Later I went to work for Dale Bumpers, and during our interview for the job I told him that I had been in charge of killing the Bumpers' amendment. He thought that was interesting, and he said, "You did a rather good job of killing my proposal. Maybe it wasn't the best idea I ever had." So I still got the job.

I consider killing hybrid rule-making and the Bumpers amendment to be major accomplishments during my White House stint, but the most important victory was

eviscerating the Regulatory Flexibility Act. I did that surgically and took out its heart, kidney, and liver. And I'd risked my job to get it done. So I was strongly in favor of certain types of regulatory reform and strongly opposed to others. It was quite a balancing act to sort out the one from the other.

**RITCHIE:** Did you work with Alfred Kahn?

**LUDLAM:** No. Fred worked on the deregulation side and I worked on the regulatory reform side. He was certainly the leader behind the airline deregulation bill. It was his concept. He's still around I think. He still talks about it as one of the greatest accomplishments of his career.

**RITCHIE:** I think if you ask 99 percent of the people on Capitol Hill, they would think that the deregulation was a Reagan administration initiative but it actually was a major thrust of the Carter administration.

**LUDLAM:** It was a Ted Kennedy initiative as much as anybody's. It was more Kennedy than it was Carter. Kennedy did some surprising things. He viewed the deregulation movement as a pro-consumer effort. Kennedy should get most of the credit.

**RITCHIE:** Regulation in a huge way came out of a Democratic administration, Woodrow Wilson's administration, Franklin Roosevelt's administration, but there was a sense by the 1970s that corporations had developed an enormous influence over the regulatory commissions.

**LUDLAM:** I think that happened really around 1980 with Reagan. He really clamped down on the regulatory process. He didn't press for legislative changes in the Administrative Procedure Act; he just used his power as chief executive to crush the regulatory agencies.

Carter was a conservative on regulatory issues and he supported many types of regulatory reform. The reason why I was hired by Si Lazarus to work on the regulatory reform effort was that the White House didn't trust OMB to staff the effort. OMB was pro-agency, defending all the excesses of the regulatory process. So Si brought me in as an independent expert on the regulatory process to keep the agencies honest, to keep OMB honest, and to pass a responsible regulatory reform bill. The agencies hated all of this: the

Regulatory Flexibility Act, hybrid rule-making, the Bumper's proposal, and the administration's own proposal.

In the end, the administration's proposal died—mostly due to the opposition led by my old friend Dick Wegman. Hybrid rule-making died. The Bumpers amendment died. And I gutted the Regulatory Flexibility Act. The big fight over the administration's own bill focused on its requirement that agencies perform cost-benefit analyses of their proposed regulations. Dick Wegman hated our bill for another reason: he wanted to stop White House intervention in the rule-making process. Dick hated OMB's meddling with the agencies.

Dick had been our leader in enacting the Ethics in Government Act and he was a close friend. Yet, I was pitted against him on the administration's regulatory reform bill. Dick was trying to kill the administration's bill or amend it to block White House intervention in the regulatory proceedings. I was trying to pass the administration's bill. I was also trying to make sure that the Carter White House didn't go too far to the right on these issues and destroy the regulatory process. So my two years on this beat had me involved in a very complicated dance with Dick. Basically, on many of these issues, I was halfway between the White House and Dick.

The Regulatory Flexibility Act was also a complicated dance between me and John Podesta [later Clinton White House chief of staff]. John had taken my desk and job with the Administrative Practice Subcommittee. He came in with [Senator John] Culver after Abourezk had retired. He was responsible for enacting the Regulatory Flexibility Act just as I was engaged in trying to gut it. John knew there were major problems with this act, and I think it's clear that he tolerated my successful effort to gut it. He just wanted a signing ceremony, which I gave to him. All of this was done with a lot of winks and nods.

I was also engaged in a complicated dance with Jim Davidson.<sup>97</sup> When Abourezk retired and John Culver took over the subcommittee, I was a holdover staff. Jim became the new chief counsel and was John's boss. Jim said to me, "I'll keep you on as long as it takes for you to land another position." Within a few months I'd landed my position in the White House. I'll never forget that and am forever indebted to Jim—who is still a good friend—for giving me that leeway to avoid unemployment. So with me working for Si, fighting with Dick, John, and Jim, fighting Dale Bumpers and gutting the Regulatory Flexibility Act, it was a fascinating two years. There were lots of back channels and some very awkward

moments!

**RITCHIE:** It's an interesting testimony to the Carter administration that you have very different tensions going on inside the administration. No consensus essentially as to what they wanted in terms of regulation.

**LUDLAM:** There were a lot of fights in the administration, and obviously that was part of the problem. I was working in Stu Eizenstat's domestic policy shop. Stu and Si were the best guys in the Carter administration. Both are kind and smart, an unusual combination in this town. Frank Moore's legislative liaison shop was notoriously arrogant. Ham Jordan was completely disrespectful to all kinds of important people. There was a very bad relationship between the Carter White House and the Democratically-controlled Congress. And then, of course, Ted Kennedy ran against Carter in one of the great acts of suicide for the Democratic Party. Finally, Carter had all the bad luck with the hostage crisis, and the oil embargo, and the inflation, and his own personal limitations. It was a fascinating and sad opportunity for me to have a front row seat to witness the demise of the administration.

There was actually another relationship that reemerged here. Although I worked for Si and Stu on the domestic policy staff, as I said, I was actually on the OMB payroll. Harrison Wellford was my nominal boss. He ran the Carter White House reorganization projects.<sup>98</sup> Harrison had been one of Phil Hart's staffers on the Antitrust Improvements Act, so we had already bonded in the Senate trenches. Harrison was a first class guy to work with.

After the 1980 election, Harrison managed the transition process between Carter and Reagan. He did such an effective job that the Reagan folks said, "We will protect all of your people for six months." I was one of the people on Harrison's staff, so I actually worked in the Reagan White House for six months! Personal relationships constantly can yield benefits and opportunities in this town.

**RITCHIE:** To go back to the tensions of the Carter administration, wasn't it essentially a conservative administration leading a liberal party?

**LUDLAM:** That's absolutely right. That's where the split occurred with Kennedy, when he ran for president against Carter. Running against an incumbent president of your own party? This was just insane. No Republican is going to run against George Bush to cause

him trouble when he seeks reelection. Kennedy's run was an act of betrayal in the face of the enemy. Everybody knew that Reagan was going to be a tough opponent, but to split the Democratic Party at that point in time was incredibly damaging.

Carter, as part of his strategy against Kennedy, retreated to the Rose Garden. He used the hostage crisis as an excuse. I think if Kennedy had not run, Carter would have handled the hostage crisis quite differently, and handled the campaign quite differently. He wouldn't have dissipated his resources in beating Kennedy in the primaries. Kennedy is not sufficiently castigated for the damage that he caused to the Democratic party, and the responsibility that he bears for Reagan's victory. In the same vein, Ralph Nader is not blamed enough for putting George Bush in office in 2000.

I could see that Carter would lose the election, so I lined up a job back in the Senate with another friend from the Ethics in Government Act fight, Ira Shapiro. But then Democrats lost the Senate—Culver lost and so did Nelson, Bayh, Church and others—so that Senate job evaporated. Fortunately, I was on the payroll at the Reagan White House for six months, making good use of my phantom New Executive Office Building office, and then I was unemployed for six months. I remember standing in line for eight hours to file for unemployment; that was not a happy day. I was out of work, and so were twenty thousand other Democrats. There weren't a lot of jobs available for Democrats. It was a bleak time in my career.

Eventually, I landed a job as a consultant with the Alliance for Justice writing a major report on how the White House was subverting the regulatory process. This was the third time I'd worked on this issue. First I worked on it with Senator Abourezk, from the congressional point of view, and then I worked on it with the Carter White House, from the executive branch point of view. I knew all sides of the issue! You have to be flexible in this town. I wrote several reports for the Alliance focusing on the White House intervention in the regulatory process, criticizing my old friend Jim Tozzi. Now I was taking Dick Wegman's point of view, opposed to White House intervention.<sup>99</sup>

During that work I became involved with an oversight hearing in the House Commerce Committee. [Congressman John] Dingell and Al Gore hauled OMB regulatory Czar Jim Miller up to explain what the White House was doing behind the scenes to

eviscerate the government regulatory process. Miller testified for an hour and passed a note up to Dingell asking for a bathroom break. Dingell kept him going for another two hours. Typical Dingell. I was blown away by Gore's brilliance. I had the pleasure of working with Pat McLean, one of the key committee top professionals, and he's remained a friend for nearly twenty-five years.

**RITCHIE:** How did you make it back to the Hill?

**LUDLAM:** I finished the consultant job and then I landed another short-term project working on the 1982 tax bill.

The issue was the tax exemption for bonds to fund non-profit hospitals and universities. The tax exemption for these bonds was in jeopardy. The Reagan administration proposed some drastic curtailment of these bonds, trying to reduce the revenue drain on the Federal treasury.<sup>100</sup> The non-profit community didn't see this challenge coming; I did and, as a result, I led the coalition to beat back the administration.

In another strange turn, I teamed up with Jim Davidson—my old friend and opponent on the Regulatory Flexibility fight—who represented the “small issue Industrial Development Bond (IDB)” users of tax-exempt financing, the commercial users. Reagan had attacked the tax exemption for all of these bonds, including commercial entities and non-profit users. I won a total victory for the non-profit institution bonds and Jim won a partial reprieve for the industrial bonds.<sup>101</sup>

The fact that Jim and I trusted each other helped to reduce the natural tensions between his clients and mine so we didn't get caught in a zero sum game. I never attacked IDBs and he never attacked the bonds of the non-profits. In the end, I won and he mostly did, but we both did better because we kept our lines of communication fair and open at all times. Once again, my respect for Jim was total and it was a pleasure to work with him.

During this fight I also met Steve Lawton. It turned out that he was an admirer of my father. Steve and my dad were both leading health care lawyers. Later Steve was hired by BIO [Biotechnology Industry Organization] and I was finally able to work with him on my bioterrorism initiative. I've always enjoyed Steve immensely. He's a first rate professional with a wicked sense of humor.<sup>102</sup>

The value of this bond tax exemption I saved for universities and hospitals, which could continue to issue bonds to finance their activities at a lower interest rate cost because the investors received the bond income tax free, runs to about \$2.5-3.5 billion per year.<sup>103</sup> So since 1982, my victory has saved this community something like \$55-80 billion and continues to accumulate. That's not a bad return on my nine months worth of work. I should count this victory as one of my greatest accomplishments, but I tend to overlook it because it was a crash, short-term project.

My base for this fight was my Dad's Los Angeles law firm, Musick, Peeler, and Garrett. Our clients were non-profit hospitals and schools, including my alma mater, Stanford. At the end of the fight, the firm, which had a pro-nepotism policy, invited me to stay on, but I headed back to the Hill, my natural home. The firm managers were somewhat incredulous and dismayed at my decision, but I had no interest in working for any law firm. This was the only stint in my career in a law firm. I never worked for a firm during my summers in law school. I always knew I'd hate working for a law firm and with this one exception at my father's firm I never was tempted to do so. This was one of the better choices I've made in my career.

After the tax-exempt bond fight, I left my Dad's firm and I finally made it back to the Hill to work with Congressman Gillis Long as his designee on the staff of the Joint Economic Committee. It'd taken me from November 1980 to early 1982. It'd been a tough two years, but I'd gotten a tremendous amount accomplished. And I'm proud of my determination to continue my career in government despite the Reagan landslide. For Gillis, I handled a lot of issues at the House Rules Committee, where he was the ranking Democrat, and on the House Democratic caucus, where he was the chairman.

**RITCHIE:** What did you work on for Gillis Long?

**LUDLAM:** I came very close in 1984 to changing the whole trade law dealing with the question of the natural resource subsidies that many foreign governments grant to their companies. The issue is pretty complicated. Typically the governments own a natural resource, like timber or natural gas or petroleum, and they sell it to their domestic companies at a subsidized price. This gives the companies an incredible advantage when they use this resource or feedstock to develop a product they can sell at a vast discount.

The issue in the legislation Gillis proposed<sup>104</sup> was whether the sale of these natural resources at a subsidized price constituted an illegal subsidy that could be offset by the United States by a countervailing duty. In recent years, natural resource subsidies have been at the heart of the United States' messy trade fight with Canada, focusing on Canadian government subsidies to its softwood lumber industry.

I got my natural resource subsidy language through the House in fine shape, but then I lost it in the conference when the Senate conferees voted three to two against me.<sup>105</sup> Again, this is a game of inches and this time I lost. Two years of hard work down the drain. If I'd enacted this amendment, it'd rank up there among my greatest accomplishments and would have had a massive impact on world trade.<sup>106</sup> But I lost, mostly because Bill Brock, Reagan's trade representative, opposed it.

The story on this fight is interesting. After I got the amendment included in the House bill, my friend Charlene Barshefsky surfaced as the leader of the opposition. She was representing Armand Hammer, the famous industrialists who headed Occidental Petroleum. Charlene fought hard and won fair and square. I don't think she'd ever done legislative work before and her victory on this became one of the qualifications that led to her being appointed as the U.S. trade representative.<sup>107</sup>

Charlene had been an intern of mine when I'd been a lawyer at the Federal Trade Commission, so it was strange finding myself at war with her! I think Char got rich beating my amendment. I don't know whether she changed her position on natural resource subsidies when she became U.S. trade representative, but she was a hundred times more effective than Bill Brock had been. I believe Charlene is acknowledged as the best trade representative the United States has ever had.

The natural resource subsidy fight brought me together with Phil Potter, a lobbyist representing some of the U.S. industries suffering from the subsidized imports. Phil was a world class expert on trade issues and a classy, incredibly funny guy. I've kept in touch with him over the years. A delightful person. Unfortunately, I've had some political fights with the D.C. council representative for Northwest D.C., whose chief of staff is Phil's wife, Penny. The issue again was tax exempt bonds. This is another of those "small village" stories.

While working with Gillis from 1982 to 1985, the most interesting work was over at the House Democratic caucus. We were working on a plan to reestablish the credibility of the Democratic Party on economic and national security issues. The 1980 election demonstrated that the country loved the Democrats except that it didn't trust us with the reins of economic or national defense power, the two most important concerns. So we were working to bring the party back to the middle.

Eventually this effort led to the establishment by Al From, the caucus staff director under Gillis, of the Democratic Leadership Council (DLC). Our goal and the DLC's goal was to bring the party back from the 1980 election debacle, to show that the party was controlled by "New Democrats," which eventually led to the election of two of the New Democrats, Clinton and Gore.

Before his movement got us back into the White House, Gillis died suddenly in 1985, right about the time Reagan was inaugurated. Gillis had a history of heart trouble, and he died of a heart attack. In 1984 I'd taken Gillis on a salmon fishing trip in Puget Sound, on our way to the Democratic convention in San Francisco. Gillis was from Louisiana and loved fishing. He had a huge marlin on his office wall. There were about twenty-five of us fishing for salmon and the only person who caught one was Gillis! Now that's a staff triumph. But in trying to land this fish—it was probably twenty-five pounds—Gillis had almost died!

At any rate, Gillis' death meant that I faced another job crisis. Within the space of seven years, I'd had one boss retire, Jim Abourezk (1978), one get beat, Jimmy Carter (1980), and one die, Gillis Long (1985). I was beginning to think I was a jinx. At the Joint Economic Committee, where I was based, Congressman [David] Obey took over and his staff director—in contrast to how Jim Davidson had handled a similar situation in 1978—gave me a few days notice to leave. They treated me like dirt.

I scrambled and landed a position with Senator Dale Bumpers over on the Senate Small Business Committee—despite my record of having killed the Bumpers regulatory amendment! There I handled all the economic issues and continued to try to build a record on which Democrats—I hoped Bumpers would run for president in '84 or '88—could run and convince the public that we could be trusted with the reins of economic power.<sup>108</sup>

In 1985 when Gillis died, I had come close to landing a job with Cray Computer, the

supercomputer company, and I'd talked with lots of other high-tech firms. So I was getting heavily focused on policy issues of relevance to the high-tech sector, which became my specialty with Senator Bumpers.

One of my most influential mentors then was Kent Hughes, who served with me on the staff of the Joint Economics Committee. Kent was probably the first congressional staffer to focus on the high-tech sector. He organized a hearing on venture capital back in about 1982.<sup>109</sup> Kent and I worked closely together with the House Democratic Caucus, which Gillis chaired, to define a pro-growth, pro-free trade, pro-entrepreneur strategy for the Democrats.

As part of this I crafted a special capital gains incentive, focused on offerings of stock by entrepreneurial firms. I'd been involved in the debate on the 1986 Tax Reform Act when the capital gains incentive had been repealed. So I crafted a targeted capital gains incentive for entrepreneurs. It only provided a special capital gains tax break for new, direct, long-term investments in the stock of small entrepreneurial firms.<sup>110</sup> This approach contrasted starkly with the proposals for a capital gains tax break for any investment in anything, an approach that provides massive windfalls on wealthy investors. My focus on entrepreneurs was typical of everything I did with Bumpers.

During the 1992 campaign, I persuaded Clinton and Gore to endorse my targeted capital gains incentive. They endorsed it and we enacted it as part of the 1993 Budget Reconciliation bill. Unfortunately, they insisted on enacting some amendments that gutted it. We got it enacted, but it was gutted.<sup>111</sup> Another close call.

If they'd enacted the incentive as I designed it, it might have had a dramatic impact on the entire high-tech sector in the 1990s, but the Clinton folks screwed me. The targeted incentive might have given Democrats an argument to use against the Republicans, who wanted to restore an across-the-board retroactive capital gains tax incentive. They enacted that and it provided a massive windfall for all types of investments, many of which have nothing to do with economic growth.

My approach was focused on the one sector of the economy that is starved for capital and has the greatest potential to generate economic growth. I believe we should husband federal tax incentives and use them where they can provide the greatest benefit for the revenue cost. But Republicans just want to gut federal revenues to "drain the swamp" of

revenues that could be spent on programs.

So on the natural resource subsidy and capital gains issues, I put in years of work and got nothing for it. In both cases, I'd crafted constructive proposals and I fought tenaciously for them, but Charlene beat me on the first one and the Clinton/Gore folks screwed me on the other one. You have to take your lumps in this game. This period from the Reagan triumph through my work with Dale Bumpers was the least productive period of my career. Democrats were on the defensive. The Republican ascendancy was changing everything.

**RITCHIE:** So how did you break out of this slump?

**LUDLAM:** If you keep plugging away at public policy, breaks may come your way and a huge break came my way in 1993 after I'd worked for eight years with Bumpers. As a result of all my high-tech work with Senator Bumpers, I was recruited by the Biotechnology Industry Organization (BIO) to serve as its principal lobbyist, as vice president for government relations. Their lobbyist, Lisa Raines, who died tragically on 9/11 in the Pentagon plane, had seen me in action on the capital gains and other high-tech issues and she invited me to apply. I served as BIO's VP for seven and a half years.

So strangely, the least productive period in my career was followed immediately by the most productive period. If you persevere in this game, and you work as an entrepreneur, good things may well happen. In this case, I had a vision of how the government should work with the high-tech sector and others were impressed with it. I came to this vision quite early. I worked on venture capital issues in 1982 and had become a leader on them by 1986.

Most people didn't get into these issues until the high-tech boom in the mid to late 1990s. I had a sense that the whole economy was changing radically and that high technology would change our world. Eventually these changes became obvious to everyone and they had a massive impact on the political system. It took fifteen years for that to happen and I made good use of those years to position myself to become one of the leaders on these issues.

When I left the Senate in 1993 for BIO, I was eighteen months short of drawing a government pension. Hill employees with twenty years of government service can retire at age fifty, but I was only forty-eight and a half. But the opportunity at BIO was so interesting, I left anyway.

During my tenure at BIO, I was intensively involved with the House and Senate. Eventually, I managed a staff of sixteen lobbyists and assistants, retained outside lobbyists to open doors, organized fly-ins of executives, hired Michael Losow to reach out to the patient groups, launched a Political Action Committee, and oversaw twenty-five state biotech associations. Michael was a dream to work with. He was a lawyer, but he had an emotional side that you rarely find in lawyers.

In terms of outside lobbyists, the two we retained, Chuck Brain and Linda Tarplin, are among the finest people I've ever worked with in this town. They're incredibly effective and kind individuals. The biotech industry was a fun and incredibly interesting client that was just then emerging in the public consciousness of the public and as a political entity.

**RITCHIE:** What sort of issues did you work on?

**LUDLAM:** One of my major projects at BIO was the enactment of fundamental reforms to the U.S. patent system. It's a long and fascinating story. This project took five years and from the first day I had a vision of where we needed to end up. And, in the end, I won everything I'd sought.

In the big trade bill in 1993, the Congress changed the term of a patent from a flat seventeen years from the date the patent is *granted or issued* to a term of twenty years from the date the patent application is *filed*. This change in the patent term put tremendous pressure on applicants to rush their patent applications through the patent office. Any and all delays in the processing of the application would erode the applicant's twenty-year patent term.

The change made sense. Many applicants were intentionally delaying the issuance of their patent to secure, in effect, a much longer term. They'd delay the issuance of the patent for ten or fifteen years and then they'd get the full seventeen year term on top of that. The system was being abused, so they set the term at twenty years from the *filing* date of the patent application, meaning that the applicant would lose patent term if he delayed the issuance of the patent.

Related to this change in the term of the patent, the Patent Office then was routinely rejecting patent applications for most biotech inventions. It was setting a high "utility"

standard requiring that applicants show that biotech inventions provided clinical benefits for patients.<sup>112</sup> This was devastating because the financial markets were waiting for the companies to secure patents before they would fund clinical trials that could prove, one way or the other, whether the inventions provide clinical benefits, e.g. had a “utility.” This was a classic Catch-22 or cart-and-horse problem.

This situation was yielding tremendous delays in the issuance of biotech patents and damage in the capital markets. So it was clear under the twenty year term that the biotech industry faced a crisis. Patents are the lifeblood of the industry; the industry doesn’t exist without patents.

First, I publicly threatened that we’d fight the new twenty-year term and kill the trade bill if they didn’t help us, which was pure bluff. But it got the attention of the Patent Office. That led Bruce Lehman, the PTO [Patent and Trademark Office] commissioner, to remove the supervisors of the patent examiners who were rejecting all the biotech patent applications. He then led the Patent Office to issue new and much more lenient "utility" standards for patents. During consideration of these new standards, I organized the drafting of a massive commentary from our companies—all organized in chapters and then presented twenty-five witnesses at a hearing—each presenting one element of our argument.<sup>113</sup>

What made the crucial difference is that Bruce believed that if he helped us with a new utility standard—so that our companies didn’t have to prove clinical efficacy to secure a patent—we’d support the new twenty year patent term. It was a classic political trade, our supporting the new twenty-year term in exchange for Bruce firing the obstructionists and changing the utility standard. For the biotech industry and patients, this was a fabulous bargain and a massive victory. It eliminated the Catch-22 problem. And the new utility standard applied to all patents, so it had ramifications at the Patent Office across the board. I had to change the whole patent system to deal with the Catch-22 problem.

Having achieved one objective, I focused on another one. If we were going to be stuck with the new twenty year term, I wanted to make sure that any delays in the process of securing a patent from the PTO would not cut into the term of the patent. The old term was a flat seventeen years starting when the patent was issued. The new term was twenty years from the application date. So it’s easy to see that if it took more than three years to secure a patent from the PTO, the applicant would end up with less than a seventeen year patent.

This was one of the reasons we had to change the utility standard; the biotech companies were all getting massive delays in the issuance of patents, all of which was going to erode the term of their patent. But changing the utility standard was only half of what we needed. We also needed to enact protections against any erosion of the patent term, any erosion that was not the fault of the applicant.

One of the reasons why the Congress changed the term to twenty years from application was that applicants had no incentive to move their applications quickly through the PTO. They sometimes delayed the applications for years, even decades. This was abusive and it had to stop. Running the clock from the day the applicant filed an application put the onus on the applicant; every day of delay came out of the term of the patent he'd finally get.

I was focusing, however, on the delays that might occur in this process that were *not intentionally caused by* the applicant and I wanted to enact a law to restore any and all erosion in the term of a patent that was *not the applicant's fault*. This legislative project proved to be much more complicated than the new utility guidelines.

Congressman [Dana] Rohrabacher introduced legislation to go back to the old fixed seventeen-year patent term.<sup>114</sup> Bruce, and the entire patent and business community, violently opposed the Rohrabacher bill. They wanted to stop the intentional delays that we'd seen under the old system. So what did I do?

I threatened to endorse the Rohrabacher bill—another bluff—unless Bruce, and the patent and business community, endorsed amendments to the new twenty-year term to ensure that delays at the Patent Office would not erode the term of the applicant's patent. Given that the term started running when the patent applicant filed the application, all delays in processing the application eroded the term. I wanted full restoration of any lost patent term as long as the delays were not caused by the patent applicant himself.

Initially Bruce felt I'd betrayed him. He'd fired the obstructionists and issued the new utility guidelines and here I was threatening to endorse a bill that went back to the old seventeen year fixed term. He was furious, but eventually he calmed down and found that what I was proposing wasn't so awful and that I could—again—be useful to him. Bruce came from the Hill, so he could deal with my machinations.

I persuaded Bruce, and the patent and business community, that I would be a useful ally in killing Rohrabacher's bill. For me to join them, however, I demanded that they pay my price. I forced or persuaded Bruce and the anti-Rohrabacher coalition to endorse all of my amendments to protect the patent term of applicants.

The deal I struck with Bruce and the coalition was that if the PTO took more than two years to examine and grant the patent, the patent applicant would be held to two years of lost term. My proposal was that we'd set up a sort of chess clock; in fact, that's the analogy I always used to explain the system. The PTO had two years, when the ball was in its court, to examine and issue the patent. Whatever time the patent applicant took, when the ball was in its court, would be its problem and its lost term. The chess clock analogy proved to be a powerful one. I kept distributing pictures of chess clocks to illustrate my proposal.<sup>115</sup>

When I got this agreement, I became the most active member of the coalition seeking to enact our amendments and beat Rohrabacher. The agreement with Bruce and the coalition to restore the term lost during the PTO patent examining process meant nothing until we enacted the reforms into law! I led the effort to persuade Rohrabacher that he should take credit for the amendments I had secured to protect the patent term of applicants. I told him in testimony that he should endorse these amendments and declare victory. One of the hardest things for politicians to do is to declare victory! I had some impact on Rohrabacher and I think I deserve a good deal of credit for enacting the Patent Reform Act.

Senator Bond led the opposition, apparently at the behest of Phyllis Schlafly, also from Missouri. She's legendary for killing the equal rights amendment. Somehow she got fascinated with patent issues, about which she knew absolutely nothing. Just the year before, I'd run up against Bond on the stem cell issue and beaten him, so I set out to beat him again.

In the end, Senator [Orrin] Hatch managed to attach the Patent Reform Act to H.R. 3194, the omnibus appropriations act enacted in November 1999 (Public Law 106-113). This included the substance of the Patent Reform Act, S. 1948. To be clear, the new PTO "utility" guidelines and the patent term restoration in the act both apply to all patents, not just life sciences patents. We had to reform the entire patent system in order to save the life science patents. In 2003 there were 342,441 patent applications and 169,028 patents granted in the U.S. and our reforms protect the applicants for all of these patents.

I must give tremendous credit for the amendments to Dave Schmickel, my patent counsel at BIO. Dave is a brilliant patent lawyer who did most of the substantive work on this issue. He's one of the most competent and thoroughly enjoyable human beings I know. He was a joy to work with. We were a powerful team—with me being the manipulator and Dave writing the bill and smoothing over the feathers I'd roughed up. We often played "good cop, bad cop" with the coalition, PTO, and the Hill.<sup>116</sup>

This whole project took five years: from the debate on replacing the seventeen year with the twenty year patent term, through the reform of the biotech section of the PTO and the issuance of the utility guidelines, through the fight to join the coalition, through the fight with Rohrabacher, through the fight with Bond and Schlafly, and through to the Hatch victory. Essentially every day of this five year period Dave and I worked to implement our strategy. In the end, we won a total and complete victory.

At one point in this fight the *Lehrer News Hour* was thinking to run a segment on the fight. Our coalition selected me to go on the show. I had some TV experience, but this was a daunting prospect. I knew I'd be put up against some nut who would speak in slogans and my response would all be in paragraphs. I brought together a group and we moot courted me for days. Just when it was looking like the show would air, I got laryngitis! I've never had laryngitis in my life. I wasn't in a panic about the show, but getting laryngitis seemed psychosomatic. In the end, the *News Hour* didn't air the show. I think they found the topic too complicated to explain.

The Patent Reform Act saves tens of thousands of years of patents for biotech inventions. Tens of thousands of years! Given that some biotech patents are sometimes worth \$2 or more billion per year in sales revenue, this victory to protect patent term was fundamentally important. They could be worth tens or even hundreds of billions of dollars to the biopharma industry. These reforms should provide substantially greater incentives for investors to back this life giving research. Without strong and long patents, the investors won't risk a single dollar on this research. I consider this to be one of the greatest victories of my career.

The reforms have changed the way the PTO manages the patent applications. Because the PTO is measuring its delay so precisely—so that it can restore lost patent term to applications—the examiners are pressured to process the applications on time, with no

delays. The PTO now has a yardstick that measures its performance. And this is making a world of difference to the applicants. When the PTO causes delay, applicants are held harmless, but the result is that the PTO is going out of its way to avoid these delays.

The reforms we enacted are most useful when there's an "interference" proceeding. Under our U.S. patent system, the "first person to file" a patent application for an invention is not necessarily the one who gets the patent. If another can prove that they were the "first to invent," they can win. The determination of which inventor was the first to invent—an "interference" proceeding among competing claimants to the patent—can be tortuous and take years, even a decade. Under my amendments, all of this time is restored to the applicant. This is crucial because the inventions that are caught in interference proceedings are often the most valuable inventions, the inventions where there was a massive race among researchers to discover some scientific Holy Grail. Dave and I fought to the death to win this concession—to compensate for time lost in interference proceedings in the chess clock system. It took every threat and argument we had to win it from the coalition.

Strangely, just as we were fighting to provide protections against erosion in the event of delays from interference proceedings, the president of the Pharmaceutical Research and Manufacturers Association (PhRMA), Jerry Mossinghoff, got involved only to fight us every step of the way. It was quite incredible. He'd been the U.S. patent commissioner and was an expert on patent policy issues. It seems he had no clue on how important it was to include interferences in the patent term protections. He was a total idiot, and had no idea about the interests of his client. We beat him, but he should have been helpful, not an obstructionist. It's amazing sometimes how much trouble your friends can make in this town!

In general, I kept my distance from PhRMA. It's an arrogant and intensely risk averse organization. It is totally dominated by the Washington offices of its members. Its staff is always running for cover. I made a point of never going to its offices. In fact, for my first five years at BIO, I didn't even know where they were located. I wanted nothing to do with PhRMA or its political baggage.

I had my own problems with the Washington offices of BIO's members. There were three and later four companies with Washington offices. They fought to dominate BIO and I fought to keep BIO independent of their influence. Some of their representatives could be condescending and rough and I was constantly defending my staff from their attempts at

intimidation. On four or five occasions, I had to talk one of my key people out of quitting in response to the attacks from the Washington representatives. At one point, one of these representatives said to me, “You know when PhRMA took a certain position on such and such, their entire staff was fired.”

None of them ever helped me on the patent reform bill. Strangely, they just didn’t understand how important it was to protect the patent term of applicants. This whole manipulatory effort on the patent term issues took five years. Dave and I played the system with bluff-after-bluff.

**RITCHIE:** What was the key to this victory?

**LUDLAM:** The key was that we set our strategy the first day and then we worked to implement it for five years. We never changed our strategy. We saw that we needed to change the personnel and utility standard and we needed to enact the protections against lost term. Two forums, two complicated projects, all interrelated. We saw that we had to whipsaw the PTO, endorsing the twenty year term and then threatening to support Rohrabacher’s repealing the twenty year term. We had to whipsaw Bruce, whipsaw the coalition, and then whipsaw Rohrabacher.

Interestingly, I’m now working on the corollary to the Patent Reform Act. That bill focused on restoration of patent term for delays that occur *at the PTO*. I’m focused now on restoration of patent term for delays that occur *at the FDA*. In the bioterror countermeasure research legislation I’ve drafted for Senator Lieberman,<sup>117</sup> I’ve included full restoration of patent term for FDA delays—for medicines for bioterror pathogens and other infectious diseases and for all patents held by NIH or its grantees. I’ve teamed up again with Dave Schmickel.<sup>118</sup> I’ll get into this initiative in another interview. The point is that I’ve been working on this issue now for more than ten years. I’m halfway to my goal of protecting patent applicants. And I’ve never given up my focus on the goal line. Dave won’t either.

One of the fallouts of the new, more relaxed patent utility standard was the issuance by the Patent Office of patents on genes. This proved to be very controversial. The patents are actually issued for knowledge of the function of the genes—their utility—not the gene itself. But this distinction was completely lost in the public debate over gene patents.

One of my happiest accomplishments at BIO was making sure that a bill restricting the patenting of genes was never even introduced. One of the best ways to win in this game is to make sure that a bill you don't like is never introduced. It's always good to beat a bill, but it's even better if the bill is never introduced in the first place. I prevented the introduction of any bill on the whole question of gene patents.

**RITCHIE:** How do you prevent the introduction of a bill?

**LUDLAM:** We tied up the proponents of the bill and negotiations for about two years. [Laughs] We had meetings upon meetings. We exchanged documents. We discussed issues. We discussed facts. We consulted and we consulted. Ad nauseam.

Over this protracted period, their political moment came and went. They could never find a sponsor for legislation on the Hill. We were trying to cut them off from every sponsor we thought they could go to. It took two years of effort, but they never actually got the bill introduced. If they had, it would have been a tough fight.

This effort to block a gene patent bill came on top of a massive fight I led to derail the [Congressman Greg] Ganske proposal to ban the issuance of certain types of patents. Ganske was a plastic surgeon and he hated the fact that some surgeons had secured patents on some surgical techniques. His legislation was poorly drafted and would inadvertently have banned the issuance of many biotech patents. Ganske was intransigent on amending his bill, so it turned into a public brawl on the floor of the House and Senate.

This was precisely what I'd feared the gene patent groups would do, try to bar the issuance of patents on genes. Beating Ganske had been frightfully difficult and I had no interest in a fight against a ban on gene patents.<sup>119</sup> With Ganske's proposal, I'd fought alone against it for months and got so bruised and battered, I had to be relieved in the ninth inning to bring in a new team to negotiate the final compromise with Ganske. That was fine with me. I was spent.

Unfortunately, I was not able to prevent the White House from making some vague and threatening statements about gene patents on March 14, 2000. The result was a panic on Wall Street with the market capitalization for the biotech industry dropping by \$40 billion in one day. This was the beginning of the collapse not just of the biotech capital markets; it

was the beginning of the collapse of both the NASDAQ and New York markets. This collapse—due to investor fears about the status of industry patents—shows the importance of the Patent Reform Act and how important it was that I prevented introduction of a bill on the subject of gene patents.

Also while I was at BIO, in 1996 I secured the enactment of the first—and I think still the only—law on the subject of genetic discrimination. It was included in the Kassebaum-Kennedy Health Insurance Portability and Accountability Act, Public Law 104-191. That law bans group health insurance plans from refusing to include an individual based on a preexisting condition which has been diagnosed and treated. Plans were denying coverage of these individuals to reduce their costs.

What we got included in this law was an amendment which also bars discrimination based on “genetic information” that indicates that a patient might later become diseased.<sup>120</sup> This is information that may exist *before* there is a diagnosed and treated condition, the threshold in the pending draft of the bill. So we had to change the threshold and include predictive genetic tests. We didn’t want genetic tests to be used as a basis for denial of coverage, which would discourage patients from taking these tests.

Our victory on this issue is one of the only cases I know of Congress acting to anticipate a problem and address it before it becomes a major problem. We don’t yet have many genetic tests, but over time the biotech industry will develop thousands of them. Many diseases have a genetic component or basis and we’re just now discovering which genes are responsible.<sup>121</sup>

I also managed to make the Orphan Drug Tax Credit permanent. The credit provides incentives for research on rare diseases, most of them genetic.<sup>122</sup> The small markets for drugs to treat these rare diseases make them very unattractive to the drug companies. The credit and some other incentives try to offset this and make it worthwhile for the companies to develop these products.<sup>123</sup>

The credit had been extended year to year, like the Research and Development Tax Credit, and had lapsed a few times. It had never become a permanent feature of the tax code. This made the orphan credit incentive rather ineffective as an incentive—no one could rely on the credit existing over the course of a five- to ten-year R&D effort on a new drug to treat

one of these diseases. It was a royal pain to keep getting these extensions every time the credit was about to expire and I hated the R&D Tax Credit Coalition, which I found to be the most dysfunctional coalition I'd ever tried to work with. So to make the orphan credit work, to reduce our year-to-year political workload, and to get away from the damned R&D credit coalition, I urgently wanted to make the orphan credit permanent.

An additional problem was that many small biotech research companies couldn't use the credit in the year in which they earned it. This was true of most of the small biotech companies that had no product, no sales revenue, no taxable income, and, therefore, no tax liability with respect to which to claim the tax credit. To make matters much worse, they weren't permitted to carry the credit forward, the orphan credit, to use it in a tax year in which they did have products, sales revenue, taxable income, and tax liability. All other business credits could be carried forward, but not the orphan credit. Why this one credit was singled out as the only one with no carry forwards is a mystery. But it meant that the credit was useless to nearly all of the companies that might develop drugs for these diseases, in a current or future tax year.

I developed a two-part strategy to remedy this mess. In the 1996 tax bill I secured an amendment that permitted companies to carry forward the orphan credit.<sup>124</sup> Then in the 1997 tax bill I secured an amendment making the orphan credit permanent.<sup>125</sup> I knew if I couldn't secure carry forwards, I couldn't justify the work to make the credit permanent. So I had to pass the carry forwards amendment first.

Chuck Brain, later the chief Clinton lobbyist, was my partner in this elaborate strategy.<sup>126</sup> He had worked on the House Ways and Means Committee and he and I established a powerful personal relationship with one of the staffers over there who cared deeply about research on orphan diseases. Chuck is one of the most effective lobbyists I know and a dear person. I absolutely loved working with him. He and I both viewed this project in very emotional and personal terms.

One of my dearest friends, Jen Belton, has a son, Noah, who is slowly dying of a rare orphan genetic disease—it's a rare form of Leukodystrophy that is known to have afflicted thirty-two people in the U.S. Jen is the most devoted mother and the most deeply spiritual and loving person I've ever met. She and her husband, Hugh, have kept Noah alive hour by hour for many extra years. Noah is a delightful person. He's totally disabled, yet he has a

wicked sense of humor. He's kind and spiritual and very courageous. We're all blessed to know Jen, Hugh, Noah, and their other children, Sarah, and Julia. They're all wonderful friends and delightful human beings.

So my work on the orphan credit was emotional and very personal. I was fighting for Noah, Jen, Hugh, and their family. The political and the personal sometimes merge up here; it's never better than when this happens. When we'd won the permanent credit, I recruited the entire orphan disease community to write personal thank you notes to the key staffer on the Ways and Means Committee who had helped us. I ran into her a few days later and she said she'd cried when she'd received all these notes. She'd never been thanked for her work before—the business lobbyists are rapacious and just come back for more goodies—and she'd never worked on a tax issue laden with so much emotion or been so appreciated by the beneficiaries.

The orphan credit is a powerful incentive for industry to conduct research on rare diseases. The orphan credit is worth about \$40 million in tax savings per year, perhaps forever.<sup>127</sup> So this was a very sweet and personal victory for me, one that is paying dividends each year. I doubt it'll help Noah, but it gives me comfort to know I've done all I can do to help him and millions of others like him.

Early in service at BIO, I led a huge fight with NIH, which was seeking to regulate the prices of products of companies that had licensed technologies from NIH. I got NIH to repeal the whole scheme. It took me two years to do that and I had to run roughshod over NIH Director Harold Varmus. The prospect of price reviews was killing the NIH technology transfer program. Companies would not begin a discussion with NIH about its technology until the price review threat was withdrawn. Without any technology transfer partners, the NIH research was going to waste and not being developed into products for patients.

Actually, my old work on the capital gains issue proved to be crucial in winning this repeal of the price review scheme. I'd made friends with a venture capitalist in New York who was a close personal friend of HHS Director Donna Shalala, a sorority sister. When it looked like HHS would simply change its "reasonable pricing" rule, I got this friend to call Donna and tell her to just euthanize the rule. That's what Donna did. My opponent at HHS was Bill Corr, a friend who had worked for Senator Metzenbaum. You keep running into friends—on your side or the opposite side—in this political game! It's a very small town.

We got the price review scheme repealed, but the technology transfer function at NIH is so miserably managed that it is still a mess there. With the price review threat it was 100 percent broken, but now it's still 95 percent broken. So in the same bioterror bill I just mentioned, I've included a sixty-page NIH reform section, focused on technology transfer. So here I am, twelve years later, working on the same issue!

At BIO I had the sense that our message would be amplified if we organized the high-tech companies into an Entrepreneurs Coalition. The high-tech sector is surprisingly disorganized in Washington, and no such coalition existed. High-tech companies are just too individualistic and entrepreneurial to get themselves organized. Getting organized is the only way to succeed in Washington.

So I went to friends at the American Electronics Association (AEA), Council of Growing Companies (CGC), The Nasdaq Stock Market, National Venture Capital Association (NVCA), and Software Publishers Association (SPA), and we organized the coalition. Together we represented fourteen thousand companies. In 1996 and 1998 we published a comprehensive and detailed agenda of issues of concern to the entrepreneurial, high-technology sector and we distributed it to all incumbent candidates. It didn't have much impact, but it's an approach that I hope someone in the high-tech sector will pursue.

At BIO I organized the first fly-ins of company executives to lobby the Hill and organized the first political action committee. The industry was very naïve when I got to BIO and I was constantly urging them to get more active and practical. This is a problem for the entire high-tech sector.

**RITCHIE:** How did you get back up here again?

**LUDLAM:** Following my seven years at BIO—a life sentence at a trade association—I took nine months off to recuperate. While I was looking for a new job on the Hill, I led a political fight in my neighborhood. In 2000, after I'd left BIO, I organized the Garden and History Tour for the Cleveland Park Historic Society (CPHS), a neighborhood group. The tour featured a local 1847 springhouse. A springhouse is a structure placed over a spring in which food is cooled by the spring water. Our neighborhood is part of the old Springland Farm founded by John Adlum around 1800. The springhouse served his manor, which is located on Tilden Street right behind my house.

I received confidential information from an inside source that the land on which the springhouse was located was going to be sold and that it might well be developed, destroying the springhouse. So I persuaded a wealthy neighbor to hire the top historic preservation lawyer on the East Coast. In a blitz, we recruited CPHS to sponsor our petition, intervened in a pending historic landmark proceeding to prevent the withdrawal of the pending application, testified at a public hearing on the petition, and secured the landmark designation. The owners of the property never knew what hit them!

We saved the springhouse for posterity. It probably deprived the owners of the land of about \$1-2 million in profits they'd have enjoyed if they could have subdivided the property and developed it. My political skills came in handy at home.

During this time, I hankered to return to my home on the Hill and lined up my current position with Senator Lieberman. I'd worked closely with him and his brilliant legislative director, Bill Bonvillian,<sup>128</sup> when I was with Bumpers and BIO. Lieberman is probably the single most active senator on high-tech issues, and Bill is a genius on these issues, so it's been a perfect home for me. I think it's best to talk about my Lieberman work in another interview. It's mostly focused on bioterrorism, fiscal responsibility, and international competitiveness issues.

Let me just say that Bill is an absolutely superb boss. Irene and Si were also, so I've been blessed in my career to work under truly brilliant and kind individuals as my mentors. That is an unusual combination in this town. I've been blessed. I'm still having fun up here, but I'm feeling quite free to retire after these efforts and these accomplishments. It's certainly been fun in a lot of ways.

**RITCHIE:** Well, you compared it to World War I at one point. There certainly was a lot of trench warfare that you've been engaged in over that time.

**LUDLAM:** Yes, I love the trench warfare up here. It's combat, no question about that. It engages all your faculties. It's a high energy game. Some of these fights take years, but if you keep plugging away, inch by inch, you can have a huge impact. The key is setting the strategy on the first day and never losing sight of the goal line. That's what I'm doing now on bioterrorism and fiscal responsibility. That's what I did for five years on the patent

reform fight.

To end today's discussion on a lighter note, let me tell you the story of the Senate buffalo. We need to move from deadly serious issues to the story of a plastic buffalo! Right across from the door clerk on the Senate side off the Reception Room, on the desk where phones are for staff, there resides a plastic buffalo. People have wondered where it came from. It weighs about one ounce. It's a fixture of the U.S. Senate on a par with the statues of the vice presidents and the glorious chandeliers.

For the full story on that, you really need to talk to Myron Fleming, who is one of the Senate doorkeepers. He and I have spent many hours sitting in the Senate chamber and we both love the institution. This is what Myron told me about the buffalo. Don Larson was his boss, and Don was a fairly aggressive, difficult individual. At some point Don started screaming at Myron about something and Myron said, "You buffalo-ass son of a bitch, don't point your finger at me." Myron is a pretty forceful guy as well. And he's a classy guy.

Bob Russell, who was also a doorkeeper, overheard this exchange. That weekend, he was at a yard sale and somebody was selling this plastic buffalo. He bargained them down from twenty-five cents to five cents and bought the buffalo. He brought it in and, ever since, it's been sitting there at the staff entrance to the Senate floor. There are some heavy moments around here, and there are some light moments around here. [Laughs]

Some of this work is very serious, and some of it is just absurd and silly. It's a very human institution that can be dominated by senators like Hart, Mansfield, Byrd, Kennedy, Abourezk, and Lieberman. The fights can be very dramatic. But the institution still finds a place for a plastic buffalo.

**RITCHIE:** Being there on the floor and dealing with all the strategies that are involved in passing and blocking legislation, how did you prep yourself? Did you read through *Riddick's Procedures*? How do you cope with the arcane nature of Senate rules and precedents?

**LUDLAM:** Well, I love learning the rules of procedure. I guess I'm an antiquarian. I believe you have to know the rules to prosper here. That's why I won the aircraft noise fight. I knew the rules better than the Commerce Committee staff. I learned a lot about the

rules during the epic Hart-Scott-Rodino fight. Then, over time, I began to understand more and more about the rules. If you are around here long enough, you learn things. I learned some funny and helpful things like: What is a star print? What is an original bill? Lots of things like that are useful to know.

You may never use that knowledge a second time or a third time, but it's useful to know things like that. I think it's basically longevity that leads to knowledge, but I have gone far out of my way to study the rules. I also love to deal with the Budget Act and the Administrative Procedure Act, two other key statutes. If you want to do well in this game, you have to know the rules, the BA, and the APA. I consider myself to be an expert on all three. One of my mentors on these issues is Bill Dauster, now with the Finance Committee, who is the Senate's institutional memory regarding procedures.

I love the Senate. I love the institution. I admire it. I love its foibles. Its history. Its traditions. Its drama and humor. I love to give tours of the Capitol and the history of the Capitol. I just gave a big tour to congressional fellows in our office the other day. I love to tell the story of this place. I certainly know the limitations of this institution. I know its problems. I know when it's operating at its best and when it's operating at its worse. But I fundamentally believe that the rules, the procedures, the traditions, the subject matter that we debate, are really important. Tradition and the rules are critical to trying to bring some civility to the process.

I believe that if you know more about the rules, and know more about the subject matter, and know more about the process, you will probably win. So my battle plan is always to try to know more than anybody else knows about the issue so we'll never be surprised or outflanked. If there is some process or procedure or approach or argument that I can make that will advance my cause, I want to know what it is, and I want to be able to use it.

A lot of what I see now around here is slipshod. There is much less respect for the institution, much less respect for the individuals, much less civility, much less maturity on the part of the staff. Poor-quality work product, less respect for the institution as an institution. We need people who love the institution and protect it.

**RITCHIE:** Did you make much use of the legislative counsel's office in any of these projects? You've mentioned the parliamentarian, but I wonder how you use the Senate

legislative counsel?

**LUDLAM:** Yes, I have the greatest respect for the SLC. We just introduced a bill to fundamentally overhaul the entire budget process—my fiscal responsibility initiative. I'll talk about it in our next interview. I went through forty or forty-five drafts of this bill with the legislative counsel before we introduced it. It's been introduced as S.1915. I love working with the legislative counsel's office. I love crafting legislation, trying to find the right words.

I've developed something of a legislative drafting style. This budget process bill has almost twenty pages of findings. The reason for this is that I'm using the findings to educate people about some very arcane subject matters in the bill. I figure if I put the findings in the bill, they are more likely to read them than if they are in a separate document as a floor statement.

Sometimes I try to make something more transparent in the bill by including some findings to explain the subject matter. Sometimes I write out the new law in long hand instead of simply amending the current law. It's very hard to understand what's happening when you put "on line xx, strike the word 'not.'" I often try to write a bill so people can read it and understand what it does. In other cases, I find it more useful to hide what I'm doing. But I think, every time, you ought to be making a choice on whether you make some point more obvious or less obvious. So I have very strong feelings and values about how to draft legislation or how to draft an amendment.<sup>129</sup> I also love dealing with the questions of the amendment tree: the seven amendments that can be pending at any given time. I know all about how to play the amendment tree.

I have copies of the rules. I study them from time to time, and love asking questions of the parliamentarian, trying to find out where a bill will be referred, redrafting so that it will go to one committee rather than another, discussing what motions or points regarding a bill are available. I love combat, and I think that is certainly a useful system of values around here because it is combat.

It's often a game of inches, as we saw on the noise/bribe bill. The more you know about physically how things happen, the better you can maneuver. You need to know exactly who refers a bill to a committee, when, and on what basis. Where does a bill actually go when it goes on the calendar versus going to a committee? How does a bill get a number?

How can you select a number in advance that is a better sounding number than another number? Little things like that. It's all a question of craftsmanship. It's pride in one's work.

**RITCHIE:** Well we really covered a lot of territory. Maybe this would be a good break. This has been terrific, especially the discussion about the Hart-Scott-Rodino.

**LUDLAM:** People should go back and read the transcripts. They read like a soap opera.

**RITCHIE:** Well I'm going to, I'm going to read some of the things you mentioned!

**LUDLAM:** They were dramatic, incredible speeches.

**RITCHIE:** That was the summer that I started here in '76, and I remember that filibuster going on at the time. Of course, I was really on the periphery of it all, but it brings back some memories.

**LUDLAM:** Somebody could write a whole article about what does this say about the institution and its values.

**RITCHIE:** Well your interview will be a good starting point for that.

**LUDLAM:** Good.

**RITCHIE:** Well, thank you. We will get you a copy of the first transcript and this one as soon as we can, and then whenever you get some time in the next week or so we can arrange another interview.

**LUDLAM:** Well, actually the good news is I'm flying to Egypt on Tuesday for a vacation, so it will be in the New Year.

**RITCHIE:** Have you ever been to Egypt before?

**LUDLAM:** No. It should be fun. It's a camping trip, so a perfect way to see the country.

**RITCHIE:** I don't know if you've noticed I have a picture on the wall here of James Landis, who was instrumental in creating the federal regulatory system. He was the fellow I wrote my doctoral dissertation about. I published that in 1980 just as all the whole deregulation movement was breaking.

**LUDLAM:** Well, the story of regulatory process and the creation of EPA and OSHA, the early cost-benefit analysis, and then the Reagan intervention in the rule-making proceedings—this is where the rubber hits the road in this town. I was in the middle of all of that for about ten years. It's pretty well settled down now. It's a lot less contentious than it was in the '70s and '80s, but regulatory policy was and remains one of the biggest arenas for fights in government. Initially, we saw agencies writing rules by fiat, without sufficient substantive input, and without any cost-benefit analysis. The liberals, of course, thought that was fine, but everybody including Carter and many others thought that we had to professionalize the rule-making process in order to save it.

**RITCHIE:** And that was the turning point, just about that time period. Well thanks, I appreciate this enormously.

### **End of the Second Interview**

## Endnotes

<sup>66</sup> Once cloture is invoked—which requires sixty of the one hundred senators—there was allotted only one more hour per senator for debate before a final vote on the bill. Once cloture was invoked on a bill, final passage was supposed to come quickly. In this case, Senator Allen continued to filibuster the bill even after cloture was invoked—the first post-cloture filibuster. He did this by filing endless amendments to the bill and insisting on a vote on each of them, together with endless motions, appeals of rulings of the chair, etc.

<sup>67</sup> Jim Allen was born in Alabama in 1912. He attended the University of Alabama and University of Alabama Law School. He practiced law 1935 to 1968; was elected as a member of the Alabama state legislature from 1938-1942; served in the United States Naval Reserve from 1943-1946; was elected as a member of the Alabama state senate 1946-1950; served as lieutenant governor of Alabama from 1951-1955 and 1963-1967; and was elected to the U.S. Senate in 1968 and reelected in 1974. He died suddenly in 1979 and his wife was appointed to serve out his term.

<sup>68</sup> Robert C. Byrd was born in North Carolina. He attended Beckley College, Concord College, Morris Harvey College, and Marshall College, all in West Virginia, and George Washington University Law School, Washington, D.C. He graduated from American University Law School 1963. He received a bachelor's degree in political science from Marshall University 1994. He was elected as a member of the West Virginia house of delegates 1947-1950; and served in the West Virginia senate from 1951-1952. He was elected to the U.S. House for the Eighty-third, Eighty-fourth, and Eighty-fifth Congresses (1953-1959) and elected as a U.S. senator in 1958. He was reelected in 1964, 1970, 1976, 1982, 1988, 1994, and 2000. He stands for reelection in 2006. He's served as the secretary, Senate Democratic Conference from 1967-1971; Democratic whip from 1971-1977; majority leader from 1977-1980 and 1987-1988; minority leader from 1981-1986; and president pro tempore 1989-1995. He has chaired the Senate Appropriations Committee. He's authored a massive history of the Senate, four volumes.

<sup>69</sup> If you don't get recognized by the chair, you can't speak.

<sup>70</sup> The precipice the Senate faced in the Hart-Scott-Rodino debate is remarkably similar to the precipice the Senate faced regarding the filibusters of Senate Democrats of the Bush administration judges. On May 23, 2005, the Senate blinked and did not invoke the "nuclear option" of crushing the Democrats by ending debate on the judges by a majority, rather than a super majority, vote.

<sup>71</sup> Quentin Burdick was born in North Dakota in 1908. He graduated from the University of Minnesota in 1931. He was elected to the House for the Eighty-sixth Congress (1959-60) and Senate in 1960, to fill the vacancy caused by the death of William Langer. He was reelected in 1964, 1970, 1976, 1982, and again in 1988. He died in 1992. He was chairman of the Committee on Environment and Public Works (100th-102nd Congresses).

<sup>72</sup> Tomas McIntyre was a senator from New Hampshire. He was born in 1915, attended Dartmouth College and the Boston (Mass.) University Law School. He served in the United States Army 1942-1946, became the major of a small town and city solicitor. He was elected to the Senate in 1962. He was reelected several times, eventually being defeated in 1978. He died in 1992.

<sup>73</sup> June 9 *Congressional Record* at 17247.

<sup>74</sup> June 9 *Congressional Record* at 17251.

<sup>75</sup> A live quorum call is different than a regular quorum call. In a regular quorum call, there's no vote. They use these as space holders, "time outs," without adjourning. They slowly read the names of the senators and then invariably they dispense with the quorum call. In a "live quorum" they vote to instruct the sergeant at arms to round up the members to make a quorum. The vote on this instruction finds that there's a quorum, so the sergeant at arms never runs off to arrest the members.

<sup>76</sup> The president pro tempore is a constitutionally recognized officer of the Senate who presides over the chamber in the absence of the vice president. The president pro tempore (or, "president for a time") is elected by the Senate and is, by custom, the senator of the majority party with the longest record of continuous service. The president pro tempore often presides when the session opens, but then other senators take over and serve as the presiding officer of the Senate.

<sup>77</sup> The "well" of the Senate is the area between the senators' desks and the dais. The desks are arranged in a semi-circle that bounds the well on one side. The dais includes the desk for the presiding officer, the table for the journal clerk, parliamentarian, and two reading clerks. Between the dais and the senators' desks are tables for the majority and minority floor staff.

<sup>78</sup> A fascinating review of the "constitutional" option to change the Senate cloture rule—the so called "nuclear option" now under discussion in the Senate regarding the filibusters by the Democrats of the Bush judicial nomination—is presented in Marty Gold's piece in the

*Harvard Journal of Law and Public Policy*, “The Constitutional Option to Change Senate Rules and Procedures: A Majoritarian Means to Over Come the Filibuster” (Volume 28, Issue 1). Marty doesn’t delve into the Hart-Scott-Rodino debate, but he could have done so with great impact because in this case it was Senator Byrd who threatened majority cloture. It is now Senator Byrd who is the leading opponent of the nuclear option, but back with H-S-R he was the one who was outraged by a determined and militant minority.

<sup>79</sup> Mike Mansfield was born in New York City in 1903. In 1906 his family moved to Great Falls, Montana. He served as a seaman when only fourteen years old in the United States Navy during the First World War, as a private in the United States Army in 1919-1920, and as a private first class in the United States Marine Corps 1920-1922. He worked as a miner and mining engineer in Butte, Montana, 1922-1930; attended the Montana School of Mines at Butte in 1927 and 1928; graduated from Montana State University at Missoula in 1933; and received a masters degree from that institution in 1934. He also attended the University of California at Los Angeles in 1936 and 1937; was a professor of history and political science at the Montana State University 1933-1942; and was elected as a Democrat to the Seventy-eighth Congress in 1943. He served in the House for ten years and was elected to the United States Senate in 1952 and re-elected in 1958, 1964, and 1970. He was elected as Democratic whip from 1957-1961; and Senate majority leader from 1961-1977. He was chairman, Committee on Rules and Administration. He was appointed as Ambassador Extraordinary and Plenipotentiary to Japan 1977-1988. Upon his retirement from public service he served as East Asian advisor, Goldman, Sachs. He was awarded the Presidential Medal of Freedom on January 19, 1989. He died in 2001.

<sup>80</sup> The Op. Ed. by E. J. Dionne in the *Washington Post*, March 22, 2005, “Will Republicans Go Nuclear?”

<sup>81</sup> Using the filibuster to delay debate or block legislation has a long history. In the United States, the term filibuster—from a Dutch word meaning “pirate”—became popular in the 1850s when it was applied to efforts to hold the Senate floor in order to prevent action on a bill. In the early years of Congress, representatives as well as senators could use the filibuster technique. As the House grew in numbers, however, it was necessary to revise House rules to limit debate. In the smaller Senate, unlimited debate continued since senators believed any member should have the right to speak as long as necessary. In 1841, when the Democratic minority hoped to block a bank bill promoted by Henry Clay, Clay threatened to change Senate rules to allow the majority to close debate. Thomas Hart Benton angrily rebuked his colleague, accusing Clay of trying to stifle the Senate’s right to unlimited debate. Unlimited debate remained in place in the Senate until 1917. At that time, at the suggestion of President Woodrow Wilson, the Senate adopted a rule (Rule 22) that allowed the Senate to end a debate with a two-thirds majority vote—a tactic known as “cloture.” The new Senate rule was put to the test in 1919, when the Senate invoked cloture to end a filibuster against the

Treaty of Versailles. Despite the new cloture rule, however, filibusters continued to be an effective means to block legislation, due in part to the fact that a two-thirds majority vote is difficult to obtain. Over the next several decades, the Senate tried numerous times to evoke cloture, but failed to gain the necessary two-thirds vote. Filibusters were particularly useful to southern senators blocking civil rights legislation in the 1950s and 1960s. In 1975, the Senate reduced the number of votes required for cloture from two-thirds (67) to three-fifths (60) of the one-hundred-member Senate. Many Americans are familiar with the hours-long filibuster of Senator Jefferson Smith in Frank Capra's film *Mr. Smith Goes to Washington*, but there have been some famous filibusters in the real-life Senate as well. During the 1930s, Senator Huey P. Long effectively used the filibuster against bills that he thought favored the rich over the poor. The Louisiana senator frustrated his colleagues while entertaining spectators with his recitations of Shakespeare and his reading of recipes for "pot-likkers." Long once held the Senate floor for fifteen hours. The record for the longest individual speech goes to South Carolina's J. Strom Thurmond who filibustered for twenty-four hours and eighteen minutes against the Civil Rights Act of 1957.

<sup>82</sup> Recently I'd thought that this would happen on the Senate FSC-ETI bill, dealing with outsourcing. The Democrats had offered many amendments to the bill the first time and could have done the same when it came to take the bill to conference—amending the Senate amendment to the House bill—but the Democrats ran out of steam and there were only a few amendments the second time around.

<sup>83</sup> See September 7 *Congressional Record* at 29145-29153, especially 29147.

<sup>84</sup> See following tribute from Senator Daschle upon Murray's death in 2000. "Mr. President, over the weekend we were saddened to learn of the death of Murray Zweben. Murray was chosen by the late Floyd Riddick to be his assistant in the parliamentarian's office in 1965. He followed "Doc" Riddick in that post and became the Senate Parliamentarian in 1975. He served in that capacity for six years and left in 1981. The Senate recognized his exemplary service in 1983 by elevating him to parliamentarian emeritus. After he left the Senate, Murray worked in private law practice and played as much tennis as his schedule would permit. Those of us who knew Murray and his extraordinary ability to fly through the New York Times crossword puzzle, in ink no less, will miss him. Our thoughts and prayers go out to his wife Anne, and his children Suzanne, Lisa, Marc, John, and Harry."

<sup>85</sup> See August 31 *Congressional Record* at 28603.

<sup>86</sup> See 431 U.S. 720 (1977) and Donald Baker, "Hitting the Potholes on the Illinois Brick Road," *Antitrust*, Fall 2002 at 15.

<sup>87</sup> Unanimous consent permits the Senate to structure its business in any way that all senators—without any one objecting—accept. Any one senator can object and that defeats unanimous consent. The consent requests are routinely “hot lined” to all senators—on a special phone—and if no senators object, the unanimous consent agreement—commonly referred to as “UC”—is adopted. Many UCs are proposed without any use of the hot line—and they are normally cleared in advance with both parties before they are proposed. Unanimous consent gives total power to individual senators.

<sup>88</sup> See October 14, 1978 *Congressional Record* at 37416.

<sup>89</sup> See October 14, 1978, *Congressional Record* at 38629-32 and 38689-92.

<sup>90</sup> Dick Tuck was a famous Democratic Party political prankster, best known for his practical jokes committed against former President Richard M. Nixon. Tuck is best known for dressing up as a railroad conductor, and waving a train out of the station while Nixon was still speaking from the train’s rear platform. In another gag, as Nixon spoke to a crowd of Chinese-Americans, Tuck caused a sign to be displayed behind Nixon reading (in Chinese) “What about the Howard Hughes secret loan?” (The reclusive billionaire had loaned money to Nixon’s brother.) When Nixon ran for president in 1968, it is said that his aides threw away thousands of foreign-language campaign buttons for fear Tuck had gotten to them. Tuck began as a campaign aide to Helen Gahagan Douglas, whom Nixon defeated in the election for senator from California in 1950. Nixon, who had already made a name for himself as a member of the House Un-American Activities Committee, ran a mud-slinging campaign, falsely portraying Douglas as a Communist sympathizer. Tuck vowed revenge and was hired as a Nixon campaign aide (while secretly working for Douglas). Tuck organized a Nixon rally, booking the largest auditorium possible. However, he barely publicized it; therefore, Nixon showed up to speak before a crowd of forty in a four-thousand-seat auditorium. In 1956, Nixon was running for reelection as vice president during the Eisenhower administration. Tuck learned that the route taken by San Francisco garbage trucks going to the dump led them right past the Republican National Convention. Tuck paid to have the garbage trucks bear signs that read “Dump Nixon.” The 1960 Democratic convention was one of the first to be covered by television cameras. Tuck, then an aide to California Governor Pat Brown, somehow persuaded the cameras to focus on eight thousand seats full of John F. Kennedy supporters while ignoring seventy-six thousand empty seats. In 1964, Tuck unsuccessfully ran for the California state senate, promising to rehabilitate the Los Angeles River by either filling it with water or painting it blue. “The job needs Tuck,” read a Tuck billboard, “and Tuck needs the job.” In 1968, Tuck was a key adviser in Robert F. Kennedy’s presidential campaign and rode in Kennedy’s ambulance as the mortally wounded candidate was rushed to the hospital. When he became president, Nixon emulated

Tuck's pranks by hiring dirty tricks specialists such as Donald Segretti. Strangely enough, Segretti was a graduate of the high school I attended in San Marino. But the Segretti tricks tended to be mean-spirited rather than humorous. For example, Segretti's dirty tricks included forging letters to newspapers imputing sexual misconduct to Hubert H. Humphrey and forging letters on the stationery of Sen. Edmund S. Muskie that included language denigrating blacks. Apparently Nixon realized that Segretti's efforts were not comparable to the standard set by Tuck. In a White House conversation taped on March 13, 1973, Nixon commented, "Shows what a master Dick Tuck is . . . Segretti's hasn't been a bit similar." The Segretti operation eventually evolved into the Howard Hunt/Gordon Liddy "plumbers" operation and the Watergate and Ellsberg break ins.

<sup>91</sup> See October 14, 1978, *Congressional Record* at 37385.

<sup>92</sup> See H.R. 13350, 94<sup>th</sup> Congress; June 25, 1976, *Congressional Record*; S.1458, 95<sup>th</sup> Congress; May 11, 1977, *Congressional Record*; and Public Law 95-70.

<sup>93</sup> Subpart 9.5, Federal Acquisition Regulations (FAR).

<sup>94</sup> The Administrative Procedure Act (APA) is the law under which some fifty-five U.S. government federal regulatory agencies like the FDA and EPA create the rules and regulations necessary to implement and enforce major legislative acts such as the Food Drug and Cosmetic Act, Clean Air Act, or Occupational Health and Safety Act. See Title 5, United States Code, Chapter 5, sections 511-599.

<sup>95</sup> See S. 262, 96<sup>th</sup> Congress. Reported to Senate from the Committee on Governmental Affairs, S. Rept. 96-1018 (October 30, 1980). Never considered by full Senate or House.

<sup>96</sup> See S. 111, introduced by Senator Bumpers on January 23, 1979. The bill provides that in any court reviewing federal agency actions, the courts shall decide de novo all relevant questions of law. The bill states that there shall be no presumption in any such proceeding that any rule of any agency is valid and it requires that such validity be provided by clear and convincing evidence except when such a rule is set forth as a defense in a criminal trial or action for a civil penalty.

<sup>97</sup> Jim graduated from the University of Missouri Schools of Journalism and Law. He studied under the late Dean Earl F. English and Professor Paul Fisher, two pioneers on Freedom of Information Act policy issues. Davidson served as special assistant/press secretary to Senator

Stuart Symington and subsequently as chief counsel to the Senate Governmental Affairs Subcommittee on Intergovernmental Relations (IGR), and as chief counsel/staff director of the Senate Judiciary Subcommittee on Administrative Practice and Procedure. As counsel to the IGR Subcommittee, chaired by Senator Edmund S. Muskie, he helped write and enact the 1974 amendments to the Freedom of Information Act. Senator Muskie's principal amendment, which was so opposed by the White House that the bill was vetoed by President Ford, would have established a new standard for the disclosure of national defense and foreign policy information. The Senate and House were successful in overriding the president's veto. He also assisted Senator Sam J. Ervin in writing the Privacy Act of 1974. This was the first effort by the Congress also aimed at government openness—this for the citizens of the United States about whom the government had collected information and was using it to make decisions about their lives. Among other activities with the IGR Subcommittee, he conducted the first public oversight hearing of Central Intelligence Agency surveillance of U.S. citizens, helped coordinate a congressional and public campaign to oppose the Nixon administration's Official Secrets Act (S. 1), and helped write and pass the Government in the Sunshine Act, the Federal Advisory Committee Act, and many other open government initiatives. Subsequently he moved to the Judiciary Subcommittee, chaired by Iowa Senator John C. Culver, where he worked on the Regulatory Flexibility Act. He now leads Davidson & Company, a consulting company focused on media and freedom of information and intelligence classification issues.

<sup>98</sup> Between 1969-1972, Harrison was a public interest advocate, serving as executive director of the Center for Study of Responsive Law (popularly known as "Nader's Raiders"), and advocating environmental and consumer causes before the Congress and executive agencies. In the U.S. Senate between 1972-76, Harrison served as chief legislative assistant to the late Senator Philip A. Hart, chairman of the Antitrust and Environment Subcommittees in the Senate. From 1977-1981, he was executive associate director of the Office of Management and Budget in the Executive Office of the President. He was in charge of management, reorganization, and regulatory policy for OMB. He served for four years as executive director of the president's Reorganization Project which prepared and advocated before Congress executive agency reorganization plans for the Executive Office of the President, the Dept. of Energy, the Dept. of Education, the Federal Emergency Preparedness Agency ("FEMA"), the Nuclear Regulatory Commission, and several other agencies. Harrison is now a partner in the Washington, D.C., office of the law firm of Latham & Watkins, where he is co-chairman of the firm's energy practice. In the 1980s, he was a leading advocate for the creation of the competitive power industry and was a founder of the largest trade association for the independent power companies. He served as outside counsel, strategic advisor, and investor in two of the leading independent cogeneration power companies created during that time, Intercontinental Energy Corporation and Sithe Energies. From 1995-1998, he was chairman of the firm's International Practice, directing Latham's expansion in Asia and other parts of the world. From 1998 to 2000, Mr. Wellford was vice chairman of Sithe Energies, Inc., one of the world's largest merchant power generation companies. Since 2000, in addition to ongoing work in mergers and acquisitions and energy project finance, Mr.

Wellford has assisted a number of renewable energy, energy efficiency, resource recovery, and environmental technology companies with private equity financing, project financing, and mergers and acquisitions. He holds a Ph.D. in government from Harvard University, where he was a Danforth Fellow and Teaching Fellow and a Juris Doctor degree from Georgetown University Law School. He was a Marshall Scholar at Cambridge University and valedictorian of his graduating class at Davidson College.

<sup>99</sup> See Chuck Ludlam, “Undermining Public Protections: The Reagan Administration Regulatory Program,” *Alliance for Justice*, 1981.

<sup>100</sup> See “Administration’s Fiscal Year 1983 Budget Proposal,” Senate Finance Committee hearings, part 3 at pages 70-72.

<sup>101</sup> See the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)(HR 4961, 97th Congress, Public. Law 97-248). The Act placed restrictions on the issuance of small issues of industrial development bonds used for private activities for purposes of the tax exclusion of interest on such bonds but did not touch the bonds issued by non-profits.

<sup>102</sup> Steve served as vice president and general counsel at the Biotechnology Industry Organization (BIO) from 2001-2005 and now represents Nabi Biopharmaceuticals, a Florida company focusing on the immune system and infections. From 1989 to 2001, Steve was a partner at Hogan & Hartson, representing clients like Amgen, Genentech, the American Academy of Pediatrics, the American Cancer Society, the Fred Hutchinson Cancer Research Center, and the Infectious Diseases Society of America. He held a similar position from 1979 to 1989 and 1969-1971 with Reed, Smith, Shaw & McClay. He was chief counsel of the House Health and Environment Subcommittee, working with Chairman Paul Rogers, from 1971 to 1979.

<sup>103</sup> See “Analytical Perspectives on the U.S. Government,” Fiscal Year 2005 at table 18-1 (estimates of total income tax expenditures). The tax exemption for student loan bonds is worth \$260-380 million per year; for private nonprofit educational facilities it’s worth \$780 million to \$1.13 billion; and for hospital construction it’s worth \$1.62 to \$2.29 billion. About 80 percent of this revenue loss to the government accrues to the benefit of the bond issuer. On this calculation see “Tax Credit Bonds,” report of the Congressional Budget Office (July 2004).

<sup>104</sup> See H.R. 3801 as introduced on August 4, 1983.

<sup>105</sup> See H.R. 3398, House Report 98-267 and Public Law 98-573.

<sup>106</sup> When a foreign country subsidizes a particular industry, the United States may, under certain circumstances, impose import duties to compensate for the favored treatment. International law recognizes the legitimacy of countervailing duties. Under the General Agreement on Tariffs and Trade (GATT), countries may impose countervailing duties on goods produced with the aid of a “bounty or subsidy.” The GATT, however, does not clearly define subsidy. This vagueness resulted in the development of domestic law that attempts to define what subsidies the United States may countervail. Unfortunately, the United States law allows the countervailing of domestic subsidies only if the subsidy benefits a particular industry or group of industries. This is known as the specificity requirement. Under this test, the foreign government must provide aid “to a specific enterprise or industry or group of enterprises or industries.” Back in 1984 the U.S. took a very narrow view of the specificity rule and was extremely reluctant to find that natural resource subsidies were subject to countervailing duties. The Gillis Long proposal, if it had been enacted, would have ensured that countervailing duties were available as a remedy. In coming so close to enacting his proposal, we put pressure on the countries that were targets of the bill—Russia, Eastern Europe, China, Mexico, Brazil, and Canada where energy and other natural resources were owned by the governments—to reform their practices. They could see that their natural resource subsidies might be vulnerable, and over time U.S. negotiators took a broader view of the specificity rule and found many more cases where countervailing duties were appropriate. This trend was strengthened by the enactment of the 1988 trade bill that included strengthening of dumping law against a non-market economy. Had this trend begun in 1984 and accelerated in response to a specific statutory mandate, the pressure against unfair subsidies would have had a much greater impact. Today, environmentalists are discovering that these natural resource subsidies can lead to unsound agriculture practices, excessive exploitation of scarce natural resources, and excessive dependence on fossil fuels.

<sup>107</sup> Charlene and her husband, Ed Cohen, became dear friends of mine in the 1970s. Charlene attended Catholic Law School with my ex-wife and I knew Ed on the Hill. He’s a distinguished public servant in his own right, having served many years on the Hill for Warren Magnuson on the Senate Commerce Committee staff (where he was one of the leaders in the consumers right movement), in the Carter White House (where we worked together on the regulatory reform issues), and Clinton Interior Department with Bruce Babbitt. Ed is now the Washington representative for Honda Motors. Before becoming U.S. trade representative, Charlene had worked at a law firm and been deputy trade representative. She was the administration’s leader in opening of foreign markets and the elimination of regulatory and investment barriers around the world, and as the architect of U.S. trade policy, she was a central figure for international business. She’s best known for negotiating the historic market opening agreement with China on its entry into the World Trade Organization, which has deepened China’s stake in a stable, rules-based global economy and helped lead to a doubling of American exports to China since the year 2000. Beyond this,

Charlene formulated an aggressive agenda to open foreign markets at the WTO and across the globe, negotiating hundreds of complex trade and commercial agreements with virtually every major market, from Japan and the European Union to the smallest states of Latin America, Africa, and the Middle East. In addition to agreements covering traditional sectors of the economy, Charlene also developed and negotiated trade rules for the information age, concluding global agreements covering the world's telecommunications markets, global financial services, information technology products, intellectual property rights, and cyberspace, which account for well over half of all global commerce. The breadth of Charlene's accomplishments and her international reach have been widely recognized: Harvard Law School has honored her with its "Great Negotiator" award and the Harvard Business School has chronicled her deft negotiating skills in a series of case studies. She was the recipient of Yale Law School's Prieskel-Silverman Fellowship for distinguished public service, and her savvy and skills are detailed at length in *Leading Up*, a book published under the auspices of the Wharton School and the Wharton Center for Leadership and Change. She's now a lawyer with Wilmer, Cutler and Pickering.

<sup>108</sup> With Senator Bumpers I had the great privilege of working with Scott Hibbard, Deborah Estes, Christie Dawson, and Tracy Crowley, all dear friends to this day.

<sup>109</sup> Kent is currently director of the Science, Technology, America, and Global Economy program at the Woodrow Wilson International Center. He's just published the definitive account of the "competitiveness" issue: *Building the Next American Century: The Past and Future of Economic Competitiveness* (Woodrow Wilson Center Press, 2005). Prior to joining the Center, Kent served as the associate deputy secretary at the U.S. Department of Commerce. Before joining the Clinton administration, he served as president of the Council on Competitiveness; chief economist to U.S. Senate Majority Leader Robert Byrd; senior economist at the Joint Economic Committee; and legislative and policy director in the office of U.S. Senator Gary Hart during the senator's first presidential campaign. Prior to his congressional service, Kent served as a staff attorney for the Urban Law Institute and an International Legal Center Fellow and Latin American Teaching Fellow in Brazil. He holds a Ph.D. in economics from Washington University, an LL.B. from Harvard Law School, and a B.A. in political and economic institutions from Yale University.

<sup>110</sup> See S. 931 introduced by Senator Bumpers on April 7, 1987. See also S. 348 introduced on February 7, 1989; S. 1932 introduced on November 11, 1991 (47 cosponsors); and S. 368 introduced on February 16, 1993 (37 cosponsors).

<sup>111</sup> See 26 United States Code 1202, Pub. L. 103-66, title XIII, Sec. 13113(a), Aug. 10, 1993. Proposals have been made to amend my venture capital gains incentive to make it work as intended. There was a Senate Small Business Committee roundtable on May 22, 2002, on

“Unleashing the Power of Entrepreneurship: Stimulating Investment in America’s Small Businesses,” chaired by John Kerry. An old friend of mine, Mark Heesen, president of the National Venture Capital Association, testified in favor of amendments to my incentive. Senator Kerry introduced a bill to this end, S. 1676. I doubt if anything will be done to make this incentive work as I’d intended it to work.

<sup>112</sup> In order to be eligible for patent protection, United States patent law requires that an invention be, 1) New or Novel: The invention must be demonstrably different from publicly available ideas, inventions, or products (so-called "prior art"). This does not mean that every aspect of an invention must be novel. For example, new uses of known processes, machines, compositions of matter, and materials are patentable. Incremental improvements on known processes also may be patentable; 2) Useful: The invention must have *some application or utility* or be an improvement over existing products and/or techniques; 3) Non-obvious: The invention cannot be obvious to a person of "ordinary skill" in the field. Non-obviousness usually is demonstrated by showing that practicing the invention yields surprising, unexpected results.

<sup>113</sup> The original proposed Utility Examination Guidelines were issued in December 1994, in response to a groundswell of complaints I orchestrated that Examining Group 1800 (biotechnology) was imposing a nearly impossible burden on biotech and pharmaceutical applicants to establish section 101 utility. These guidelines were formally published for comment on January 3, 1995. The proposed guidelines were incorporated nearly verbatim as section 608.01(p)A of the revised MPEP circulated in March, and were assumed to be final. The “final version” of these guidelines, published in the July 14, 1995, volume of the Federal Register (60 FR 36263-265). See (<http://www.uspto.gov/web/offices/com/sol/notices/utilexmguide.pdf>).

<sup>114</sup> Currently serving his eighth term in Congress, Dana Rohrabacher represents California’s wealthy Orange County coastal community, including Palos Verdes. He’s chairman of the Space and Aeronautics Subcommittee and a senior member of the International Relations Committee. He’s known for his late-hours speeches on C-SPAN. He is one of that body’s most forceful spokesmen for human rights and democracy around the world. Rohrabacher led the effort to deny Most Favored Nation trading status to Communist China, citing the rogue nation’s dismal human rights record and opposition to democracy. Prior to his first term in Congress in 1988, Dana served as special assistant to President Reagan. For seven years he was one of the president’s senior speechwriters. During his tenure at the White House, Rohrabacher played a pivotal role in the formulation of the Reagan Doctrine and in championing the cause of a strong national defense. He also helped formulate President Reagan’s Economic Bill of Rights, a package of economic reforms that the president introduced in a historic speech before the Jefferson Memorial. Prior to joining Ronald Reagan’s White House staff, he was an editorial writer for the *Orange County Register*, and

graduated from Long Beach State College in 1969 and received a masters degree from the University of Southern California. He's famous as a surfer and gadfly. See H.R. 811 introduced by Congressman Rohrabacher on March 15, 1997.

<sup>115</sup> In chess matches, players are each given a fixed amount of time to make all of their moves—called “time control.” A time control of 40/2 means that each player has two hours to make the first forty moves. A “sudden death” time control means that both players must make all their moves for the game before time expires; “game/30” means that each player must make all their moves in thirty minutes or less. When one player has moved, he or she stops the countdown on his clock—often called an “allegro” clock—and this automatically starts the countdown on the other player’s clock. The two clocks are part of one mechanism in the center of the table. Time pressures on one or both players can become a major issue as the match proceeds. In the patent context, the examination process moves back and forth between the PTO and the applicant, with inquiries and responses, rulings and appeals, etc., so it’s possible to determine how much time each “player” has consumed.

<sup>116</sup> Dave Schmickel is a detailee from NIH at the Senate Health, Education, Labor, and Pensions (HELP) Committee. At NIH he served in the Office of Technology Transfer. Previously, Dave was a principle at the investment firm Meridian Venture Management, Ltd., in New York City, which invested in mature biotechnology companies. He also has served as patent and legal counsel for the Biotechnology Industry Organization (BIO) in Washington, D.C., as a patent examiner at the Patent and Trademark Office, and as an associate with a large Washington, D.C., based law firm. Dave received his doctoral degree from the Department of Biology at the Johns Hopkins University in Baltimore and his Jurist Doctorate from the University of Baltimore.

<sup>117</sup> See S. 975 introduced on April 28, 2005. The predecessor bill is S.666, introduced in March 2003.

<sup>118</sup> Dave was detailed to the Senate HELP Committee in 2005 to work on this legislation.

<sup>119</sup> The original version of the Ganske bill (H.R. 1127), introduced in March 1995, would have banned the issuance of patents claiming "pure" medical procedures, such as methods of making incisions for cataract or open heart surgery. However, the bill’s language was so broad that it would also have banned patents on new uses for known compounds and many diagnostic assays. The Ganske bill thus faced strong opposition from groups such as the Biotechnology Industry Organization, the American Bar Association, and the American Intellectual Property Law Association, and the bill did not become law. The Ganske bill was revived, in very different form, as Section 616 of the 1996 omnibus appropriation bill, P.L.

104-208, and it became law in late 1996. The new Ganske compromise law no longer attempts to curtail patentable subject matter. Instead, the compromise legislation amends 35 U.S.C. Section 287 by adding a subsection (c) that exempts from the definition of patent "infringement" a medical practitioner's performance of a "medical activity" on a human or a laboratory animal. Rather than banning patent protection for medical procedures, the Ganske compromise legislation establishes that any such patents are not infringed when the patented procedures are performed under certain situations by certain classes of individuals.

<sup>120</sup> The language reads as follows: "an employee health benefit plan or a health plan issuer offering a group health plan may establish, under the terms of such plan, eligibility, enrollment, or premium contribution requirements for individual participants or beneficiaries, *except that such requirements shall not be based on* health status, medical condition, claims experience, receipt of health care, medical history, evidence of insurability (including conditions arising out of acts of domestic violence), *genetic information*, or disability." Section 101.

<sup>121</sup> There exists a database of four thousand human genes and seven hundred genetic disorders called the OMIM(TM), Online Mendelian Inheritance in Man. This database is authored and edited by Dr. Victor A. McKusick and his colleagues at Johns Hopkins and elsewhere, and developed for the World Wide Web by the National Center for Biotechnology Information. The database contains textual information, pictures, and reference information.

<sup>122</sup> An orphan disease is defined as a condition that affects fewer than 200,000 people nationwide. This includes nearly six thousand diseases as familiar as cystic fibrosis, Lou Gehrig's disease, and Tourette's syndrome, and as unfamiliar as Hamburger disease, Job syndrome, and acromegaly, or "gigantism." Some diseases have patient populations of fewer than a hundred. Collectively, however, they affect as many as 25 million Americans, with one in every ten individuals in this country having received a diagnosis of a rare disease. That makes the diseases—and finding treatments for them—a major public health concern. See the Web site of the National Organization for Rare Diseases for a description of the symptoms for eleven hundred of these diseases.

<sup>123</sup> Since 1983, the Orphan Drug Act has resulted in the development of nearly 250 orphan drugs, which now are available to treat a potential patient population of more than 12 million Americans. In contrast, the decade prior to 1983 saw fewer than ten such products developed without government assistance. As a result, treatments are available to people with rare diseases who once had no hope for survival. Many consider the ODA the most successful tax incentive in the history of the tax code. It's an incentive for economic activity that would not otherwise occur—whereas many tax incentives are windfalls for what taxpayers would do anyway without a tax incentive.

<sup>124</sup> See H.R. 3448 (104<sup>th</sup> Congress) and Public Law 104-188 (August 20, 1996; Section 1205).

<sup>125</sup> See H.R. 2014 (105<sup>th</sup> Congress) and Public Law 105-34 (August 5, 1997).

<sup>126</sup> Chuck was head of legislative affairs for the Clinton White House and a top aide to the Ways and Means Committee. He founded his own firm after the breakup of Bergner Bockorny Castagnetti Hawkins & Brain. He's regularly voted one of the city's top "hired guns."

<sup>127</sup> See Joint Tax Committee "Comparison of The Estimated Budget Effects," JCS-37-07 (July 10, 1997).

<sup>128</sup> Bill has been legislative director and chief counsel for Senator Lieberman since Joe took office in 1989. From 1974 to 1975 Bill was a law clerk to Judge Jack B. Weinstein, U.S. District Court for the Eastern District of NY; from 1975 to 1977 he was an attorney with Steptoe and Johnson; from 1977 to 1981 he was deputy assistant secretary, director of congressional affairs, and liaison officer, Department of Transportation; from 1981 to 1985 he was a partner at Brown and Roady; and from 1985 to 1989 he was a partner at Jenner and Block. He has degrees from Columbia and Yale Universities and Columbia Law School.

<sup>129</sup> I worked closely with Stacy Kern of the Senate Legislative Counsel in drafting the BioShield II legislation. She was utterly brilliant in this effort. We went through four main drafts, but I gave her fifty to seventy documents worth of amendments to each draft. Some of them were overlapping or even inconsistent. She sorted through these amendments and often spotted errors in proposals from some of the top D.C. law firms. We ended up with a 360-page bill and she gets much of the credit for how well it reads and how few mistakes it contains.

## THE EMBRYONIC STEM CELL FIGHT

### Interview #3

Monday, October 18, 2004

**RITCHIE:** The last time I saw you, you were on your way to Egypt.

**LUDLAM:** That's right!

**RITCHIE:** Was that a successful trip?

**LUDLAM:** Completely fabulous. We were with an Australian group on a camping trip. We spent five days with Bedouins in the Western Desert, camping in the oases. Then we spent three days sailing with the Nubians on the Nile on a traditional felucca. We saw most of the ancient sites as well. We took a balloon ride, rode on donkeys, camels, and a train, took a carriage ride, and walked endlessly. It was very low to the ground, the way that two former Peace Corps volunteers like to travel! [Laughs]

Since then we spent three weeks in Idaho in August. I took a five-day hiking trip supported by llamas, and we took a six-day whitewater raft trip on the Middle Fork of the Salmon. Then we went horseback riding for what was supposed to be five days, except that my wife, Paula, got thrown off a horse and we had to medivac her out with a helicopter. She's okay now, but it was harrowing. And we're about to take off to Palau and Yap in the South Pacific for New Year's.

These islands are near the Philippines, and we'll be sea kayaking and snorkeling. Palau is the top-rated snorkeling site in the world. We'll also spend three days on Peleliu, where my wife's uncle fought in the Second World War. His unit had fourteen hundred killed and fifty-seven hundred wounded in the two hundred hours they were on Peleliu. This puts our losses in Iraq in perspective.

This is a typical trip for us. We love to sea kayak. I've sea kayaked in the Queen Charlottes, Nova Scotia and Newfoundland, Belize, Baja, Iceland, Prince William Sound, and Turkey. I've also hiked in the Himalayas, Andes, Atlas, Owen Stanley Range, Brooks

Range, and Rockies. I also love whitewater rafting and have rafted a hundred rivers ranging from the high arctic in Alaska to the Yukon Territory, British Columbia, Arizona, Maine, Idaho, West Virginia, Chile, and New Guinea. I applied twice to be on Survivor, but never even got an interview. Now that was a disappointment!

For twenty years I organized rafting trips on the Gauley River in West Virginia, a world class whitewater run. We rafted it so often that we decided to jazz it up one year by wearing costumes. Everyone else was white knuckles, and we came out in Santa Claus outfits with a blown up gorilla. It freaked everyone out. Our outfitter, Class VI River Runners, was then asked to supply a poster for a local Wendy's and the picture it chose was of our costumed group. This spoofs the pictures donated by all the other outfitters, which are pictures of hair raising flips. All of these trips put this political work in context and give me a great way to release the tensions. My wife and I take some great trips. I believe in working hard and playing hard.

**RITCHIE:** I'd say you do some pretty exotic trips.

**LUDLAM:** Well, that's our style. We need escapes from all the seriousness of this desk-bound town.

**RITCHIE:** Yes, people say that travel can be dangerous but actually, staying around here could also be dangerous.

**LUDLAM:** My office is immediately above the [Tom] Daschle mail room where the October 15, 2001, anthrax attack occurred, so you're absolutely correct.

**RITCHIE:** You've also mentioned your plans to rejoin the Peace Corps. Have you proceeded any further on that?

**LUDLAM:** Well we should hear more next week. We have applied. We've been accepted. But now they have to match us up with a program in Africa and that's proving to be a little bit complicated. It's always more complicated to match up couples than to match up singles. We expect we're on track to leave next September

So the timing of these interviews is perfect. I'm wrapping up my career and when I

leave to go into the Peace Corps that will be the end, I believe, for my government career. I hope at that point never again to work at a desk. So these interviews provide me with a chance to tell all these stories and get them on the public record.

**RITCHIE:** Do you have any place in Africa that you'd like to go to if you had the opportunity?

**LUDLAM:** We've put in a preference for Mali, Niger, and Senegal. Over on the east side of Africa, we've requested Uganda and Tanzania. Down in the south, we're requested Zambia and Madagascar. In West Africa, we've also requested Benin, and Ghana, and Cameroon. So we've actually given the Peace Corps quite a few possibilities.

**RITCHIE:** You also suggested that the Stanford program might use these oral histories, and I wondered what you had in mind for that.

**LUDLAM:** I've asked myself why I am providing this oral history. Obviously, it might be of interest to researchers. Maybe what I say can provide them with information about how this institution really operates, and how people really win and lose in the trenches.

Primarily, however, I am telling these stories for the Stanford students who might be considering a public service career. They can read this and see what a public service career can accomplish and what it's like day-to-day. I'm in very close touch with the Stanford in Government (SIG) program. This program focuses on summer internships, and then there's the Stanford in Washington (SIW) program that brings students here for an academic program over the winter. I helped to establish the SIW program based on my experience with SIG. My great hope is that some of these students will not just come and experience Washington, and learn a little bit about it, but I hope some of them will spend thirty or forty years in a public service career.

What I can show them with my stories is what a public service career can encompass. Why is it that people win or lose in politics? How complicated are the fights? How tough and nasty can they be? Is this fun or is this drudgery? How can you handle it in terms of the daily grind? How do you handle failures? I'm talking here about fights that I lost, not just the victories. The students need to know that also. We need young blood and we need staff who can manage a whole career, not just a few years, which is the average.

**RITCHIE:** We can make the interviews available on disk as well as in hard copy and since they are in the public domain, you can reproduce the interviews as often as you want for the Stanford students. It seems to me these interviews will serve as a very good introduction for them.

**LUDLAM:** Some of them will like what they read here and some of them won't.

**RITCHIE:** Some may be discouraged, some may be inspired.

**LUDLAM:** Who knows?

**RITCHIE:** You never can tell. In our previous interviews we've focused before on your work in the 1970s and '80s, from the Senate Legal Counsel to the Hart-Scott-Rodino to patent reform. Today, can we start with the history of the role you played in the fight over embryonic stem cell research? As an introduction to that, could you tell me again how you became the principal lobbyist for the biotechnology industry?

**LUDLAM:** I was working in the Senate in 1993 as chief tax counsel of the Senate Small Business Committee with Dale Bumpers and I had gotten to know the lobbyist for the Biotechnology Industry Organization (BIO), Lisa Raines. Lisa was killed in the Pentagon plane on 9/11. She was flying out to California to work on something for the biotech company for which she then worked. She was a highly energetic advocate for the biotech industry, both when she was the principal lobbyist at BIO and then with this company.

Back in the 1991-1993 timeframe, Lisa was interested in a capital gains incentive I'd championed for Senator Bumpers.<sup>130</sup> She was leaving BIO and they were looking for a new vice president for government relations. She asked me to apply, I applied, and I got the job. It was a dilemma for me because I was eighteen months short of the age of fifty. I already had twenty years of government service so—

**RITCHIE:** Eighteen months short of fifty years?

**LUDLAM:** Yes, that is the magic formula. Age fifty with twenty years of government service is the minimum for retiring. If you have twenty years of service, and you are age fifty, you can start drawing your pension then, not having to wait until you're sixty-

five. When the BIO offer came, I was forty-eight and a half. So leaving the Hill to go down to be a lobbyist was a difficult decision financially, but it was too interesting a client to pass up. BIO, in effect, paid me the pension I was foregoing, so that helped me to justify the move. I became the principal lobbyist for a thousand biotech companies and for a very controversial industry. It was a great deal of fun

**RITCHIE:** Before we get to the cloning fight, just in general as a lobbyist, how different does Capitol Hill look from the outside than it does after all those years working inside?

**LUDLAM:** I think the answer is not at all different. The only difference was that my client was a group of companies and up here your client is one individual, a chairman or individual member. Other than that, everything you do day to day is almost exactly the same. The way you talk to people is the same. The way you identify issues is the same. The way you do research is the same. I'm on Senator Lieberman's staff now, but I'm definitely a lobbyist. I'm constantly pressing others to join me in an effort, to join a coalition, or to move in one direction or another. So I don't think that day to day there is much difference between being a staffer and being a lobbyist.

**RITCHIE:** That's an interesting way of looking at it. Well, how did you get into the whole embryonic stem cell issue, which is now a hot issue in this presidential election?

**LUDLAM:** The issue has come a long ways since 1997. The fight today couldn't be more different than the fight in the first round of the fight back then. It was far and away the most complicated and intensified fight I have ever been involved with in my entire forty years in politics. And perhaps the most satisfying.

I would characterize it this way: if you're going to pursue a career in politics for forty years, all of that time you are developing the skills that you hope to apply in one titanic fight where you are the critical person leading on a monumental issue. If you've prepared well, you can win, vindicating all the years of investment in developing those skills. That's what the stem cell fight was all about for me.

Every skill I have ever developed in any context in the Hart-Scott-Rodino fight or the Senate Legal Counsel fight or in the Airline Noise bill or the patent reform bill, all of those

fights, all of those skills, came to bear on the cloning fight in 1997 and 1998. I was in the perfect position to lead the effort, and I won. That's what you hope for in a public service career. In my view, if the only thing I had ever done was the human cloning fight, that would probably justify my whole public service career.

The stakes back in 1997 and 1998 were large. With embryonic stem cells, it could be that we have a special cell that can be transplanted into a patient to repair any cell in the body—cells for your eyes, heart, liver, kidneys, muscles, or nerves. We could have a special cell that could repair the damage that disease and aging do to these cells and organs. We could secure a stem cell that could regenerate the patient's organs, make them young and viable again.

Half of health-care costs arise from the degeneration of organs. This includes degeneration of the skin, nerves, eyes, internal organs, and brain, and it includes damage from aging and disease. If we can transplant a stem cell that could regenerate the damaged organs, it potentially could revolutionize human life and medicine. This is a far-off dream. It will take at least ten or fifteen years to know how much of this dream is real. It's already been seven years from the original legislative fight over whether to curtail or ban this research.

The stakes in this fight were and remain potentially very high, the highest. This is what the fight was about. We won't know for many years whether or not embryonic stem cells can do any or all of this, but the potential is so great that it's worth fighting to continue this research. That, at least, is my perspective. I don't believe it is wise policy to ban scientific research that could revolutionize human medicine.

This was a complicated fight to lead in part because I'm a lawyer. Leading this fight meant that I had to understand oocytes, zygotes, embryos, blastocysts, mitosis, haploid and diploid cells, somatic cell nuclear transfer, enucleated eggs, spare embryos, totipotent cells, pluripotent cells, differentiated cells, customized stem cells, histocompatibility, and a whole variety of other incredibly complicated scientific and medical concepts.

I became sufficiently familiar with all of these concepts so that I could lead this fight without being challenged by any expert. I can say that I never once misstated the status of the science or what it might lead to. I never engaged in hype. I fought very hard to preserve my

credibility on these very complicated issues.

It's typical of a Senate career that you are constantly being dragged into fights where you initially know nothing about the subject matter, and all of a sudden you have to assemble a degree of expertise sufficient so that you can explain things to people and persuade people about how they should act and vote. I have never been in a fight where the issues, technically speaking, were as complicated as they were in the embryonic stem cell fight.

What was even more amazing about this fight was that everyone was obfuscating the issues—both sides. Nobody was telling the whole truth about what this debate was about. Basically it was a conspiracy between the right and the left to claim that the issue was something other than what it was. The Republicans and the Right to Life community thought cloning was the political slogan that would win the day. They don't want to admit that they were trying to criminalize medical research. Now [George W.] Bush comes along and says he will provide some government funding for some stem cell research at the same time he is trying to criminalize other stem cell research. All of it based upon the idea that life begins at conception.

**RITCHIE:** When you said cloning, you meant that they were going to use the slogan of “human cloning” as something to use in campaigning, because cloning had a negative connotation.

**LUDLAM:** Yes, correct. Most polls find that people oppose “human cloning.”

**RITCHIE:** Okay. You could explain everything in that way because it was an easier concept for the public to understand.

**LUDLAM:** That was a slogan that Republicans believed would work best for their side. The Democrats used “stem cell research” as their slogan of choice. They don't want to admit that they are willing to destroy human embryos for medical research purposes. They don't want to admit that they don't believe that life begins at conception. In short, both sides were playing very fast with what is really at stake as a matter of science.

For the Right to Life community, the effort to ban embryonic stem cell research has been a radical departure from its traditional agenda. It had been making great progress in

seeking to ban third trimester abortions, where you might be aborting a viable fetus. I think that almost everybody is squeamish about third trimester abortions. This revulsion is what led to enactment of the ban on partial birth abortions.<sup>131</sup> I think this ban will turn out to be unconstitutional,<sup>132</sup> but it was quite a big political effort and they secured the enactment of a ban on some kinds of abortions.

In the stem cell fight, the Right to Life community has changed the focus from a third trimester fetus to a zygote or embryo that is smaller than the head of a pin. This is a totally different focus, visually, emotionally, and politically. It isn't clear to me whether or not this fight to criminalize embryo research will ever prove to be an effective one for the Right to Life movement. I can't imagine they will get as much political traction opposing embryo research as they have gotten with opposing third trimester abortions.

It's a bit strange that the Right to Life community came out opposed to this research. These zygotes or embryos—from which the embryonic stem cells are extracted—are not created by conception or artificial insemination. In fact, there's no sperm involved. There is no father. These zygotes or embryos are laboratory constructs, completely unnatural. As I will explain, the process of deriving stem cells starts with oocytes, eggs that have not been fertilized. Then the nucleus of the zygote is extracted and the diploid nucleus of a patient is inserted. Then the stem cells are harvested and the zygote or embryo is effectively destroyed.

The oocytes that are used for this procedure are those that are left over in invitro fertilization (IVF) clinics. For IVF to work, the technicians harvest many more oocytes than they eventually use. Harvesting oocytes involves inserting a needle into the vagina and the ovaries to extract oocytes from a follicle. They use suction to extract the oocytes.

If IVF—that is reproduction—is the goal, the technicians fertilize all the oocytes with the father's sperm and see which zygotes or embryos look to be the healthiest—a sort of “beauty contest.” Only the healthiest zygotes or embryos are implanted to induce a pregnancy. The rest of the unfertilized oocytes are frozen for possible later use by the couple.

There are hundreds of thousands of these frozen oocytes and embryos in IVF clinics around the world. The vast majority will never be used and eventually they'll be discarded. It makes sense to me to use these spare oocytes and embryos to develop embryonic stem treatments for patients rather than let them sit in freezers or discard them. I find it interesting

and a little strange that the Right to Life movement has switched its focus to these laboratory creations. I guess, even if there's no sperm and no father, the fact that we end up with a zygote or embryo makes this similar enough for them to fertilization so that they find it abhorrent. Apparently, they believe that all of these zygotes or embryos have all the constitutional rights of you and me and that none of them can be destroyed or used as the means by which we develop stem cell treatments for sick patients. I don't know if this makes any sense medically or politically.<sup>133</sup>

For the biotech industry, the medical research community, and the patient advocates, the cloning/stem cell fight was the first fight over criminalizing some basic biomedical research—a watershed event. It's the first major conflict between those groups and the Right to Life community. I predict it'll be the first of many fights. If you think about it, all of the genetic tests that women perform during pregnancy—and eventually there will be thousands of them for every type of disease and condition you can imagine—might be connected to abortions. Eventually people might want to use these tests to select for size, intelligence, and lots of other characteristics—not just for diseases.

Eventually we are going to have a massive conflict between the medical insurance community, the biotech community, the pharmaceutical industry, and the patients, and the Right to Life community. This was the first of those fights. Now, seven years later, we can see the embryonic stem cell fight in a little more focus. But back in 1997 and 1998 the industry, patient, and medical research community was totally and completely unprepared. It is no exaggeration to say that because of this lack of preparation to defend embryonic stem cell research, the Congress was poised to set criminal penalties on this research. By all rights, those of us who were defending this research should have lost this fight. We were totally on the defensive. We were caught by surprise. Basically the story I will tell is how we managed, against all odds, to win a stunning victory.

It all began with Dolly, a Scottish ewe. Dolly was born on July 5 of 1996 as the result of an experiment, Ian Wilmut's experiment, at the Roslin Institute in Scotland. Dolly was the first mammal cloned from another mammal. Her DNA was exactly the same as the DNA of another lamb, another ewe. The reason why she was called Dolly is the cell that was used to create her was a mammary cell from the other lamb. Wilmut associated mammary cells with Dolly Parton. That mammary cell was Dolly's starting material. So Dolly was genetically identical to another ewe.

I think most people understand that there are good reasons why we want animal clones. There's a lot of value in cloning animals. I'll talk about that in a minute. One of the strangest things about the Dolly case was that when her existence was announced, that was February 19 of 1997 in the *New York Times*, nobody talked about animal cloning. They skipped right over that and talked about human cloning! This was one of many strange twists and turns in this debate. We've still not had a debate about animal cloning.

The way they created Dolly is truly fantastic, and I am really quite surprised that a Nobel Prize has not yet been awarded to Wilmut for his experiment. I think he'll probably get one at some point. Wilmut started with a lamb oocyte, an unfertilized egg which has only half of the DNA of a fertilized egg. It's a haploid cell. Normally, when you want to take this egg to term—to birth—you combine the egg with a sperm. You use IVF to secure a fertilized egg or a zygote. This is an embryo that has a full complement of DNA, a diploid cell. When you introduce the sperm, you get a fertilized egg that has different DNA from either of the parents. You get a mixture of their DNA, and therefore it's not a clone. That's where you get variety, and that's where you get the possibility of evolution.

Dolly's egg was not fertilized and there is no mixture of DNA. Her DNA is exactly the same as that of the ewe from which the mammary cell was extracted. The way Wilmut did this was completely amazing. He started with the unfertilized egg. He took the nucleus out of that egg. The nucleus he extracted was a haploid nucleus—with half the DNA of an adult cell. This yielded an enucleated egg, an egg with no nucleus. Then he took the mammary cell, extracted its full, diploid nucleus and introduced it into the enucleated egg. Then we had an egg with a diploid nucleus that is identical to the nucleus in the other ewe.

Wilmut had created the equivalent of a fertilized egg. It wasn't a fertilized egg, but it is the equivalent of a fertilized egg because it has the full compliment of DNA, a diploid nucleus. This process of extracting the nucleus and introducing a new nucleus is called "somatic cell nuclear transplant."<sup>134</sup>

Wilmut then implanted that "fertilized" egg into a ewe, brought it to term, and Dolly was born. And Dolly's DNA was the same as the DNA of the mammary cell from which the diploid nucleus was taken and implanted into the cell. She was a clone. The thing that is really bizarre here is that the nucleus that they brought in from the other ewe was a differentiated cell. There's a difference between a differentiated cell and an undifferentiated

cell. An egg or a sperm is an undifferentiated cell. It is a cell that could become any cell in the body. There are approximately two hundred and ten different types of cells in the human body. The egg and sperm, once combined, first become an embryo and then later they differentiate into all these different types of cells. Some of the cells become eyes, teeth, or whatever. We don't fully understand the process by which the fertilized eggs differentiate into a full blown human being. There are apparently regulatory genes that control cell differentiation, telling one cell to become one type and another to become another type of cell.

In this case, Ian Wilmut took a differentiated cell that had become a mammary cell, extracted its nucleus, inserted this nucleus into an enucleated egg, and caused the DNA to de-differentiate to the point where he had the equivalent of a fertilized egg that had not differentiated. Getting this differentiated cell to de-differentiate was the key, the act of genius for which Wilmut deserves a Nobel Prize. So Dolly was a clone. Clone means copy. Wilmut started with a mammary cell of one ewe and created a whole new ewe with the same DNA.

In terms of cloning animals, it's clear that there is value in growing copies of a cow that is a fantastic producer of milk. At some point, Churchill Downs is going have to decide whether or not a clone of Secretariat is eligible to run in the Kentucky Derby, and Westminster is going to have to decide whether a clone of Mick is going to be able to compete.<sup>135</sup> At some point we'll have controversy about animal clones, but nobody is trying to ban them at the moment. But human cloning has been and continues to be a fantastic fight.

It is possible to legislate a ban on human reproductive cloning saying that anybody who creates Dolly in human form is a criminal. The law can say that you cannot create a duplicate, an artificial twin if you will, of an existing person using somatic cell nuclear transfer, and de-differentiation of a diploid cell, to create a clone of an existing human being.

One question in such a law is whether the woman who carries that clone to term is the criminal or whether it's only the scientist and the medical people who are the criminals. That's a question the Right to Life movement by and large has dodged with regard to abortions—they do not propose to make the woman who has the abortion the criminal but only her doctor. I'm assuming they might want to dodge this issue in regard to cloning as well.

Instead of wanting to ban human reproductive cloning, however, the Right to Life community wanted to ban embryo research. Even if the constructed embryo was never implanted, even if the embryo was never brought to term, the Right to Lifers wanted to ban the research itself, to ban the creation of an embryo with the same DNA as someone else.

One of the strange twists here is that the Right to Life community only wanted to ban some embryo research and not all embryo research. It probably wants to ban all embryo research, but its legislative proposal would only be to ban some embryo research. This is another strange twist. This is where we get to embryonic stem cells. Perhaps you thought I'd never get to them! The question is what does embryo research have to do with stem cells?

**RITCHIE:** Right, why make the distinction?

**LUDLAM:** I'll explain. It gets very strange. If we start with a zygote, our early stage embryo, it begins to divide and you get daughter cells. After about the fourth day the organism, the zygote or the early stage embryo, begins to differentiate into a fetus with arms and legs and all of the organs. But for the first four days it is simply dividing and every cell is identical to every other cell. We don't fully know what happens that starts differentiation, and we don't fully understand how the differentiation occurs. Apparently there are some signaling genes that say: you're going to become skin; you're going to become liver; and the organs begin to develop into a fetus. The embryo goes from being a blob of identical cells to a fetus of differentiated cells.

During those first four days, these cells are embryonic stem cells. They're dividing but not differentiating into different types of cells. It remains possible that any of these cells can become any type of cell. Once you have extracted the stem cell, you have what's called a "totipotent" cell, meaning it is a cell that could become any cell in the body. It could also become a person if it's implanted and brought to term. It's either the equivalent of a fertilized egg or just a specialized differentiated cell, depending on what you manipulate it into being. Unfortunately, in order to extract a stem cell from an embryo, you have to destroy the embryo.

The reason we want these stem cells is because if we could control differentiation, we could tell this stem cell to become cardiac muscle cells to treat heart attack victims, or skin cells to treat burn victims, or spinal chord neuron cells for treatment of spinal chord

injuries, or pancreatic cells to treat diabetes. We would transplant those cells into a diseased person or an aged person to regenerate an organ that had been damaged.

Strangely, the Right to Life movement was not trying to ban all of this research. What it was trying to ban was the creation of a certain specialized kind of stem cell, which is a stem cell that has the same DNA of an existing person, a cloned stem cell. It was not trying to ban the extraction of stem cells from embryos that are created through normal fertilization or IVF where the DNA is not the clone of any other's DNA.

These two types of stem cells are critically different. What researchers want to do is create a customized stem cell with the DNA of the patient they want to treat. The reason they want to do it is because that stem cell will not be rejected through histoincompatibility.<sup>136</sup> This is the problem with organ transplants because the organ comes from somebody else who doesn't have the same DNA as the patient. Rejection is a huge problem with these transplants. In order to make these transplants work, they have to suppress your immune system to ward off rejection of the new organ.

This explains why with stem cells, they want the stem cell to have the same DNA as the patient. What they take is an adult differentiated cell from the patient (like taking the mammary cell Wilmut used to create Dolly); they use somatic cell nuclear transfer to create an embryo which has the same DNA as the patient; they extract a stem cell from that control differentiation; they transplant that cell into that patient; and the cell is not rejected by the patient's immune system. That is the kind of stem cell that was the subject of this debate, not stem cells generally and not embryo research generally. Only the creation of customized embryos and customized stem cells for the treatment of patients was at risk.

The reason why it became so controversial is because that same embryonic stem cell could be implanted in a woman and brought to term as a clone of the other person, of the patient. That isn't the purpose of this research, but it could be done, theoretically. As I said earlier, it's possible to enact a ban on implanting a cloned, customized stem cell that has DNA that is identical to the DNA of an existing person. So you can permit the research but not the implantation. It is also possible to ban the creation of customized stem cells without banning the creation and even the implantation of other embryonic stem cells. There are two issues here; the debate only focused on one of them.

**RITCHIE:** The Right to Life group was willing to admit that there were two categories?

**LUDLAM:** No, they didn't admit that they were only attacking one type of stem cells and they didn't admit that they were attacking the creation of these stem cells, not the implantation of them. They would be happy to ban all embryo research, I'm sure, but they only proposed to ban some of it. They only proposed to ban the stem cell research that is the most important and the most useful.

They were not proposing to ban embryo research to create non-compatible stem cells. They only wanted to ban research that created customized stem cells that could avoid tissue rejection. The implication is that tissue rejection is a good thing and suppression of the immune system is an effective strategy!

Another strange twist in this story—and this is why it's fun to be in public service—was that in 1997 and 1998 we had not yet isolated a human embryonic stem cell. These stem cells didn't exist in the laboratory. So this entire fight about stem cells in 1997 and 1998 was about something that didn't yet exist. Embryos existed, and we thought we could use somatic cell nuclear transfer to create cloned stem cells, but it hadn't yet been done. So this was a theoretical debate, charged up with all kinds of emotions.

On November 6, 1998, researchers announced that they had isolated a human stem cell. James Thompson of Wisconsin and John Gearhart at Johns Hopkins announced that each of them had separately isolated human stem cells. They are now generally available, but at the time of this debate, they didn't yet exist.

Another bizarre chapter in this story occurred in 1997 when the existence of Dolly was announced. My boss at BIO, without consulting me, immediately went on the television to announce that BIO would support criminalizing human cloning. My immediate reaction was absolute horror because I knew, instantly, that the Right to Life community was going to use this as a vehicle and excuse to ban embryo research. I knew that they would mislead people about the nature of legislation. I knew that they would call it cloning, and actually attempt to ban customized stem cells. I didn't know all the details but I had a clear vision that if BIO supported criminalizing human cloning, we would give the Right to Life community a clear shot at banning vital biomedical research.

It so happened that a week later, BIO had a board of directors meeting in San Diego. I challenged my boss in front of the board of directors. I said that we should oppose any criminal ban on human cloning because it would be used by the Right to Life community to ban embryo research. The board backed me and my boss threatened to fire me. He was enraged at my embarrassing him in front of the BIO board. He didn't fire me but he threatened to. So this whole initiative at BIO started off with a bang.

**RITCHIE:** He took that position presumably because he thought that a ban on human cloning would protect him. In other words, give on one side, and he'd be free on the other. But your position was if you give in on one side, you're vulnerable on the other side?

**LUDLAM:** Correct. He thought it would be popular for the industry to oppose human cloning. He wanted to look good and try to get out in front of what he viewed as a tidal wave. I knew instantly that human cloning wasn't what the fight was really going to be about. It was going to be about embryo research, not human cloning. At any rate, as I ventured into this brawl in the Congress, I had a very skittish board and an enraged boss.

One key issue in this town that goes to the heart of these fights is when you risk your job. I was almost fired at the Carter White House. Here I was almost fired at BIO. In my view, if you don't stand up for your views, you shouldn't play this game. It can be a tough game. And there are victors and vanquished. You have to take risks and you have to be willing to lose and be fired. Simple as that. If this isn't your constitution, you should play a more gentle game. In this case, my view of the matter turned out to prescient.

Exactly as I feared, Vern Ehlers [R-Michigan] in the House introduced a bill that used broad and fuzzy language to ban stem cell research generally and not just ban human reproductive cloning. There were hearings on that bill in the Connie Morella subcommittee over on the House Science Committee. Three or four days of hearings. I had about 150 biotech companies located in Montgomery County, her district. So we expected that she would help us defend this research. She was regarded as a moderate and independent Republican. James Sensenbrenner, who was the chairman of that committee, was a Right to Life supporter. I was sitting in a meeting with Connie Morella's top staffer when Jim Sensenbrenner's top staffer came in and, in front of me, told the Morella folks that they would cede jurisdiction over this bill, it would move to and through the full committee, and they would report a broad ban on this research. Without uttering a peep of objection, Connie

Morella let that happen.

To be clear, I always thought Morella was a member who rarely did anything. This was explicit and graphic confirmation of that impression. Later, when Ira Shapiro, among others, ran against her in the next election, I would have loved to have “outed” Morella for selling us out on stem cell research. Ira was an old friend of mine from the Senate Legal Counsel and Ethics in Government Act bill, and I was a big backer of Ira, but I couldn’t come out and tell this story because I was then employed by Senator Lieberman. What I would have said is that Connie Morella sold us out to the Right to Life community, without a whimper or peep.

So, the Ehlers bill went to the full committee. For the full committee markup, I didn’t even go to Morella’s office for help. I went to Lynn Rivers from Michigan. She offered several amendments, and lost them all. The committee reported out the Ehlers bill on August 1, 1997. It was referred to the House Commerce Committee and things were fairly quiet the rest of 1997.

I knew that 1998 was going to be worse. I had seen that the Catholic Bishops were organizing the whole effort in the House. So I went to all of the patient groups warning, “They’re going to try to criminalize some stem cell research.” I made multiple attempts to organize the patient community and the medical research community in defense of this research, and none of them agreed to do anything. I had no coalition. I had no supporters. We were completely disorganized.

In January of 1998 the entire fight went nuclear. We still had no coalition, no followers, no troops. I had just hired a new staffer who joined me on January 5, Nancy Bradish, an Irish redhead who turned out to be a brilliant fighter. She came out firing and running. She was a passionate advocate and crucial to our success in this brawl. I absolutely loved my time in the trenches with her. I have enormous respect for her brains, her fire, and her love of battle. She’s also a zany and delightful person to be around.

Two days after Nancy arrived at BIO, Richard Seed in Chicago announced on National Public Radio that he was going to clone a human being.<sup>137</sup> Can you imagine finding a provocateur named “Seed” as the guy who wants to clone a human being? It’s right out of central casting.

That day, [Senate Majority Leader] Trent Lott said that the first action of the new session of Congress was going to be to pass a criminal ban on human cloning. I knew what that meant. I knew that meant that they would criminalize embryo research.

So January 7 through February 12 were the thirty-seven days from hell for me and Nancy. It is the most intensive legislative work I've ever done. Much more intensive than Hart-Scott-Rodino or anything else I've ever worked on. Absolute pandemonium for thirty-seven days. Nancy and me against the entire Right to Life community.

Kit Bond was the leader of the whole cloning ban for Lott. Their ban was not a ban on reproductive cloning. It would criminalize the creation of an embryo that could be implanted, even if it was never implanted, but only if that embryo was one that had the DNA of an existing person.

I have a day-by-day chronology of what Nancy and I did during those thirty-seven days. I'm going to put it into the appendix to these interviews because it is a chronology of what a fight looks like from the trenches. It reveals an absolute frenzy of activity.

My strategy was simple. I was going to leave the trench and see if anybody would follow me. It was like World War I. Someone rises up and goes over the parapet and takes the bullets or the gas. Sometimes others follow and sometimes they don't. I said, "To hell with it. I'm going." I had no idea if anyone—my board, my boss, or any coalition—would follow me. I only knew Nancy would.

I knew that my board of directors was skittish and confused. My boss had already threatened to fire me once on this subject. I had no coalition. I knew that I was taking BIO into the teeth of the Right to Life movement, into the teeth of Trent Lott, and ultimately into the teeth of the House Republicans. I knew this would be bloody. If that meant the end of my career at BIO, so be it.

To be honest, I didn't go to my board and ask them whether they wanted to engage in a frontal confrontation to defend embryo research, to fight the Right to Lifers, or to fight the Republicans. I didn't go to my boss to alert him about what this would look like. I had a vivid imagination about how bloody it would be, but I did not share that with my board or boss. I had Nancy, who was born to fight. That was it.

As you'll see in the chronology, Nancy and I divvied up seventy-five meetings on the Hill in those thirty-seven days. We held massive briefings for patient groups and for Hill staffers. In the end we organized a coalition of seventy patient groups. We had dozens of Nobel laureates decry this ban on stem cell research.

At one point I held a seven-hour conference call with the researchers from Roslin so that I would technically understand what the hell this research was about. I had to learn all of this science. I didn't want to make any misstatements about the science. They hadn't yet isolated a stem cell. I didn't want to make any claims about what was or wasn't at stake, and what could or couldn't happen from stem cells, unless it was entirely accurate.

I'm happy to say despite the frenzy of the process, I can look back at the documents, look back at the testimony, look back at the statements, and I think I did not misstate anything even once. I'm very proud of that because the pressure on us was just phenomenal. Every day was pandemonium. Like kickboxing. Every appendage flailing

On February 3, Trent Lott and Kit Bond introduced their version of the ban. Just as I suspected, it said it shall be unlawful for any person or entity, public or private, in or affecting interstate commerce, to use human somatic cell nuclear transfer to create an embryo. It wasn't a ban on reproduction; it was a ban on research. This research would yield a ten-year criminal penalty plus civil fines. The term "human somatic cell nuclear transfer" was defined to mean taking the nuclear material of a human somatic cell and incorporating it into an oocyte from which the nucleus has been removed or rendered inert and producing an embryo.

**RITCHIE:** Do you have any suspicions as to why they came out so focused on creating the embryo when they could have separated the cloning issue from embryo research?

**LUDLAM:** I don't. I'm not a party to their decision-making process. The Catholic Bishops have always opposed embryo research. They believe that a fertilized embryo is the equivalent of a human being.<sup>138</sup> This was a chance for them to use "human cloning" as a subterfuge to enact a criminal penalty for some research involving embryos.

**RITCHIE:** To start with the broadest possible attack on the issue?

**LUDLAM:** Well, they apparently made the calculation that they couldn't seek an across-the-board ban on embryo research, that they could only seek a ban on a certain type of research they could call "cloning." I don't know why it was so limited.

It strikes me as unprincipled, opportunistic. I think they must have calculated that the public might not support a general ban on all embryo research, but they could potentially seek an enactment of a legislative ban on human cloning embryo research. I don't know. The Catholic Bishops made a corporate decision that that's what they would go after.

Complicating this situation was that Kit Bond was running for reelection at the time and Missouri is well known as a having a very strong Right to Life movement. In the middle of all of this, we knew that we needed an alternative to what we anticipated would be the contents of the Bond/Lott bill. I had days, and days, and days of negotiation with Diane Feinstein's and Ted Kennedy's staffs so they would propose an alternative to the Bond-Lott bill, which is a ban strictly on reproductive cloning and not on embryo research. It was very difficult to draft.

My great hope was that Bill Frist would be our champion because he was a transplant surgeon and he understands organ rejection. He understands histoincompatibility. We made sure that he and his staff understood that the only research that was going to be banned was customized stem cells, and that the only purpose for creating customized stem cells was to avoid cell transplant rejection. There is absolutely no doubt in the world that he and his staff knew exactly what the science was all about, and exactly what was at stake. But Frist joined Bond and Lott.

He is still joined to Bond and Lott on this issue. It's clear that the reason for this is that he has ambitions in the Republican Party, and that's the only position he can take. But given what he knows about the science, his support for a criminal ban on this science is absolutely unconscionable. There's nobody who has ever served in the House or Senate who knows more about what is at stake in this fight than Frist. The whole purpose of stem cell research is to avoid transplanting organs, whole organs.

When you know what's going on in a fight, and you know what somebody knows, and you know what they finally choose to do, you take the measure of the person. I admire Frist in many other respects, but in this one I think what he did was absolutely

unconscionable. His personal knowledge that we were banning the most useful stem cells is unquestionable, so I believe he was giving priority to his political position over his Hippocratic Oath.

On February 11 we finally got to the cloture vote on the Bond and Lott bill. Lott needed sixty votes to get cloture. He got forty-two. Twelve Republicans defected to join us, including Strom Thurmond. We had others who would have joined us if we ever needed them. We crushed him. We absolutely humiliated Trent Lott.

**RITCHIE:** Do you think he had any inkling that it was going to turn out that way?

**LUDLAM:** Only some. My goal in this fight was not simply to win. It was to crush Lott, and the Republicans, and the Right to Life movement, because I did not think my side had the power to sustain a year-after-year-after-year fight with the Right to Life community. My effort was not simply to win, but it was to crush them, because I thought that they would eventually win a war of attrition. It's now seven years later and they still haven't won and I think they will never win.

**RITCHIE:** Did you focus most of your attention on Republicans, assuming Democrats were on your side on this issue?

**LUDLAM:** Yes, I personally had meetings with the Right to Life staffers in about twenty-five Senate offices. This was a very interesting cross-cultural experience for me. I went in and said, "You're on a high moral plane and so am I. You are not on a higher moral plane than I am." I knew we probably couldn't get many of them, although we did get Thurmond and eleven others. He had, I think, a granddaughter or a niece who had diabetes.

Connie Mack was an absolute hero in this process. His family is rife with cancer. He stood up and was our leader for our side of the debate. Mack was ambiguous until the end, but then he came out for our side. I am told that there was a screaming confrontation between Mack and Bond, after Mack came out in favor of our side of the debate. I was not a witness. Bond is well known for being nasty.

**RITCHIE:** I think a lot of people were quite surprised because Mack had been so conservative in the House of Representatives. He hadn't been quite as ideological in the

Senate as he had been in the House, but still that was a remarkable break for him. At one point Senator Lott said to him, “Well, with you of course this is personal.” And he said, “Of course it’s personal.”

**LUDLAM:** Sometimes politics is personal. In the middle of our massive preparation for this cloture vote in the Senate, the House Commerce Committee was scheduling a hearing for the next day, February 12, on this issue. In addition to lobbying the Senate, I was also lobbying every member of that subcommittee, lining up my witnesses, and drafting their testimony. More pandemonium.

Mike West was my witness. He’s a fantastically interesting, almost totally uncontrollable human being, who would love to talk about Catholic theologians in the Middle Ages, or lots of other stuff, rather than stick to a script. I drafted Mike’s testimony very tightly, to talk absolutely accurately without speculating about anything. I had a four-hour briefing of him the day before where I told him on about forty occasions, “Do not leave the script. Do not talk about that. Do not talk about that. Do not talk about that. Do not talk about that.” I just went on and on and on trying to keep him under control.

**RITCHIE:** Did he stay under control?

**LUDLAM:** He did. I was sitting behind him. I was going to kick him if he didn’t stick to the script. All but two members of that subcommittee backed us. There were only two members on that subcommittee who supported the ban. So I crushed the Republicans in the Senate on February 11, and I crushed them in the health subcommittee in the House on February 12.

As you would expect, on February 17 we were invited—compelled is the better word for it—to what we all refer to as the “woodshed meeting.” The Republican leadership in the Senate and House called us all in—BIO and our allies—to scream at us about how we had embarrassed them. They accused us of lying and misrepresenting the facts, which was absolutely not true. We sat and took their invective for forty-five minutes, and then we said to them, “If you ever try to ban medical research again, we will do exactly the same thing.” We didn’t blink or back off an inch.

**RITCHIE:** Who were the leaders who called you in?

**LUDLAM:** Lott's staff, Bond's staff, Frist's staff, and who was the majority leader in the House?

**RITCHIE:** Dick Arme y?

**LUDLAM:** Arme y's staff, all of them. We looked them in the eye and said, "We do not regret a thing. We never misstated a fact. And if you do it again, you'll get exactly the same response." If you don't stand up to your friends in this game, they'll run all over you.

You have to stand up and tell them that you stand for certain things, and there are certain things that you will never support even when it is your friends who support them. Of course, the Republicans are much more the industry's friends than the Democrats. They didn't like our defiance, of course, but I think they had some respect for the fact that we didn't give an inch. If people think you can be intimidated, you're finished.

**RITCHIE:** It seems that their position was not an effort to see where there was room for compromise. It was to establish a position and to force it on you.

**LUDLAM:** Sure.

**RITCHIE:** They weren't consulting with you to see what you were seeking.

**LUDLAM:** No.

**RITCHIE:** They were imposing a decision to ban some research.

**LUDLAM:** Absolutely. That forced us to fight and embarrass them. I view this as entirely their fault, not ours. We were on the defensive. They were the offenders. We'd warned them and we'd given them expert and accurate information about the medical value of the research they were banning. Frist could not have been better positioned to understand these points.

To make matters even more strange, on February 13, two days after I had won the cloture fight in the Senate and one day after I had won the day in the House Commerce Committee, the chairman of the board of directors at BIO announced to my boss that I had

to be fired. He went to my boss and said, “Ludlam has to go.” The reason for this was that he was a die-hard Republican, and he had gotten calls from his Republican friends on the Hill saying, “Your little boy here has embarrassed us and we want him out of BIO. He’s persona non grata here.” That came from a staffer of [Congressman Tom] Bliley at House Commerce who was well known as a bully.

So instead of being able to celebrate one of the greatest victories, probably the single greatest victory of my entire career in politics, I spent the next six months defending my job. It was brutal. It was surreal. It was vicious. It was nasty. It was ugly. And I survived it.

This was just what happened with the Regulatory Flexibility Act fight when immediately after my victory Frank Moore tried to fire me. In this town, winning is just the beginning. Before you start celebrating, you need to watch out for retaliation! People who lose get pissed and try to get even. That’s this game at its essence.

This proposal to fire me was never discussed by the board. I don’t know if he ducked or just cooled off or he was fearful we had the votes to beat him. We attended two board and two executive committee meetings not knowing if he’d bring this up. I had to be totally prepared to defend myself. It was very tense and uncomfortable.

My boss was backing me. He knew that if one member company with a partisan political interest in an issue could get the top lobbyist fired, the trade association would be forever vulnerable to that kind of intimidation. And if it got public, it would be even more embarrassing to BIO. It would look like it was bought and sold to the Republicans and had become their toady.

As far as I’m concerned, this fight was absolutely worth the price. If they had fired me, I could have handled that. I made a decision in San Diego the year before to challenge my boss in front of the board of directors and got them to oppose a ban on cloning. I’d almost gotten fired then. Then I made a decision to leave the trench to fight the Bond bill and almost got fired. In both cases, if I had been fired, so be it. I could live with myself and be proud of the risks I had taken and the skill with which I’d won the day.

**RITCHIE:** Do you think after the six months of battles, did they begin to realize what a victory they had won? Or were they more worried about their continuing relations

with the leadership on the Capitol Hill?

**LUDLAM:** I don't think the board understood the importance of this fight, that it was a rite of passage for BIO, that it said a lot about BIO's values. In terms of relations with the Hill, this fight had no negative impact on the industry's relations with the Republicans. Adults move on in this political game.

Since then, the embryonic stem cell fight has devolved into a fight that is trench warfare between the patient community and the medical research community and the Republicans, but not BIO particularly. At the time it was only me and Nancy. We were the only people out front, but eventually we had allies and they've carried on the cause. Dan Perry is the key guy, with the Alliance for Aging Research.

I think it is a rite of passage for a trade association to have an experience like this. Trade associations tend to be risk averse. They don't like to make enemies, especially with the people who tend to be their best friends. I don't think my board or boss felt they were adequately consulted by me about how nasty this was going to get. The truth of the matter is that I didn't consult with them because I didn't want them to stop me. [Laughs]

It's clear that I led them into something where I knew how grim it would be and they didn't. But my personal judgment was that it was worth the risk, and that they had to stand on our principles. We could never support criminalizing of any medical research. Even trade associations have to stand for something. So I didn't and won't apologize for what I did for a second. The risks that I took were totally and completely justified and in the best interest of BIO, its members, and the entire biomedical community.

Since then, we have seen Ron Reagan testifying at the Democrat National Convention. We have Nancy Reagan involved. It's now an issue in the presidential campaign. We have seen Proposition 71 in California where they are going to set aside three billion dollars for stem cell research. And the administration has just backed off its attempt to secure a UN resolution banning cloning worldwide. Now it is hard to imagine how close we got in 1997 and 1998 to a criminal ban on this research.<sup>139</sup>

**RITCHIE:** You talked about how complicated the issue was for you. It's always hard to sell a complicated issue to a public audience but if the "cloning" slogan had worked, that

would have been a nice way of presenting it because it would have been a very simple way for people to understand. But it seems to me that the response in return has been to explain the benefits of this type of research. That's what's made Nancy Reagan's stand and Ronald Reagan, Jr.'s stand a remarkably popular one. It's also remarkable that there have been very few internally divisive issues like that within the Republican Party, which has been fairly cohesive in recent years.

**LUDLAM:** We were selling hope. We had to speculate about what we could do with embryonic stem cells. Hope is an important commodity in politics. The problem was that we hadn't even isolated a stem cell, which was why this debate was so dangerous for our side. Now that we have stem cells and there's a huge coalition favoring this research, it's an even fight. Back in 1997-1998 it was a very unfair battle where by all rights we should have been annihilated. The other side was peddling fear of human clones, a very powerful argument.

I think all politics has devolved into a debate about emotions and values. It is no longer just issues. Everybody is selling hope or fear and I think that's part of why politics has become so nasty. I think it's the advertising profession that has taught us how to segment and motivate people, and they segment and motivate you with hope or fear. Politics has learned to play the same game.

In terms of the Stanford students, let me say that one hopes in a career that when something like this happens you have the skills to lead a fight and win. This is when we can apply all that we've learned in all our years in the trenches, so we know instantly, minute by minute, what we have to do to win. We know who we have to meet with. We know what's coming next. We know how to persuade people. We know how to explain the facts and concepts. We know the parliamentary situation. We know how to draft bills and amendments. We know how to make our arguments, position ourselves, and organize a coalition. We have *all* of those skills that enable us to fight with the best in a fight that is very emotional, very fast paced, and very important.

I'm very proud of the risks that I took, and the result that we got, but it took all of what I've learned over the previous decades to win. You can't engage in politics for a few years and assemble those skills.

**RITCHIE:** Now when you're starting on a project like this, and you've got an issue

that has a deadline as a bill is being called off the calendar and coming down the pike, is there an existing network on Capitol Hill on an issue like medical issues that you can begin to plug in and get active and get on your side? Do you know staffers and senators and representatives who were likely to be your allies?

**LUDLAM:** Yes to some extent we had a network, but of all of the people I worked with on this issue who were on the Hill, I probably only knew one or two of them before the fight started. We had relationships with some members, but this was a whole new fight, and a whole new issue. We were really starting from scratch. The pace of it was so phenomenal, and the issues were so complicated, that even though I worked on this a little bit the year before, we were caught essentially flatfooted at the time this hit us.

**RITCHIE:** You mentioned the senators that disappointed you, but were there any senators who really came through on the issue?

**LUDLAM:** Feinstein and Kennedy took the lead on the other side. They introduced the alternative bill and did a very effective job of organizing the other side of the debate. I have great respect for both of them—they are talented members who are willing to fight. Connie Mack was critical.

When we started, essentially nobody on the Hill understood what the issue was about. They didn't understand what stem cells were or could become. They didn't understand the process of somatic cell nuclear transfer. Literally I had to walk several hundred people through all of what I have explained here, which is not easy stuff for anyone to understand.

We were always careful to explain that the Republicans and the Right to Lifers were not trying to ban all stem cell research. We're trying to be honest, and fair, and factual. They were only banning some stem cell research. Well, of course that confused people the most. They'd ask, "Why aren't they trying to ban all stem cell research?" Then we tried to explain why the research they were banning was so valuable. It was so strange and we hadn't yet isolated stem cells. It was surreal, it was completely surreal. There was so much misleading information. There were so many emotions. There were so many charges. It was just absolutely pandemonium for those thirty-seven days.

**RITCHIE:** I heard Senator [John] Cornyn of Texas give a talk recently in which he

said the big problem on Capitol Hill is that senators rarely read the bills that they vote on. The implication on that is that people don't bother to learn a lot, but learn only what they need to know. Is that an accurate account? Or did senators and staff go out of their way to try to figure out this complicated issue? If twelve Republican senators bucked their party, they had to have had some motivation and understanding of the issue.

**LUDLAM:** Well, both sides in the debate were offering misleading information for different reasons. The Democrats did not want to say that they were willing to destroy human embryos for medical research purposes. The Republicans didn't want to explain that they wanted to throw scientists in jail and ban research on the most useful type of stem cell.

We had both sides misleading everybody, and neither side being honest, which makes it especially difficult for an outsider who has a commercial interest to try and set things straight. In the end, I think we were able adequately to explain that these were artificial embryos that were not fertilized, that they could be implanted, could be brought to term, and could yield a clone, but that we had an entirely different use in mind.

I understand the other side's problem with our argument. But I also believe that the only way to get totipotent stem cells, and customized totipotent stem cells, is to use somatic cell nuclear transfer to bring in the DNA from a patient to create an embryo, and destroy it to harvest that stem cell.

Sometimes in a debate like this, you are tempted to just throw up your hands in frustration. We had here a conflict that was completely derivative of your beliefs about embryos and human life and when human life begins. I infuriate some of my liberal friends when I explain that the Right to Life community has values and principles that are akin to anti-war principles of the '60s or liberals who oppose the death penalty. I don't happen to agree with them that life begins at conception, but I think that they come to this point of view with high moral principles. If it is true that an embryo is a human being, then killing it should be a crime. I don't happen to believe that embryos are human beings, but I respect the Right to Life movement for raising issues about embryo research. The Choice community has vilified the Right to Life community in ways that are completely unfair. I was an anti-war protestor, I don't like the death penalty, and I don't like third trimester abortions. I don't happen to oppose embryo research because I don't think at that point the fetus is viable. For me that's the dividing line between what's moral and what's not moral. But I do respect the

Right to Life community for their views and commitment.

**RITCHIE:** In this campaign were you able to get the press involved? Did you direct much of your effort towards the media?

**LUDLAM:** The answer is “not much” because we didn’t have time. My view was that the only way to win this fight was to explain it one-on-one to the members and their staff. We didn’t have enough time to bring in the press. I thought the press was never going to understand the issue and would constantly be creating more problems. Every time they wrote an article, they would include seven or eight misstatements. This made everything even more difficult to explain. So my strategy was, “I want to be the only one to explain these things on the Hill and it won’t be helpful if the press tries to do the same.”

**RITCHIE:** Did the press get it wrong or did they —

**LUDLAM:** They have never gotten it right. They have never explained to this day what this fight is all about. I don’t know why Bush isn’t being accused of proposing to throw scientists in jail. I don’t know why he’s been so successful with his ploy of funding some stem cell research at NIH. Why can’t people understand the concept of “customized” stem cells? Why can’t Bill Frist?

**RITCHIE:** Well the end of the story, by the way, is that you did keep your job. You were not forced out of the BIO operation. They sort of swallowed that situation.

**LUDLAM:** I was widely respected in some quarters for how I handled this fight. I think people even enjoyed the woodshed meeting.

**RITCHIE:** Did the Clinton administration play any part in all of this battle?

**LUDLAM:** Yes, it was helpful. It made a series of statements during this debate which were helpful. My friend at the White House, Rachel Levinson, did a wonderful job of working with us as we fought in the trenches on the Hill. For several decades she’s one of the leading advocates for life sciences research.<sup>140</sup>

**RITCHIE:** It probably didn’t help that the president was being impeached in the

middle of all of this.

**LUDLAM:** In most respects, I think Clinton was a worthless president. After the reconciliation bill and the health care bill in '93, he never led again. I don't think we should elect presidents to a second term unless they're going to lead. He never led in his second term. His dysfunction came naturally to him because his mother married a series of alcoholics who beat her. So Bill Clinton was a classic adult child of an alcoholic. His lifelong sex addiction came from that. All of us who worked for Dale Bumpers in the '80s knew all about it, and none of us were surprised when this happened.

In fact, I think what Clinton should have done, once he was caught with [Monica] Lewinsky, was to say that he was going to resign for the good of the country, and the good of the Democratic Party, make Al Gore the incumbent, let Al Gore select a vice president to be confirmed in the Senate and the House. Then Al Gore would have run as an incumbent, and would have won.

Unfortunately, Bill Clinton thought he was more important than the country. In fact, if you remember back at the time when [Richard] Nixon was facing a similar decision, Barry Goldwater went to Nixon and said he must resign for the good of the country, and Nixon did. I think Dale Bumpers should have gone to Bill Clinton and told him to resign for the good of the country. I've said that to Dale Bumpers, who acknowledged that I might have a point here. But the Democrats all lined up to defend Clinton, which was stupid. Clinton never fought for the congressional Democrats. He betrayed the African American Democrats when he signed welfare reform, yet they all loved him. If Clinton had resigned, everything would have been different in the 2000 election. But Bill Clinton thought he was more important than you, and me, and everybody else. He fought even though he knew full well that he'd screwed Lewinsky and lied under oath. He knew he was defending his office based upon lies.

**RITCHIE:** You are now back here on Capitol Hill after your seven plus years with BIO. You are working with Senator Lieberman. Were you very much involved in the 2000 election?

**LUDLAM:** I had no involvement in the 2000 campaign, and I had as little involvement with his 2004 run as possible. I don't like electoral politics. During the 2004 campaign I had endless fights with the campaign policy staff, who I thought were much too

focused on pandering to the liberal Democratic primary voters.

**RITCHIE:** What have you been working on with Senator Lieberman?

**LUDLAM:** Well, as I explained, the way I got back here was that I've known Bill Bonvillian, Senator Lieberman's brilliant LD [Legislative Director], and Senator Lieberman since '89, when they first arrived here. Lieberman was appointed to the Small Business Committee where I was a staffer with Dale Bumpers. They were intensely interested in high technology, industrial policy. They were intellectually curious about all of these things, so one of the first things they did when they first got here was to come over to talk to me at the Small Business Committee. I've always had tremendous respect for Bill and Senator Lieberman.

After I left BIO in 2000, I was free, and they had an opening, so I came up to my natural home, which is back here in the Senate. What is so attractive about both of them is that both Bill and Senator Lieberman are incredibly curious about all of the ways in which the economy works and they are incredibly entrepreneurial. Senator Lieberman and Bill both are kind people, and it is hard in politics to find people who are both skilled and kind. They are both. They also love to focus on the big issues. The issues that I have focused on with Lieberman are the three biggest threats that I see to our country. One of them is bioterrorism, another is debt, and the third is China.

**RITCHIE:** Tell me about the bioterrorism initiative.

**LUDLAM:** When I left BIO in 2000, I had no intention of working on the biotech issues again. I was finished with that. I had immersed myself in those issues for seven years and I came here to move back to my old portfolio focused on economic policy. I was not assigned to work on health care, Medicare, FDA, patents, bioethics, or any of the BIO issues. They were not any part of my portfolio. I was focused on economics, budget, tax, fiscal policy, high-technology policy.

All this changed on October 15, 2001, when we got hit in the Hart Building with weapons grade anthrax. My office is located immediately above the Daschle mailroom, where the anthrax letter was opened. After we were evacuated to the Dirksen Building, Bill and I were talking about what we could do about the attack, and he said, "You know this

industry. Why don't we work out a set of incentives to try to get the industry to help us to get ready for a bioterror attack?"

I undertook a crash project and on December 4, 2001, Senator Lieberman introduced a bill I drafted that provides incentives to persuade the biopharma industry to help us develop medicines as countermeasures for bioterror pathogens.<sup>141</sup> The problem addressed in the bill is that we have essentially none of the medicines we need to respond to an attack. In the summer of 2000 the Defense Science Board put out a study that found that we have one of the fifty-seven medicines we would most want in the case of bioterror attack—only one. The board didn't think relying on an eighteenth century smallpox vaccine was good enough. It didn't think that relying on a six-shot over eighteen-months anthrax vaccine was good enough. Those vaccines got yellow, not green lights on the DSB "stoplight" chart. This list of fifty-seven medicines does not begin to deal with all of the exotic hybrid threats or genetically modified pathogens or infectious disease generally. The list of threats that we could face is truly frightening.<sup>142</sup>

If we get hit with a bioterror or infectious disease attack and we don't have medicines, the public will flee. We will see panic. We need to be able to tell the public that we have a diagnostic, so we know what pathogen we're dealing with. We need to tell them that we have a safe and effective therapeutic or a vaccine. We need to tell them that they will not die and their children will not die. If, instead, we have to tell them that we don't know what it is, that it's a highly contagious pathogen, and we have no medicines to protect them, we'll see mass panic and we will have to impose quarantines.

When SARS hit in China, Beijing, Shanghai, and Hong Kong were closed down for months. Nobody went to work. We have to avoid that situation here. We have to secure development of these medicines. We have to have good medicines that work, with a minimum of side effects.

The biopharma industry has no interest in this research because of what happened to Bayer Company, a good Connecticut company. Bayer had secured an anthrax label indication for its antibiotic Cipro in 1999 or 2000, a year before the Daschle attack. It had done so at the request of CDC and FDA. These agencies wanted one antibiotic that was "on-label" for anthrax in case we got hit with an anthrax attack. Bayer said they would do it, and did it, and paid the money to get the label indication for anthrax based upon animal studies.

Then we got hit with the attack, and Bayer donated four million doses of Cipro to the government. The government said it would like to buy several million more doses of Cipro. Chuck Schumer and Tommy Thompson threatened the patent of Bayer if it wouldn't sell Cipro at one-fourth the market price. Bayer had no choice and it was forced to sell Cipro to the government at one-fourth the market price. Then all of its other customers for Cipro demanded this discount. It was basically an attack on Bayer's patriotism and stock price and Bayer had no leverage to resist.

The biopharma industry looked at this and said, "I understand this. If I have the perfect product to deal with a bioterror attack, and the government needs it, it will steal it." This is exactly what they had suspected would happen and then the Bayer incident proved that this fear was justified. Their fears were shown to the world in Technicolor.

Another major problem is that there is no market for many of these bioterror countermeasures other than the government. The industry hates the government. They hate Medicare. They hate FDA. They have problems with NIH. The government is not their friend. So the idea that there is only a government market is a disaster. It's second to only having no market at all, from the industry point of view.

I know all of this because I've represented the industry. The industry doesn't want to spend its capital on this bioterror countermeasure research. So the question is this: what incentives can you put in front of them that might change their mind? So that's what we did, we introduced the bill that provides these incentives.

Drafting this bill put me in a strange situation because BIO did not support the legislation, nor did PhRMA.<sup>143</sup> They didn't support it because they do not want to do the research, and therefore they do not want to support incentives that might make it more difficult for them not to do the research.

So pushing this legislation put me in an antagonistic relationship with my former employer. I knew this would be the case before we introduced the bill. I knew the industry wouldn't support this legislation. I didn't go to it for technical support. I did all the drafting of the legislation myself.

Strangely, Ralph Nader—my old nemesis on the Airline Noise bill—wrote a book

during the presidential campaign, with Charles Lewis. It was a book called *The Buying of the President, 2004*. It was an attack on the ethics of all the candidates.<sup>144</sup> There is a long section in the book attacking me by name for shilling for my former employer in proposing these bioterrorism incentives. The report didn't lead to anything. No other press source picked it up.

Back in 1978 when we enacted the revolving door rules in the Ethics in Government Act, it never occurred to us that anyone would come back to the Hill—taking massive pay cuts like the 75 percent pay cut I took. So the revolving door restrictions we drafted—the one year cooling off period—only applies when a Capitol Hill person leaves the Hill to work in a private firm downtown. The restrictions don't apply if someone from K Street comes back to the Hill!

Even though the revolving door rules didn't apply to me, I observed the one year cooling off period after leaving BIO. And in Lieberman's office I've never handled the issues that form the core of the biotech industry's legislative agenda—healthcare policy, FDA, Medicare, bioethics. I only got involved with the bioterrorism issue after the anthrax attack. So, I find it ironic that I've been accused of violating the revolving door restrictions given that I had helped write and enact them!

The allegations in the Nader/Lewis book are fundamentally bogus because I am not doing something my old clients want me to do. In fact, they have privately told me to shut up. But this subtlety was lost on Nader and Lewis, who just looked at the surface and concluded that I was trying to help my former clients. In fact, I'm trying to force the industry to spend its capital on research that we need for the public defense. We need to create a market for these medical products, and a motive for these companies and their investors so they will invest their capital in this research and so we will not face public panic and quarantines.

Nothing in our bill is a giveaway to the industry. The industry is rewarded only if it expends its own capital to fund the research and successfully develops the medicines we need. If it tries and fails, it gets nothing. So I'm trying to shift the risk to the industry, not give it a windfall. Interestingly, this model is exactly the model that industry would most prefer. It doesn't want the government to fund the research because then the government will then own the product's price and the patent. This is a cost-plus market and it's a business

model the industry will never accept. It's willing to take the risk, and spend its own capital to develop the products, if there's a sufficient reward at the end if they succeed. That's the economic model I've proposed we work with in the Lieberman bill. This is no sweetheart deal for the industry.

In the same bill, I've taken the opportunity to propose a fundamental reform of NIH. I've long believed NIH was a massively unproductive organization that's become little more than a pork barrel funding source for academics. NIH could not care less about maximizing its role in the development of medicines for patients.

In this bill, we've proposed to protect NIH patents from erosion due to FDA delays, the corollary to the reforms we enacted for PTO delays in the Patent Reform Act. I loved working on this with Dave Schmickel. He's a prince, an expert, and a dear friend. I'm now trying to land him a job up here on the Hill with the HELP Committee, so he can help us pass these critical reforms.

**RITCHIE:** Did the bill get anywhere?

**LUDLAM:** In February of 2003 President Bush in his State of the Union address announced that he wanted to pass what he called "Project BioShield." This was his version of my idea. We heard that he'd proposed it because he feared that Lieberman, who was running for president, might be the Democratic nominee. So Bush was working to preempt us and protect their right flank. Their proposal came straight out of our bill, but it was only one of the twelve titles in our bill. In July of this year, we enacted Project BioShield.<sup>145</sup> It's a down payment on my comprehensive plan.

I am now in the process of drafting BioShield II, and doing everything I can to persuade the administration to steal that also. I'm arguing that a bioterror attack or infectious disease outbreak could well ruin Bush's second term. And there are many Richard Clark's around—like me—who can say they warned the administration again and again.<sup>146</sup>

I've been blessed to work with some of the top professionals in the Senate on this initiative. Bruce Artim, now Senator Hatch's chief of staff on the Senate Judiciary Committee, is my lead partner. I've known Bruce for many years and always found him to be extremely knowledgeable, dedicated, and lighthearted. I love working with him, and with

the rest of Senator Hatch's health policy team, especially Patty DeLoatche. I've known Patty since the stem cell fight and she's a delight to work with. Dedicated, and also lighthearted. Senator Gregg's staff is also first rate: Vince Ventimiglia and Steve Irizarry. They're pros.<sup>147</sup>

There's actually a lovely little story in the middle of all of this, which ties up into an earlier story in this oral history. I was redrafting the bill, second version of this bill in December of 2002. I knew that the procurement titles of our first bill, introduced in December 2001, were not well drafted. The Senate Legislative Counsel had done its best, but I knew that we were falling far short of the radical procurement reforms I needed.

I remembered Gil Cuneo, with whom I had worked on the organizational conflict of interest issue back in 1978. He had died, but I went to his old firm to ask them whether they would give me some pro bono help in redrafting the bill. The firm had changed names several times, but it was still the top government contracts firm in the city. Eventually I found a partner of the firm, Frank Rapoport, who gave me considerable pro bono time to help in redrafting the procurement titles of the bill. Just as Frank and I were about to introduce the new bill, in January of 2003, President Bush announced Project BioShield, and suddenly we were off to the races. The tie with Gil Cuneo had me well prepared for this surprise.

Frank was suddenly a hot commodity. He had drafted what became Project BioShield. He immediately landed a few clients, including Aventis, the big vaccine manufacturer. Then Frank and I and a few others hired by Aventis waded in to fix and enact BioShield. John Clerici and Dack Dalrymple were skilled players on Frank's team. Aventis Pasteur was critical because it was the only large pharmaceutical firm that wanted to fix and pass BioShield.

The administration's draft bill was miserable, absolutely miserable, and we had to rewrite it in the House. We had twelve amendments we needed, and we got ten of them adopted. The bill went to three committees and every single committee improved the bill. That is unheard of! We had no help from the administration. Then when we'd fixed the bill in the House, we persuaded the Senate to adopt the House bill. Vince and Steve were crucial to this transaction. The bill we enacted is a fairly functional product. I give Gil Cuneo some credit for this; it was his pro bono help for me back in 1978 on the organizational conflict of interest legislation that set this whole process in motion.

We will introduce BioShield II in February.<sup>148</sup> It is the most ambitious set of incentives ever proposed for any economic activity, and I'm not sure if it's enough. The industry is incredibly skeptical of this research. It has no interest at all. I'm not sure if the incentives we're proposing—as ambitious as they are—will be sufficient. The incentives include the whole tax code, patent system, the tort system, and lots of other incentives, and that might not be sufficient to entice the industry to play. If we don't get the industry interested in this research, we are never going to get the medicines that we need to prepare ourselves for an attack. We're going to see panic, and we're going to see quarantines. It is a very desperate situation, and a very difficult challenge in terms of incentives.

I've been working on different types of economic incentives my entire career, and I've never run into a problem of incentives as difficult as this one or as critical. If we're not prepared for a bioterror attack, millions, or even tens of millions could die. We could see a SARS attack that would kill 100 million people.

We could see an avian flu attack that would kill a couple hundred million people. The 1918 flu epidemic, which killed at least 20 million people and perhaps 100 million, had a lethality rate of 1.8 percent. The avian flu we're now seeing has a 55 to 70 percent lethality rate. SARS had a 40 percent lethality rate. It's possible to see a billion or more people dying in a new pandemic flu outbreak. This would give us Cambodias and Rwandas all over the world.

I have taken the lead to apply BioShield II to the development of medicines for all “infectious diseases,” not just for bioterror pathogens. I am assembling a coalition of all of the international public health groups, including those focused on research to develop drugs and vaccines for AIDS, Malaria, TB, and other third world diseases. They will back these incentives and press to apply them to all infectious diseases. So what we might secure here is enactment of a very aggressive set of incentives for research on medicines for all infectious diseases. This could have an unbelievable impact on hundreds of millions of people. This is a big idea.<sup>149</sup>

My fear was that we would pass BioShield and the natural course would be for the Congress and administration to sit on their laurels for several years waiting to see how it worked. I knew BioShield wouldn't be sufficient. So four months before we passed BioShield in July of 2004, I started talking about “BioShield II.” I just invented the term. I

had a good idea of what would be in it but there was no such bill. Basically it would be everything that wouldn't make it into BioShield, all the stuff on the cutting room floor. The Lieberman bill had twelve titles and BioShield was only one of them.

**RITCHIE:** President Bush announced that in his State of the Union message and then rarely mentioned it again. It didn't seem to be a big initiative of his administration. Were they pushing it hard or was it something that they were being pushed into?

**LUDLAM:** We were told by a high ranking administration official that the only reason Bush proposed it was because he felt Lieberman would be the Democratic nominee. So Bush was putting BioShield to make sure that we couldn't outflank him on the right on biodefense. Then when the legislation was introduced, the biopharma industry hadn't been consulted, was silent, had no interest in it, wasn't trying to fix it, and wasn't trying to pass it. The legislation got bogged down in a variety of ways. Lieberman's campaign languished, and the president lost interest. In the end, we got it passed and the president had a big signing ceremony at the White House on the eve of the Republican convention.

On October 6, 2004, the Senate Judiciary Committee and the Senate Health Committee held a joint hearing on "BioShield II." The hearing was chaired by [Orrin] Hatch and [Judd] Gregg. They are totally convinced that BioShield is not enough. They heard deafening silence from the industry while we were working to pass it. The hearing clearly implied that enacting BioShield wasn't remotely enough. The fact that we had any hearing at all was remarkable. The fact that we had a joint hearing was very unusual.

The hearing was my idea. It was my idea that it be a joint hearing. I selected all the witnesses. I mostly wrote the testimony of all the witnesses. I wrote the questions that the committee asked for the witnesses, and I wrote the answers that the witnesses gave to the questions. I have rarely been so involved in manipulating a legislative product.

Now I am having endless meetings with everybody in the administration trying to persuade them to try and start a process to look at BioShield II. I'm trying to play on their fears about how a bioterror attack, or SARS or avian flu, could ruin their second term.<sup>150</sup>

This is a big issue and the enactment of BioShield is an accomplishment. But BioShield II would be the Holy Grail for research on a whole host of neglected and

dangerous diseases. The day before the October 6 hearing, we had the debacle with Chiron and their flu vaccine production in England. My immediate reaction was this mess was manna from heaven. This is the perfect event to show that we have no vaccine industry in the United States. Part of what we're trying to do in this bill is to recreate a vaccine industry, almost from scratch. Government policies basically destroyed our vaccine industry. We also need to create a biodefense industry, and in the middle of all of that, we need to create what I call a research tool industry.<sup>151</sup>

The research tool industry would be an industry that wouldn't be trying to create actual diagnostics, therapeutics, and vaccines, but would focus on developing tools that would give us the power to create new diagnostics, therapeutics, and vaccines on a crash basis. So if we get hit with something new for which we are not prepared, either from a terrorist or from Mother Nature, we can develop a new medicine in the middle of an epidemic to try to quell the damage. This is a visionary idea. We want to stockpile as many things as we can for the things that we can't anticipate, but it's the nature of bioterrorism and the nature of Mother Nature that we will never be prepared for everything.

The bill attempts to create a vaccine industry, a bio-defense industry, and a research tool industry. Rather ambitious. So far, with the enactment of BioShield, I've only secured about 5 percent of what I've proposed. Now that BioShield II will focus also on third world diseases, I have a huge personal interest. I'm going to be vulnerable to these diseases when I get to Africa in the Peace Corps. I've seen people die of these diseases and I've had some of them myself.

This bioterror and infectious disease initiative is the kind of issue that Lieberman can handle. He's a man of stature, and a man of vision, a man who knows how to lead, and a man who can handle the complexities of this bill.<sup>152</sup>

**RITCHIE:** What is the second initiative you mentioned?

**LUDLAM:** The second big threat is government debt, both explicit and implicit. We are seeing a convergence of two titanic forces. One of them is demographics, which is overwhelming, and the other one is an upending of the alignment of our political parties. These two forces are now colliding in very dangerous ways.

In terms of demographics, everybody has a general sense that the baby boomers are going to retire and it's going to be costly in terms of our social insurance programs, Medicare and Social Security. In April, I forced the Social Security trustees to issue new estimates on the shortfall in funding for Medicare and Social Security. They had previously estimated that on a present value basis that the programs were \$18 trillion short.

Present value estimates tell you how much money you need to set aside today to pay the bills you know that are going to be due tomorrow. It is a methodology that all businesses use, but which the government does not use. The government operates on a cash accounting basis. The old trustees' estimate was \$18 trillion short, present value. I forced them to change their methodology and this yielded the new estimate that we are \$72 trillion short. To put this in perspective, the net worth of the United States is \$42 trillion. The annual GDP is \$10 trillion. Every year we fail to set aside \$72 trillion, that figure grows by about \$2 trillion.

Two brilliant economists, Kent Smetters and Jagadeesh Gokhale, laid the intellectual groundwork for these new estimates.<sup>153</sup> They'd worked at Treasury and prepared landmark studies on the present value of the government's long-term commitments, particularly Social Security and Medicare. I have been working closely with both of them for several years on this issue and enjoyed every minute of the experience.

The point is simple: these programs are catastrophically underfunded, ruinously underfunded. Yet nobody seems to know and recognize this fact—because the cash accounting system which dominates the congressional budget process disguises the shortfall. The cash flow approach, focusing on yesterday and today, is the perfect system to enable politicians to make irresponsible promises today to secure their reelection and not acknowledge the costs of these promises over the long term. As a result, there's no political will to deal with this shortfall. Demographics is a force of nature on a par with global warming and SARS.

The other force that is converging with that funding shortfall is the realignment of our political parties. For fifty years the Republicans were the Castor Oil party and actually believed in fiscal responsibility. Because of the entrepreneurial vision of a few members, in 1978 the Republicans started espousing supply-side economics. A certain congressman from Buffalo, Jack Kemp, and a few other people, and a famous drawing on a napkin in a restaurant down on Connecticut Avenue, and we had supply-side economics.<sup>154</sup>

As a result, Republicans in 1981 passed the most irresponsible tax bill in the history of the United States, the Reagan tax cut. This involved the infamous “Lear Jet weekend” when every lobbyist in the country flew in to get something into that bill. It took us seventeen years from 1981 to 1998 to get back to a balanced budget. It took one of the greatest economic booms of all time and also three major tax increases. The second of these ended the first Bush presidency when he broke his no-tax pledge. It took the massive tax increase in 1993 under Clinton, and the high-tech boom of the late '90s, to finally undo the damage of the 1981 tax cut. Democrats passed a tax cut in 1993 and then they lost their majority in the House.

Since George Bush has come into office, we have passed four tax cuts in four years and again—like those we saw starting in 1982—we are running catastrophic budget deficits. These tax cuts include almost three hundred “sunsets,” put there by Republicans. Every single one of those sunsets could result in a vote which the Republicans will characterize as a vote to “raise taxes” or “cut taxes.” The Democrats are totally and completely on the defensive. They had absolutely no strategy to stop these tax cuts. There is no indication that Republicans will back off the tax cuts.

In 1982 Reagan backed off his tax cuts and passed what was to that date the largest tax increase in history. [That’s when I won my victory on tax exempt bonds.] He took back about a third of the tax cuts from 1981. I have no sense that the Republicans in this era will back off the 2001 tax cut, or the 2002 or the 2003 or the 2004 tax cuts.

These tax cuts and deficits coincide with the baby boomer retirements, which start in just seven years. Just to give you a sense of what this crunch looks like, Senator Lieberman is about to put out a study, which we put together with the Urban Institute, which finds that in eight years if we fund only the tax cuts, Defense and Homeland Security, Medicare and Social Security, and interest on the national debt, and have a balanced budget, we will not have a single dollar left for anything else—zero. We would just need to cut out all these other programs; we’d have to eliminate them. We would have no Congress, no courts, no White House, no State Department, no Education Department, no Transportation Department. Zero, absolute and complete zero. No parks. And, most important of all, no Peace Corps!

If we keep running the deficits, it is quite clear to me that we will see a crash of the dollar. The only reason why the dollar hasn’t crashed is the Chinese and the Japanese are

intervening to keep it strong so they can steal our manufacturing jobs. We're already paying a very big price for these deficits and this irresponsibility. At some point the Japanese may not be able to sustain their massive intervention and the Chinese may repeg the yuan. We've already seen a big depreciation of the dollar against the euro. I think we will see an even bigger depreciation against all the other currencies, because I think that not only do we have the government debt, we have unprecedented consumer debt, and we have unprecedented current account debt.

At some point our lenders will extract a premium on interest rates, because they will begin to think that we are a banana republic. And they don't even know about the \$72 trillion shortfall! Our country is living completely and totally beyond our means, and it's all being financed by borrowing and intergenerational transfers of debt.<sup>155</sup>

For me the issue is: how do you get a handle on this problem? I figure that the only thing that I can do about this problem is to try and change the government accounting system and the budget process. The current cash accounting process gives you no handle on what's going on in the future. It tells you what happened yesterday, and maybe what's happening today. It gives you no clue about what's happening tomorrow. The budget process is totally broken. Republicans and Democrats have learned how, with sunsets and other gimmicks, to disguise the cost of their programs and move the costs outside the budget window so that politicians can pander.

This goes to the fundamental flaw that even Tocqueville understood about the United States when he said that "America will endure until the politicians learn they can bribe the people with their own money." What we get with politicians—I think it is the fatal flaw of democracies—is that they make promises today and then ask for the public to pay for them after the next election, but not before. We have that now with the tax cuts. We have that now with the entitlement spending, and the budget process does absolutely nothing to indicate how irresponsible it is.

Lieberman has introduced a bill, S.1915 (November of 2003), which would move us to a present value accounting system, and force us to recognize the cost of government programs into the future. I drafted this bill with a team of twelve economists over a period of a year. We went through forty drafts. We had two hundred e-mails on some of the key sentences in the bill. It was the most intensive drafting process I have ever been through, and

it is a phenomenally complicated bill.<sup>156</sup> Kent and Jagadeesh were key members of our drafting team.

It would keep the cash accounting system but supplement it with a present value system, where all of the future costs are known today. It would establish points of order that would change the day-to-day operation on the floor. We also need to amend the Byrd Rule. It is a very tough and complicated bill. It's an attempt to deal with the demographics and the irresponsibility of Republicans. Democrats have always been irresponsible on spending, and sometimes even on tax cuts, so they have no credibility on fiscal responsibility. They deserve some credit for being fiscally responsible, but they're ineffective in stopping or slowing the Republican juggernaut on tax cuts. Republicans have got it down to a formula and can pass any tax cut they want to pass. The timing of all of this, with the baby boom demographics, could not be worse or more dangerous.

It's been a massive struggle on this initiative with the budget process establishment. The CBO [Congressional Budget Office] issued a major report on long-term fiscal measures and went out of its way to piss on our proposal. It was a first rate hatchet job. It set up phony straw men, gave nothing but the most negative possible spin on every issue, and put none of the issues in context. We've sent a very nasty letter with a long list of probing questions to the CBO to try to mitigate the damage. At the same time, the Center on Budget and Policy Priorities [CBPP], one of the most effective liberal think tanks, showed us a draft report of theirs on our bill and it was even more biased and contrived. I had a very rough meeting with them about it. I argued that if we don't reform the entitlements, particularly the non-means tested Medicare program, everything CPBB believed in would be in dire jeopardy. I'm not sure if the report will be revised.<sup>157</sup>

My point about both the CBO and CBPP reports is that the current budget process, which focuses on short-term cash flow, is a disaster and we all have to move towards new measures that will give us a vision of the fiscal future. The battles with CBO and CBPP are distractions and part of the guerilla warfare that goes with nearly any legislation.

Again, as has been so common in my career, I have teamed up with some first rate professionals, in this case Jen Olson<sup>158</sup> with Senator Lindsay Graham and Maya MacGuineas of the New American Foundation.<sup>159</sup> They're both so practical and visionary advocates for fiscal responsibility. So the threat is either bugs or debt. Take your pick. Both can kill us.

Both can kill our economy. Both can ruin this country. Both can ruin the second term of George Bush. I think bioterrorism and debt are just about the most dire threats I can think of. Either one of them could destroy us completely.

**RITCHIE:** How active has Senator Lieberman been in all of this? Has he taken the bit and run with it, or has he had to be persuaded to come on board on this?

**LUDLAM:** He trusts me. [Laughs] He listens to me and he has done everything I've asked him to do. He's introduced three bioterror bills and is about to introduce BioShield II. He's introduced the fiscal responsibility bill. He's given some speeches on these issues. Mostly, he's turned me loose. He obviously was very busy during his campaign, which took him out of pocket for a year. But he's given me pretty much everything I need from him. These are the kinds of issues that are so technical that it's hard for members to actually carry the ball. These really are the kinds of things staff needs to pursue. I've pursued them relentlessly, but the beginning in both cases was a very ambitious bill.

I guess what I've learned in my career is that big ideas are easier to pass than small ideas. Most people, I think, have reached the opposite conclusion, that because the process is so complicated, and so bitter, and so partisan, that you have to salami slice your ideas in order to get anything done. I believe exactly the opposite. I think the only way you can galvanize the political system is to go with massive ideas that deal with massive problems that people cannot avoid. That's what I'm doing on the bioterrorism and debt initiatives.

**RITCHIE:** That's very interesting. I've always thought that on appropriations issues that members can't fathom trillions of dollars, but the smaller the appropriation, when it gets down to a little bit of money, they have the big fights over that because they can understand that amount of money. They'll argue over a few hundred thousand dollars and then pass a trillion dollar bill without a fight.

**LUDLAM:** What I'm trying to do is change the entire budget process so all of them will have difficulty pandering that way. Democracy is fine, but it's got a fatal flaw which is pandering.

**RITCHIE:** That and the fact that the public doesn't pay attention when they need to pay attention.

**LUDLAM:** The cash accounting system purposely disguised the consequences of pandering. The deficits are not great, the deficits are bad, but they are about 2 percent of the fiscal problem. It's the commitments that are outside of the budget window that are going to ruin us. The real issue is the excessive, profligate, and irresponsible commitments we've made to the baby boomers. Those are the commitments we need to know about and manage. Instead of worrying about \$100 billion or \$500 billion, we need to focus on the \$72 trillion shortfall in funding for Social Security and Medicare. Focusing on hundreds of billions compared to tens of trillions, that is the choice. The commitments to the baby boomers are what is completely obscured by the cash accounting system. In fact, I think the cash accounting system is perfectly designed to enable politicians to pander. That's why they support it. I'm trying to pass a system that will make it vastly more painful for members to be irresponsible, to make commitments that come due after the next election.

**RITCHIE:** What chance do you think the bill has of passing at this stage?

**LUDLAM:** I think we will first have to face a budget or international financial crisis. We've already had a rather stupid and wide-ranging budget process debate in the House, which unfortunately was entirely focused on tinkering with the cash accounting system. I think a real debate might be precipitated by a run on the dollar.

A declining dollar helps our exports. It hurts imports. Given our trade deficit, this is a good thing. But a decline in the dollar hurts Europe's exports, and its growth. The U.S. is the only vibrant economy in the world now, except for China, and we need Europe and other industrialized countries to generate growth. Germany is still mired in deflation and experiencing double digit unemployment. Relying only on the U.S. to stimulate the world economy is dangerous. If the dollar decline undermines growth in Europe, it hurts world GDP growth.

Japan is holding the Yen down with its massive currency intervention, but it might not be able to do this for long. As the Yen rises, it'll dampen Japan's growth. After a decade in deflation, its economy has only recently shown any signs of life. We need Japan to help grow the world economy.

China is not moving quickly to repeg the yuan. It may repeg the yuan soon, but it probably won't be a big shift. If it repegs, it's not clear that that will be enough to prevent

the bursting of a bubble and a plunge in its economy. Its central bank is weak and inflation and energy shocks are huge worries.

The imbalances in the world economy are massive. The U.S. and China are basically the only bright spots. Overall, China is running a trade deficit, but it's sucking in huge amounts of imports—the only bright spot for Japan. It's the U.S. that is living wildly beyond its means and it's all being financed by foreigners. This is dangerous.

If the U.S. sucks in fewer imports, there's less competitive pressure on the prices of U.S. products, which might lead to inflation. If the dollar declines, foreigners investing in Wall Street and other U.S. assets face currency losses that make these investments unattractive even if the investments themselves appreciate. The currency losses offset that appreciation. If the dollar declines, there's pressure on oil prices, which are all paid in dollars. And U.S. purchases of oil from abroad get more expensive. If the dollar declines, foreigners are less likely to buy our government debt. Again, they may face currency losses that exceed the interest income.

If U.S. interest rates go up, we dampen growth in our economy and increase the budget pressure—with financing charges becoming the fastest growing government program and squeezing out other spending. It's possible all of this leads to a political crisis next year—with a focus on the budget deficits. If that happens, it's a perfect opening for the Lieberman fiscal responsibility initiative. It's the only proposal around that focuses on the real problem, the entitlements.

That's what I'm getting ready for. That's how I'm positioning Senator Lieberman. It's the same with regard to the bioterror bill. If there's a bioterror attack, we couldn't be better positioned to respond. In either case, we can propose our bills on the floor and force members to walk the plank.

The point of our bill is simple: the current budget process is a fraud. Its focus on cash flow disguises and ignores the long-term challenge. Until we update this process to focus on the long term, there's much less pressure on the Congress to deal with the long-term challenge before it's too late. So I'm anticipating that there might eventually be an "Oh my God, the sky is falling" debate about the deficits. The deficits are not the problem; the real problem is the debt, the long term debt, and the entitlements. But we can use the budget

deficits debate to focus on budget process. I think the Senate will do budget process before it can deal with budget substance. They can't possibly deal with Medicare reform or even Social Security reform without changing the budget process first.

I have met with the White House, with OMB, with Treasury. I have a coalition of eight or ten fiscal responsibility groups on the outside that were very interested in what I'm proposing. I'm attempting to work with the staffs of Senator Mitch McConnell, Lindsay Graham, and Judd Gregg—the new Budget Committee chairman. I think Gregg might forego debate on a budget resolution to focus on budget process.

So the answer to your question is that the odds that the Lieberman bill will be enacted are long, but that was true of the Gramm-Rudman-Hollings law enacted in 1985. It came up when we had the massive Reagan deficits and didn't have the votes to raise the debt ceiling. Wall Street was screaming. International markets were unstable. So they drafted G-R-H on the Senate floor. Unfortunately, it was a cash accounting proposal, and not a very well designed one.

I'm trying to anticipate the next crisis and be ready to pass a responsible reform that's focused on the long term, not just the cash flow. I am working very effectively with a bunch of Republicans who are fiscally responsible. There aren't many Republicans who are and there are essentially no Democrats who are fiscally responsible.

Frist is interesting because he thinks of himself as a citizen-legislator. I hear he might propose a "Twenty-first Century Senate Reform" that might include budget process elements. It might focus on such issues as the committee system, floor debate procedures, the discontinuity between authorizers and appropriators, and other issues. I am pressing his staff to include my present value accounting ideas.

Because of the flu vaccine debacle, the bioterrorism initiative is further along. We had the joint hearing on BioShield II, and I've got very solid Republican champions. Again, I can't find any Democrats who are interested.

**RITCHIE:** And the third threat? China?

**LUDLAM:** Yes, China. I took a staff trip to China in April [of 2004]. It's obvious

when you go to China that the twenty-first century is going to be dominated by us and them—and maybe just by them. China is both a threat and an opportunity.

It's overwhelming what is happening in China. The political revolution there, which got started in 1978 under Deng Xiaoping, is one of the greatest transitions in the history of any country in the world.<sup>160</sup> From the Dark Ages of the Great Leap Forward and the Cultural Revolution, China is emerging as an entrepreneurial, free enterprise economy.

So I'm drafting a bill, which Lieberman has agreed to introduce next year, that sets up the mother of all exchange programs. And I mean the mother of all exchange programs. Basically, everybody who can organize exchanges with China under any auspices—young people, businessmen, defense people, patent lawyers, anybody—we'll support. We will provide massive funding for Mandarin language study in the United States. We will authorize \$1.3 billion for a whole series of interrelated programs, which is one dollar for each Chinese. It's a very interesting bill, a very interesting concept, and very futuristic.

We're having a meeting with the Chinese Embassy on Friday about it, and we're roping in lots of other people who understand that the twenty-first century is all about the United States and China.<sup>161</sup>

**RITCHIE:** When you say exchange, would you also be funding Chinese to come to this country?

**LUDLAM:** Yes, it's fully reciprocal.

**RITCHIE:** Well that raises a question, because right now it's very hard, because of the security issues, to get visas. Visas are becoming an increasing problem for academic scholarship. Universities are finding that people who are coming here with scholarly credentials are having their visas denied. How would you deal with something like that?

**LUDLAM:** We have a whole title of the bill dealing just with visas. We'll propose visa reforms on a grand scale, applied first to China. Every other country has got visa problems with the U.S. now with our new emphasis on homeland security, but this bill would set up all kinds of new mechanisms, new resources, and new priorities to get the visas for Chinese processed much more quickly, with better results.

Some people would probably look at that and ask why we're only focused on China. Our answer is that China warrants such prominence and the reforms we propose provide a model for reforming all of our visa programs. We understand that visas are a big part of the problem.

So I've had the good fortune to be ending my career focusing on three overriding threats—bugs, debt, and China. It couldn't be a more stimulating agenda and it shows just how much fun it can be to serve in the Congress for a great member like Joe Lieberman.

**RITCHIE:** Well it looks like you're retiring on a high point.

**LUDLAM:** We'll see if that's true. This is a fickle and tough game. Timing is everything. Actually I have to end this interview so I can go to a security briefing on how we can protect ourselves against a radiological or an anthrax attack in the Senate.

**RITCHIE:** Maybe later this week we can meet again?

**LUDLAM:** That would be fine. It's recess. But the cloning fight was a fabulous opportunity.

**RITCHIE:** Well, thank you very much.

### **End of the Third Interview**

## Endnotes

<sup>130</sup> The first version of this bill was introduced on April 7, 1987 (S. 931). It provided a preferential capital gains tax rate for direct, long-term investments in the stock of small entrepreneurial firms. The capital gains had been repealed in the 1986 Tax Reform Act. This bill restored the preference for certain high risk investments. The bill was reintroduced as S. 348 on February 7, 1989; S. 1932 on November 7, 1991 (cosponsored by forty-seven senators), and S.368 on February 16, 1993. This last bill provided a special capital gains tax rate for individual and corporate taxpayers who make high-risk, long-term, growth-oriented venture and seed capital investments in startup and other small enterprises. For ten-year holdings of the qualifying stock investment, the tax rate was set at zero. This concept became law as part of the 1993 Clinton tax bill, but it was gutted with restrictions.

<sup>131</sup> When President Bush signed the Partial-Birth Abortion Ban Act (S. 3) into law on November 5, 2003, pro-lifers saw the culmination of an eight-year struggle by congressional pro-lifers. The bill represents the first direct national restriction on any method of abortion since the Supreme Court legalized abortion on demand in 1973. The Partial-Birth Abortion Ban Act was introduced by Congressman Charles Canady (R-Fl.) on June 14, 1995. The House first passed the bill on November 1, 1995, 288-139. The Senate first passed the bill on December 7, 1995, 54-44. In the 104th and 105th congresses, Congress approved the ban but President Clinton vetoed the bills; in both of those congresses, the House overrode but the Senate sustained. In the 106th Congress, both the House and Senate passed similar bills, but no final bill was approved. In the 107th Congress (2002), the House passed the ban, but the Senate Democratic leadership blocked it from coming to the Senate floor. In 2003 the bill won final approval in the House on October 2, 281-142, and in the Senate on October 21, 64-34.

<sup>132</sup> In the case of *Stenberg v. Carhart* in 2000, by a 5-4 vote, the Supreme Court struck down a Nebraska law banning partial-birth abortions, holding that *Roe v. Wade* guarantees the right of an abortionist to use the method whenever he thinks it is preferable to other methods.

<sup>133</sup> The Catholic Church view on zygotes and embryos focuses on ensoulment, the point in time where it is animated by a spiritual soul. The process of development of a zygote into an embryo and then into a fetus is medically very complicated and little understood. We don't know precisely when fertilization has, in fact, occurred: when the spermatozoon docks with the oocyte, at penetration of the oocyte, or at the initial interaction of DNA, or when the DNA fuse together? For the Church, however, ensoulment undoubtedly occurs at the moment of fertilization, whenever that is deemed to have come to pass. Given that there is no fertilization and no conception in the creation of embryonic stem cells, it's hard to say why ensoulment must necessarily occur when the nucleus of the patient is inserted into the

oocyte.

<sup>134</sup> A somatic cell is any diploid cell of a plant or an animal other than a germ cell. Also called body cell and somatic cell nuclear transfer—moving a cell nucleus and its genetic material from one cell to another.

<sup>135</sup> Mick is the Kerry blue terrier who won best in show at Westminster in 2003 and was the biggest British import since the Beatles, strutting his stuff and winning best in show at more than two hundred shows in the U.S. for two and a half years before he won at Westminster.

<sup>136</sup> Histoincompatibility is the incompatibility in which one person's tissue cannot be transplanted to another person. Incompatibility (immunology) is the degree to which the body's immune system will try to reject foreign material (as transfused blood or transplanted tissue).

<sup>137</sup> At first sight, Richard Seed seemed to be a serious contender in the race to produce the first human clone. He trained as a physicist, but turned to reproductive technology twenty years ago when he founded a company to transfer embryos from prize cows to surrogate mothers. Then, in the 1980s, he launched a company called Fertility and Genetics to apply the technique to people, using it to move fertilized eggs from healthy women, inseminated several days before, to those with fertility problems. That effort resulted in publications in *The Lancet* and *The Journal of the American Medical Association*, with one 1984 JAMA paper (vol. 251, p. 889) reporting the birth of a healthy child. At the time, this embryo transfer was a competing technology to IVF, but it never caught on. "Seed has enough credentials to make you listen," says Lori Andrews, an expert on the legal issues surrounding reproduction at Chicago-Kent College of Law. "But so many people are far ahead of him." In interviews right after his announcement, Seed did not acknowledge that cloning a person would pose a far greater challenge than his previous work. This is in character, says Maria Bustillo of the South Florida Institute for Reproductive Medicine in Miami, a coauthor on some of his papers. "He was always kind of eccentric with a lot of grandiose ideas, but I'm not worried. He's not capable of pulling this off." While Seed provided money for the research on which she collaborated, Bustillo notes, his scientific input was limited. Unfortunately, he had sufficient credibility to spur a nuclear explosion in the Congress on the "human cloning" issue.

<sup>138</sup> If a fertilized embryo is the equivalent of a human being, it would follow that any IVF clinic that discards an embryo that a couple decides not to use for IVF is committing murder. In the IVF process, dozens of embryos are created and only a few are implanted. The rest are

saved or discarded. Estimates are that there are hundreds of thousands of these fertilized embryos in IVF clinics. The idea that it should be a crime to discard any of them is not likely to find a positive response in Congress.

<sup>139</sup> Despite President Bush's veto threat, the House voted on May 24, 2005, in favor of a bill (H.R. 810) sponsored by Reps. Mike Castle, R-Delaware, and Diana DeGette, D-Colorado, to lift Bush's 2001 ban on federal funding for new research using stem cells from embryos that had not been destroyed before August 2001. Bush called the bill a mistake and said he would veto it. The House approved it by a 238-194 vote, far short of the two-thirds majority that would be needed to override a veto. Supporters of the measure said many embryos that would be studied would otherwise be discarded rather than implanted in the wombs of surrogate mothers. The moral obligation, they argued, rested on Congress to fund research that could lead to cures for diseases like Parkinson's and Alzheimer's. The House vote on the Castle-DeGette bill was intended mostly as a show of force to help propel it through the Senate and, the sponsors hope, into compromise talks with the White House. It's not clear what Senator Frist will do with the measure, but it's clear that the Congress is not poised to enact a criminal penalty for embryonic stem cell research. To show how the political climate on stem cell research has changed, the July 2005 issue of *National Geographic* features an article on stem cells with titles such as "With more and more countries aggressively developing stem cell therapies, the United States is in real danger of being left behind," "A five-day old embryo is smaller than the period at the end of this sentence [and] has no identifying features or hints of a nervous system," and "proponents say it's immoral not to use leftover embryos to save lives...."

<sup>140</sup> Rachel is currently director, Office of Government and Industry Liaison, The Biodesign Institute, Arizona State University. Previously Rachel was with the White House Office of Science and Technology Policy handling life sciences issues including biotechnology under the administrations of George H. W. Bush, Clinton, and George W. Bush. She was on detail from NIH. At NIH, she'd worked on establishment of the NIH component of the Human Genome Project, and in the Office of Technology Transfer and the Office of Recombinant DNA Activities, now called the Office of Biotechnology Activities.

<sup>141</sup> See S. 1764 introduced by Senator Lieberman on December 4, 2001.

<sup>142</sup> See the testimony of Senator Lieberman at an October 6, 2004, hearing of the Senate Judiciary and HELP Committees.

<sup>143</sup> PhRMA is the Pharmaceutical Research and Manufacturers Association, which represents the large pharmaceutical firms. BIO represents the small biotechnology companies. There's

a complicated relationship between the two.

<sup>144</sup>Charles Lewis and the Center for Public Integrity, *The Buying of the President, 2004: Who's Really Bankrolling Bush and His Democratic challengers—And What They Expect in Return* (New York: Perennial, 2004).

<sup>145</sup> Public Law 108-276.

<sup>146</sup> Richard A. Clark was the former White House anti-terrorism leader for the Clinton and Bush administrations. On March 24, 2004, he testified before the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) that the Bush administration had not taken the threat of terrorism seriously.

Subsequent to this interview I became aware that the Senate Republicans were drafting their own bioterror/infectious disease bill to be included in the Senate Republican leadership bills introduced on January 24, 2005. I had circulated my draft BioShield II bill widely, including sending it to many Republicans and administration officials. The result was that the Republican leadership bill for the 109<sup>th</sup> Congress, S. 3, was taken largely verbatim from my draft.

I managed to persuade the Republicans to steal my draft for one good reason—they know I am an expert on these issue and they can have confidence following me. They did not apologize for stealing my work product, or for not asking permission to do so, but I have no concern about that. They know they are indebted to me and I find that they are coming back again and again to me for more substance.

When the Republican bill was introduced, I sent out the first word to my master email list, praising the Republicans, but also pointing out that they'd "borrowed" our bill. I also emphasized that Senators Lieberman and Hatch were shortly to introduce the real deal, the refined and upgraded version of our BioShield II bill, and that everyone should look to that for the real substance.

In order to persuade the Republicans to steal or borrow more of my work product, to take our BioShield II bill and substitute it for the text of S. 3, I conducted a quasi-public drafting process on BioShield II. The Republicans had worked off my December 15, 2004 draft and I proceeded to vet additional drafts in February and March and April. I sent out my drafts to my entire "bioterror" email list—six hundred experts. The recipients probably forwarded the draft to one thousand more experts. Not a single one of them leaked my drafts to the press. I did all of this in plain view of the Republican staffers, who are all on the same list.

In doing this, I was making the point that I was drafting the penultimate bill, that I had access to experts that they couldn't match, and that they would be fools not to steal or borrow more of my work. I wanted to show them that I was way out in front of them and running at full speed. I wanted to freeze any effort on their part to drafting their bill and wanted to force them to wait for my final bill to be introduced. I'm trying to control the

process indirectly, through my command of the substance.

Part of my thinking here is that Senator Lieberman is not a member of any of the key committees that will consider this legislation. So the high water mark of our influence may well be when BioShield II is introduced. I was also thinking about my planned retirement to go serve in the Peace Corps, so I wanted to maximize my influence early in the process.

The new Lieberman bill, S. 975, was introduced on April 28, 2005. It is 360 pages long with 29 titles. It's an aggressive, serious, and comprehensive bill. It challenges the Republican leadership, particularly Senator Frist, to be serious about the issue. It's also a challenge to the administration.

I invented a very interesting way of organizing this effort. All of the e-mails I sent out were sent to people on a blind copy, BCC, basis, so that no one could "reply all" and use my list. I kept total control of it. They didn't know who else was on the list. They couldn't post a message contradicting mine. They were quite captive and dependent. This gave me great power to propagate my views. I would send out the most frightening information—all attempting to motivate people to back my aggressive proposals. I began to get everyone feeding me very up-to-date information that everyone wanted to see. So many people came to me asking to be placed on the list. I have enlisted the top six hundred experts in the world and given them an incredibly aggressive bill to follow.

The biggest problem is that the bill falls within the jurisdiction of so many Senate Committees. S. 3 has provisions for HELP, Judiciary, Finance, and Banking. BioShield II adds Agriculture, Homeland Security, Environment and Public Works, Foreign Relations, and perhaps Commerce. I've proposed to the leaders of the HELP Committee that it report out a bill including the architecture for a comprehensive bill, and whenever a provision falls within another committee's jurisdiction, it should insert brackets and name the committee of jurisdiction, e.g. "[Finance Committee]." This will put tremendous pressure on Senator Frist to organize all of the committees to contribute their elements of the comprehensive bill. I've said to the HELP Committee leaders that this is the only way they can show that they are attempting to secure a comprehensive bill and won't be left holding the bag on a narrow, unimpressive bill. I've also said to Senator [Richard] Burr, chairman of the Public Health Subcommittee, that if he handles this well, he is perfectly positioned to be the vice presidential nominee on the next Republican ticket. If there's an attack or an outbreak, and he's been the leader in attempting to prepare us for it, he'd be the perfect choice. He's also smart, telegenic, and geographically correct.

The introduction of the Republican bill, S. 3, was a massive victory for me because now there is little doubt that the Congress will, in fact, enact BioShield II. The details are in doubt, but I am confident we'll enact an aggressive and significant bill based very much on my concepts and drafting. How this all turns out will not be known until after this oral history is finalized.

On my last day in public service, I sent out one last email to the six-hundred-person mailing list I'd developed. It stated in part: "It is urgent that you maintain the pressure on Senator Frist and the Administration. The fate of this legislation lies almost entirely in their hands. Senators Lieberman, Hatch, Brownback, Enzi, Burr, and Gregg have provided superb leadership, but there are severe limits on what they can accomplish without the

leadership of Senator Frist and the Administration. Only Senator Frist can bring together all of the Senate Committees with jurisdiction over elements of BioShield II. Here's the cite to his recent speech on bioterrorism, which is long on analysis and painfully short on prescriptions for action: [http://frist.senate.gov/\\_files/060105manhattan.pdf](http://frist.senate.gov/_files/060105manhattan.pdf). Compare it to Lieberman's speech, printed below, which is long on both. Also, nothing will happen until the Administration finally states unequivocally that we need to enact something like BioShield II. . . . Thank you all again for your support. This is your legislation to win or lose. It's yours to win now. My role is over. I wish you the best and will be forever grateful for your support. Bless you all."

<sup>147</sup> Kira Bacal joined Senator Hatch's staff and Wendy Shelton joined the Lieberman staff in 2005 and they have proven to be incredibly helpful. Kira has a PhD, an MD, and an MPH and Wendy is a veterinarian, so they actually understand all the science. Working with professionals like them, with their knowledge and sense of humor, makes this work an easy job.

<sup>148</sup> It was actually introduced in late April.

<sup>149</sup> I successfully recruited support for the bill from a wide ranging coalition of groups focusing on AIDS, TB, and malaria research. It all started with Bob Guidos of the Infectious Diseases Society of America (IDSA). Bob is another former Peace Corps volunteer, so we tend to look at the world the same way. I worked with Bob and IDSA for over a year and it determined that the only serious proposal for developing these countermeasures—principally new antibiotics—was mine. Bob is a first-class professional and a delight to work with. So IDSA became leaders in fighting for my ideas. Then Bob led me to Peg Willingham who represents the International AIDS Vaccine Initiative (IAVI), which has now endorsed my bill. Peg is also a first-class professional and a delight to work with. That led me to other groups and voila, we have an infectious disease coalition. This white hat endorsement puts the left wingers—like Kennedy and Schumer—very much on the defensive. It's perfectly appropriate that I will now be headed off to Senegal, where AIDS and many of these infectious diseases are a major problem. I've had the great pleasure to work with a brilliant group in developing this legislation: George Poste, the preeminent expert on bioterrorism in the world; Richard Danzig, a neighbor and former navy secretary; Frank Rapoport and John Clerici with Gil Cuneo's old firm; Dack Dalrymple, world class expert on procurement and vaccine issues; Jeff Kushan, my patent guru and ally on the PTO utility guidelines; Jim Rafferty, my tax expert; Dave Schmickel, my dear friend; Bruce Artim, Patty DeLoatche, and Kira Bacal with Senator Hatch's staff; Anne Solomon of CSIS; Steve Lawton of BIO and NABI; Leighton Read of Alloy Ventures; Susan Geiger of Preston Gates; Tara O'Toole and Brad Smith of the BioSecurity Center; Mike Hopmeier of Unconventional Concepts; Val Giddings of BIO regarding bioag terrorism; Rachel Levinson, a world class expert on life sciences issues; Klaus Schafer of DoD; Cynthia Schneider and Mike McDonald at Georgetown. I consider

all of them to be friends and supporters. They're visionaries who care deeply about these critical issues. If the nation knew them, they'd feel safer and very grateful.

<sup>150</sup> Following is an argument I have been circulating widely in the administration: "The flu vaccine debacle is just the tip of a massive vulnerability for the Bush Admin. in the second term. A Bioterror attack or contagious disease outbreak (SARS, avian flu) would make 9/11 look trivial. The President almost lost the election because of the flu debacle. His second term will be a mess if it's marred by a failure of leadership to prepare for an infectious disease. That would lead to another 9/11 Commission! And there would be multiple 'Richard Clarks' to expose the Administration's indifference to the threat. Lieberman proposed what became BioShield. He's now drafting BioShield II. He wants to work with the Admin. He's got Hatch, Gregg, and Enzi on it. Reports are that he's trying to get Clinton! BioShield is the Admin.'s brand. Proposing BioShield II is the right moniker for this new initiative. Getting ready for infectious disease is worthy of a mention in the State of the Union address. It's important enough to be mentioned in the Inaugural Address. The policy issues here are very complex, but the key problem is that the biopharma industry is not interested in this research—to develop drugs and vaccines to deal with an outbreak. If we don't have drugs and vaccines, we'll get quarantines—which are very ugly. The industry does not trust the government—AT ALL. So we have to overcome this suspicion with incentives. These incentives will drive some liberal Democrats nuts, but that's probably a desirable thing from the Admin.'s point of view (witness Cleland and Carnahan). If the Admin. waits for Tony Fauci to develop these medicines, we'll never get ready. At a minimum the Admin. has to make some bold gestures at solving this problem and getting us ready. We won't be ready for many years to come, but it's imperative that the Admin. show that it's taking this threat very seriously. There is zero political risk of proposing bold incentives. The risk comes from not leading and not pushing the Congress to take decisive steps."

<sup>151</sup> We will never be able to anticipate all of the pathogens that might be utilized by terrorists. Our medicine chest will never have all the medicines we need for all the possible terrorist pathogens. The ultimate and only effective bioterror defense are "research tools" powerful enough so that we can develop and deploy new countermeasures quickly after an attack has occurred. We need this power to respond to Mother Nature's new concoctions, like SARS, but it's also the only defense against exotic terror pathogens we'll never see in advance of an attack As stated by the leading biodefense think tank, "The process of moving from 'bug to drug' now takes up to ten years. The U.S. biodefense strategy must have as one of its key strategic goals the radical shortening of this process." The development of research tools is a central focus of the bills that Senator Hatch and I have introduced and it will be a central focus in BioShield II and all of the incentives in BioShield II will apply to the development of research tools.

<sup>152</sup> *CQ Homeland Security* published an article regarding my retirement on May 20, 2005, “The Gods Must Be Crazy: Biodefense ‘Visionary’ Chuck Ludlam Is Off to Africa,” By Eileen Sullivan and Sean Madigan, CQ Staff.

<sup>153</sup> Kent is associate professor of insurance and risk management. He’s served as economist, Congressional Budget Office, 1995-98; faculty research fellow, Aging Program, National Bureau of Economic Research, 2000-present; research associate, Public Economics, National Bureau of Economic Research, 2001-present; deputy assistant secretary of Economic Policy, U.S. Treasury: 2001-2002; member, Blue Ribbon Advisory Panel on Dynamic Scoring, U.S. Congress (JCT), 2002-present; member, National Academy of Social Insurance, 2002-present; research associate, Michigan Retirement Research Center, 2000-present. Among his seminal writings on fiscal issues are, “Measuring Social Security’s Financial Problems” (with Jagadeesh Gokhale), (December, 2004); “Fiscal and Generational Imbalances: New Budget Measures for New Budget Priorities” (with Jagadeesh Gokhale); Testimony before the Subcommittee on the Constitution, House Judiciary Committee (March 2003). Jagadeesh now operates out of the Cato Institute. He’s a former senior economic adviser to the Federal Reserve Bank of Cleveland. He served in 2002 as a consultant to the U.S. Department of Treasury (working with Kent) and in 2003 as a visiting scholar with the American Enterprise Institute. He has coauthored many of key fiscal policy studies with Kent. At Cato he’s authored, “The Impact of Social Security Reform on Low-Income Workers” and coauthored “Social Security Privatization: One Proposal” (with David Altig).

<sup>154</sup> Supply-side economics was born in an igloo shaped curve drawn on a cocktail napkin by economist Arthur Laffer at a meeting at a restaurant in the late 1970s as Laffer and Robert Mundell described the concept to Jude Wanniski. The curve was used by Republicans to justify tax cuts. The Laffer curve and supply side economics inspired the Kemp-Roth Tax Cut of 1981. Supply-side advocates of tax cuts claimed that lower tax rates would generate more revenue because government was operating on the right-hand side of the curve. Conventional economic paradigms acknowledge the basic notion of the Laffer curve, but argue that government was operating on the left-hand side of the curve, so a tax cut would thus lower revenue. The central question is the elasticity of work with respect to tax rates.

<sup>155</sup> For a frighteningly realistic projection of how our country could experience a “meltdown” see “Countdown to a Meltdown,” by James Fallows, *Atlantic Monthly* (July-August 2005) at 51.

<sup>156</sup> Three of the provisions of this bill illustrate the complexity of this issue. One requires the president to submit new estimates of the long-term shortfall in funding for the government. Here is what the bill requires of the president: “For the 75-year horizon under clause (i)(I), each calculation shall take each year’s expenditures minus revenues, divide this difference

by the projected discount factor for that year, and add the resulting 75 annual discounted flows to obtain the program's net present value imbalance. The long-term discount and growth rates utilized in these calculations shall be discussed in the report and consistent with those utilized by the Department of Treasury and other government agencies with regard to other long-term financial calculations. For purposes of the calculations in clauses (iii), (iv), and (v) of subparagraph (A), revenues will include payroll taxes as allocated by law to the respective Trust Funds (currently the case for OASI, DI, and HI), participant premiums (for SMI), general revenue receipts from the taxation of benefits, as currently allocated by law to the OASI, DI, and HI Trust Funds, and funding for the Federal retirement and health insurance systems, both civil and military. For purposes of this calculation, revenues will not include interest income on Trust Fund and transfers of general revenue to SMI, Social Security, or Medicare."

Another provision calls for the president to submit estimates for the long-term cost of legislation he proposes. Here's what the bill requires of him: "If the net present value of the Government's overall liabilities and commitments of a legislative recommendation or recommendations is found to have an adverse impact greater than 0.25 percent of the present discounted value of all future payrolls over 75 years or an indefinite horizon, the President shall submit a plan to accompany such recommendation or recommendations that reduces the total of debt held by the public added to the calculation of the net present value of the Government's overall liabilities and commitments published, as required by section 331(e)(3)(A)(i) of title 31, United States Code, to a level that exceeds 1.25 percent of the present discounted value of all future payrolls as of September 11, 2011. Such plan shall be submitted with regard to calculations based both on a 75-year horizon and an indefinite horizon."

Another provision sets up a point of order against legislation that has a negative long-term fiscal impact. Here's how the legislation defines this point of order and how it sets up strict rules of construction in scoring the proposal: "It shall not be in order in the House of Representatives or the Senate to consider any bill or resolution (or amendment, motion, or conference report on that bill or resolution) that changes direct spending or revenues that would, when considered together with any other legislation passed by that House or enacted prior to such consideration during that calendar year, cause an adverse impact on the net present value of the Government's overall liabilities and commitments incurred by that measure over 75 years or an indefinite time horizon that is greater than 1.25 percent of the present discounted value of all future payrolls. The calculation required by this subsection shall assume that the legislative measure subject to the point of order will be a permanent change in law and disregard any changes in the terms of the legislative measure and any formula or mechanism for adjustments in the recommendations beyond the date of enactment to the extent that such change, formula, or mechanism decreases the net present value of the Government's overall liabilities or commitments over 75 years or an indefinite time horizon."

<sup>157</sup> In early 2005, CBPP decided not to issue its report and began to negotiate a new budget process bill based on mine. If CBPP and my conservative economist allies reach an

agreement, we'll have a left-right coalition that might be quite powerful.

<sup>158</sup> Jen is legislative director for Senator Lindsey O. Graham, R-South Carolina. She specializes in Social Security, tax, and budget policy. Prior to joining Senator Graham's staff, she served as legislative assistant for Congressman Jim Kolbe, R-Arizona, where she focused on Social Security and health care issues. Before coming to the Hill, she was a research assistant at the American Enterprise Institute and Pension Policy Analyst at the American Academy of Actuaries.

<sup>159</sup> Maya serves as president, Committee for a Responsible Federal Budget & Director, Fiscal Policy Program at the New America Foundation. Before coming to New America, MacGuineas served as a Social Security advisor to the McCain for President campaign. She has also worked at the Brookings Institution, the Concord Coalition, and on Wall Street. She received her master in public policy from the John F. Kennedy School of Government at Harvard University and serves on the boards of a number of national, nonpartisan organizations.

<sup>160</sup> Deng was born in Sichuan province in 1905. In the '20s he commanded communist guerrillas against Chinese Nationalists. In 1956 he was appointed general secretary of Communist Party, but then he was purged by Mao from 1966 to 1969 during China's Cultural Revolution. In 1975 he surfaced as the vice premier and vice chairman of Communist Party. By 1976 he was expected to advance as premier, but he was again purged. In 1978 he won a power struggle against Mao's successor and became China's paramount leader. He remained the paramount leader until 1987 and died in 1997 of Parkinson's disease. He will go down as one of the most important political leaders of the twentieth century and his legacy may dominate the twenty-first century.

<sup>161</sup> The bill was introduced as S. 1117, the U.S.-China Cultural Engagement Act, on May 25. Paul Brand and Hassan Tyler in my office did most of the work and managed a glorious rollout event, with lots of American students speaking in Chinese about how important it is to engage with China and learn its language. The timing for the introduction couldn't have been better; Tom Friedman has just published a fascinating book about the flat world, which argues that China is critical to the twenty-first century. Paul and Hassan could not have been more effective in developing my idea into a practical, ambitious and visionary bill. We named the titles of the bill after famous Chinese, specifically Du Fu, Wang Xizhi, Zheng He, Sun Yat-sen, Zhou Xinfang, Cai Lun, Ieoh Ming Pei, and Wang Wei. We printed a short history of each of them in the bill. We tried valiantly to persuade the Rules Committee to permit us to print these names in Chinese script, arguing that that this was consistent with the theme of the bill. We failed to persuade them. If they had agreed, it would have been the first time any bill was printed with non Latin script. I'm constantly thinking of new ways to

accomplish things in the Senate. In drafting the bill, we reached out—as is always our routine—to the various groups with expertise or interest in the matter. We approached the Embassy of China and they came in for a meeting. We explained that we wanted their views, would keep all of our conversations off the record, and would not imply that they were endorsing the bill. This type of consultation was something they'd apparently never encountered, so it took some months for them to become comfortable with what we were asking of them. Then they began to open up about their concerns about our draft, which centered on two issues. First they were concerned that any funding of programs in which any of the participants were from Taiwan would imply U.S. recognition of Taiwan. We emphasized that we were only focused on cultural exchanges, not political ones. But this was not sufficient to allay their fears, so we eventually limited the bill to U.S.-P.R.C. exchanges. Second, they were concerned that any bill might become a vehicle for opponents of the P.R.C. We emphasized that in a democracy we could not stop anyone from offering such an amendment, but that we and the administration would oppose any such amendments, and we were confident those amendments would fail. These discussions were quite fascinating. They were, in effect, cross-cultural exchanges, exactly what we intend to spur in the bill, and they revealed just how important it is for the United States to learn more about the Chinese and their culture. Just prior to my retirement, the embassy hosted a farewell dinner for me, a truly gracious gesture by embassy staff we'd come to respect.

# **Stanford in Government: Forty Years of Influence**

By Chuck Ludlam (SIG intern, 1965 and 1967)

Seated next to Secretary of State Dean Rusk at a briefing that summer day in 1967, I wondered how he would respond to the question that was consuming me. As organizer of the briefing, one of six that Stanford in Government<sup>1</sup> held with Cabinet members that summer, I faced a complicated situation. Rusk was the leading Administration defender of the Vietnam War. As early as 1964, I had turned strongly against the war and had organized an anti-war protest at my Stanford graduation several weeks earlier. I saved my question for last: "In Vietnam, isn't the United States taking sides in a civil war and acting like a colonialist?" Rusk glowered at me, responded perfunctorily, and stomped out of the room. Mine was a fair question and his, a dismissive response. It was one of those encounters that made a lifelong impression on a lowly intern. I felt powerful and relevant, feelings that have led to my 32-year career in government and public policy and my boundless gratitude to SIG.

Over the past four decades SIG interns have had thousands of such encounters. We cannot measure what these experiences have meant — for the interns, the government, and Stanford — but we suspect that the cumulative impact has been profound on all three fronts.

In its 30th year in 1994, I organized a gala reception at the home of Senator Jay and Sharon Rockefeller here in Washington. It's time to celebrate again the manifest and multiple contributions SIG has made to our world.

SIG has found that exposing students to the fascinating nitty-gritty of the political process — warts and glories — encourages some of them to invest a lifetime in it and most to be more effective citizens. Politics is much stranger than fiction; it's a game driven by massive and conflicting forces, and it can be profane, fair, venal, idealistic, maddening, inspiring, pedantic, and even hysterically funny. Some interns recoil in horror, and others find it human and manageable. Only by immersion in it can students choose their point of view.

Immersing students in politics and government has been SIG's strategy since its founding in 1962-63 by Jamie Hunter (LLB '64) with a \$4400 grant from the William T. Grant Foundation. That first summer it placed 14 students as interns on Capitol Hill and "downtown" with the agencies and lobbying groups in Washington. Since then, approximately 4000 Stanford students have served as interns, mostly in Washington, but many in Sacramento and now overseas. SIG's annual budget is now \$150,000, of which 53% comes from endowments and every summer it awards 30 fellowships (a minimum of \$3,000 per student), including 13 international fellowships. The cumulative total

---

<sup>1</sup> Originally named "Stanford In Washington," the program was renamed "Stanford In Government" in the 1970s when it began to offer internships in Sacramento as well as Washington. This left the "Stanford in Washington" moniker available for the University's campus in Washington.

number of fellowships over the years is in the many hundreds. In a typical year on campus, SIG sponsors dozens of public speakers and similar programs on campus, attended by thousands of students. It helps students secure internship placements and organizes an extensive program of speakers and events during the summer. SIG has a reputation on campus for providing superb and non-partisan service to the student body. And it has the potential for even greater accomplishments.

For early interns who had to navigate the turbulent 60s, SIG was critical in providing a constructive focus for our anger. My story is illustrative. I grew up in San Marino, California, a right-wing John Birch Society stronghold. Ignoring the Kennedy allure because of my parents' political bias, I sported an "I Miss Ike/Hell I even miss Harry" bumper sticker on my Mustang. I was involved in politics but only at the high school level. This introverted world died my freshman year at Stanford on Big Game weekend when President Kennedy was assassinated. A decade of bitter public debate -- cultural conflicts and divisive public policy between generations and throughout the nation -- tore the country apart. SIG and the 60s gave me a mission: to fight for social and political change on the inside, not from the barricades.

My first encounter with SIG was in the winter of 1964. SIG controlled a bank of internships that it dispensed to Stanford students. My application was summarily rejected; SIG didn't accept sophomores. Undeterred, I recruited my grandmother to place me in an internship with the Republican Congressman she'd helped to elect. SIG then permitted me to join its summer program. We summer interns watched enthralled as the Great Society and the Voting Rights Act sailed through the House of Representatives in what was perhaps the most dramatic legislative session in our nation's history. While students throughout the country took to the streets, and became increasingly radicalized and alienated, SIG challenged its interns to plunge into the government decision-making process.

This immersion taught me the lesson that's governed the public service careers of many SIG interns: Politics works in America. This was confirmed for me the summer of 1967 during my second SIG internship in the House. My roommate was a close friend of Al Lowenstein, who had taught at Stanford in 1964 and was a legendary champion of liberal causes. Al visited us often that summer as he attempted to recruit someone to run against President Johnson in the Democratic primaries. When he finally persuaded Senator Eugene McCarthy to run, many of us went Clean for Gene — reverting to 50s-style attire to mollify the voters in the conservative early primary states. One of the happiest moments of my political life was sitting in a McCarthy campaign office in Milwaukee's Polish ward, shocked but ecstatic to hear Johnson drop out of the race. We believe, with some justification, that we were personally responsible for ending his Presidency.

Through the 60s tumult — the Free Speech Movement at Berkeley, Martin Luther King's and Hubert Humphrey's speeches on campus, the election of anti-war activist David Harris as our student body president, the Trips Festival, Haight Ashbury, the Fillmore and Jefferson Airplane, Barry Goldwater, the March on Selma, the Tet

offensive, the King and Robert Kennedy assassinations, the Chicago Democratic Convention, and Kent State — SIG's influential message was consistent: Burrow into the political power structure.

SIG's influence survived Presidents Nixon, Reagan, Bush, Clinton and Bush, the end of the Cold War, Newt Gingrich, welfare reform, supply side tax cuts, recessions and booms, globalization, terrorism, and the wars in Iraq. The message was always the same: It's not someone else's problem. You can make a difference. Get involved.

SIG's influence has survived the distracting crosscurrents of political strife, promoting civic involvement as the alternative to cynicism and apathy. In a country that was founded on opposition to autocratic rule, it's no surprise that many Americans enjoy eviscerating politicians and public servants. So SIG's mission is difficult: encouraging talented students, who have many more lucrative job options, to enter public service; to fashion effective solutions for America's and the world's seemingly intractable challenges; and to take the everyday risk that they and their efforts will be subject to vituperation.

Now, in the early years of the 21st Century, we're facing new threats: The imminent retirement of 55% of the highest-ranking Federal civil service managers, just as we face critical new homeland security and terrorism challenges. Again, SIG's programs might help to supply the next generation of civil servants.

During the decade of the 80s, SIG faced its own challenges, experiencing several near-death experiences. Fortunately, these crises turned out to be blessings in disguise for both SIG and Stanford. The first arose when the Stanford Alumni Association, which had housed SIG for many years, urged it to find another home, while SIG's anonymous donor, who had single handedly funded SIG for twenty years, was concerned about the lack of sustainable funding for the program. He gave an ultimatum — unless other sources of funding and support were found, he would no longer fund the program at the end of the year. In a case of perfect timing, Stanford President Don Kennedy — a former government official who valued public service — had just hired Catherine Milton, with whom he had worked in Washington, D.C., to develop a strategy to promote public service/community service on campus. Catherine is the acknowledged Mother of Stanford's massive public and community service infrastructure. She also established the Corporation for National and Community Service in 1993 in Washington, giving the nation the same infrastructure.

I was already intensively involved as a mentor to SIG when its existence was put in jeopardy. Catherine and I teamed up and worked together to find SIG a new home and stable funding. In her report to the Stanford President on public service, she argued that SIG should not only be "saved," but should become a foundation of a new public service center at Stanford, a recommendation that led directly to the creation in 1984 of the Public Service Center in Owen House and in 1993, the Haas Center for Public Service. The idea was to tap the student energy and commitment and match it with inspired

teaching and leadership by people like Catherine. SIG might not survive on its own, but it could thrive in this haven.

This partnership has worked and the Haas Center has transformed Stanford's public and community service profile. The Center now has an annual budget of \$2.3 million. The Haas Center staff, especially Catherine Milton, Tim Stanton, Nadine Cruz, Jeanne Halleck, Suzanne Able-Vidor, and now Leonard Ortolano, nurture SIG and a hundred other student public and community service programs. The dedicated staff provides continuity and perspective to harness the students' enthusiasm. Because of its central role in promoting careers in public service, SIG is one of only two programs on campus that the Haas Center officially sponsors. During the fundraising for the Center, I thought it unwise to take anything for granted. Even though it had the strong support from Catherine and Don with their Washington experience, I realized that in the future support might change; therefore, I funded an office in the new building dedicated solely to SIG.

Another superb program, the John Gardener Fellowship Program, was established in 1983 as part of these interrelated projects to honor one of the most beloved and respected University Alums, John served as Health, Education and Welfare Department Secretary under President Johnson and founded Common Cause and Independent Sector, two influential public policy advocacy organizations, and the White House Fellowship Program. The Gardner program has now placed 120 Stanford and Cal students in year-long fellowships in Washington and around the world.

Another threat to SIG's future arose as the university decided to establish an academic program in Washington DC. Catherine had originally made a recommendation in her report for such a program and two SIG students, Leslie Hetch and Anna Jackson, volunteered for several semesters to help develop recommendations that eventually went to a faculty committee. Some wanted the University to "take over" the functions that SIG provided; instead, Catherine and I were able to design the campus we see today, the widely acclaimed Stanford in Washington Program. Students study at the Bass Center while interning on the Hill and with the agencies and then SIG interns take over the campus during the summer. The synergy between SIG and SIW enhances both.

SIG soon faced another challenge. Its new funding source, grants from the ASSU starting in 1985, was suspended when graduate students voted down the entire student fee assessment program in a low turnout election. SIG limped through the next year until the fee assessment program was reinstated, leading us to launch a series of very successful endowment campaigns to fund SIG, protecting it against these shocks. Twenty-three of SIG's thirty fellowships are now endowed and the endowment of its international fellowships will shortly be completed. SIG is now set to launch a new \$2 to \$3 million campaign to endow its extensive public speaker and events programming — a prestigious "naming" opportunity. As one would expect from a program led by effective student politicians, SIG has always maintained excellent relations with the University's Office of Development, which finds SIG an attractive cause to pitch to donors.

SIG has enriched the Stanford community in the nation's capital. The fact that there are over 7000 Stanford alums in Washington is certainly due in part to SIG. Alums are organized to serve as mentors to aspiring Stanford public servants, and provide housing during the summer. In the 70s and 80s I organized many whitewater rafting trips for the Stanford Club on the Potomac River (Potomac fever!) to fund stipends for the SIG summer program coordinators. SIG interns are routinely invited to many Club events and events held at the Stanford in Washington campus.

Through the years SIG has weathered classic crises that reflect the passions of politics. For example, in the early 80s SIG interns held an off-the-record meeting with a high-ranking official of the Reagan White House who had made, they believed, an offensively sexist remark. The interns were outraged and determined to "out" the official in the most embarrassing possible way. We knew that SIG interns would know all too well how to do this. I persuaded them that they were bound by the ground rules for the meeting and that they had no right to jeopardize SIG's standing and programs. Out of respect for SIG, they backed off.

SIG is responsible not only for starting my career, but also for influencing me to venture beyond public service in Washington and join the Peace Corps in Nepal in the late 60s. The SIG and Peace Corps experiences, plus extensive travel in the Third World, have enabled me to see that our political system is the most effective, decisive, open and substantive in the world. This understanding accounts for the fact that I'm still working on the Hill — where so many of the staff are in their mid-20s and last only a few years — and not yet jaded by the political process. I'm now focused on crafting a strategy to close the \$72 trillion funding shortfall for Social Security and Medicare, fashioning an industrial policy to secure the medical countermeasures we need to respond to a bioterror attack, and setting the terms for this Century's overriding reality, the economic and political competition between the United States and China. And to complete the circle, my wife — also a former Peace Corps Volunteer — are planning to "reup" as volunteers in Africa. SIG's influence continues.

SIG's greatest influence on the University and its students is the same as it's been on me: Its optimism. SIG's optimistic premise is that our society will be led, generation after generation, by capable, idealistic, and inspired public servants. It's an honor for me and the Hass Center staff to be associated with SIG. The thirty or more SIG student Presidents with whom I have worked, and many other SIG leaders, are among the brightest and most effective people I've ever met. We rarely know their political affiliations; it's just not important in comparison to SIG's compelling non-partisan civic mission.

SIG's ambition for the next forty years should be to extend its influence to the very foundation of the Farm. In contrast to Harvard and Yale, Stanford has yet to fully apply its academic acumen to the great public policy debates of the day. The Hoover Institution provides a model for what should be more pervasive at Stanford — academics immersed in and leading the myriad battles that will shape our future. Establishing a John Gardner School of Public Policy modeled on the Kennedy School of Government

would enhance Stanford's relevance. Every department at the University should offer public policy fellowships — engineering students can focus on science policy and art students can focus on funding for art in public spaces. Stanford could fund grants or make annual awards to academics who publish the most timely and influential reports on social or economic policy issues. SIG could assemble a consortium of high tech trade associations and Stanford Park firms to host an annual conference — call it the Frederick Terman Summit after the Stanford-based founder of Silicon Valley — focusing on the interconnections among entrepreneurs, technology firms, academia, and government. It could bring retired Congressmen and Senators to campus for extended stays; establish a National Advocacy Center and Clearinghouse for Public Policy Internships; and maintain the definitive national website on internships and public service careers. Stanford and SIG could found their version of the Cambridge Union Society, the oldest debating society in the world, and endow annual lectures on social policy/poverty or East-West issues. If Stanford is destined to be the richest university in the world, then it has obligations to the world that exceed its current grasp.

America's future will be determined in large measure by America's ability to extend our influence to the East, combining the power of Stanford's greatest innovation, Silicon Valley, the ultimate bastion of the individualist, with the endless possibilities of Asia's multitudes. It is natural for Stanford to take the lead on the myriad public policy issues that will make this possible.

In doing all of this, Stanford will continue to build on SIG's 40 years of leadership and service to generations of Stanford students and alums. Congratulations SIG. Well done. And thanks.

---

Chuck Ludlam (BA ' 67) has served as the principal alumni mentor to SIG and many generations of Stanford students. SIG's office at the Haas Center is named the "Chuck Ludlam Room." He was one of 100 alums to receive the Centennial Medallion in 1991 for his service to the University. He had funded 25 summer fellowships and his dad, Jim Ludlam, has funded 20 more. For 20 years he gave a lecture at Stanford on "how to get a job/internship in Washington." He served for 26 years as counsel to the White House, Senate and House Committees, and the Federal Trade Commission, and 7 years as the principal lobbyist for 1000 biotechnology companies. He is retiring in June of 2005 and his wife, Paula Hirschhoff, and he are rejoining the Peace Corps to serve in Senegal. They both served as Peace Corps Volunteers in the late 1960s, Chuck in Nepal and Paula in Kenya.

# History and Work of the Office of Senate Legal Counsel

---

---

## 1. Introduction

The Office of Senate Legal Counsel, which was created by Title VII of the Ethics in Government Act of 1978, Pub. L. No. 95-521, § 701, *et seq.*, 92 Stat. 1824, 1875 (1978), *codified principally* in 2 U.S.C. § 288, *et seq.*, was the product of several years of legislative work in the Senate, by both the Committee on Governmental Affairs and the Subcommittee on the Separation of Powers of the Committee on the Judiciary. The key document in the legislative history of the office is the report of the Committee on Governmental Affairs on the Public Officials Integrity Act of 1977, S. Rep. No. 170, 95th Cong., 1st Sess. (1977), *reprinted* in 1978 U.S. Code Cong. & Admin. News 4216.

As originally conceived, the legislation would have created an Office of Congressional Legal Counsel. The House conferees on the Ethics Act stated that the House was not prepared to establish a joint office, but agreed to a Senate amendment to establish an Office of Senate Legal Counsel. H.R. Rep. No. 1756, 95th Cong., 2d Sess. 80 (1978), *reprinted* in 1978 U.S. Code Cong. & Admin. News 4381, 4396. The interests of the House in litigation are represented by the Office of General Counsel. Senate Counsel and House Counsel cooperate in litigation pursuant to the direction of the conference report on the Ethics Act that "the Senate Legal Counsel should, whenever appropriate, cooperate and consult with the House in litigation matters of interest to both Houses." *Id.*

The Senate Legal Counsel and Deputy Legal Counsel are appointed by the President pro tempore of the Senate upon the recommendation of the Majority and Minority Leaders. The appointment of each is made effective by a resolution of the Senate, and each may be removed from office by a resolution of the Senate. The term of appointment of the Counsel and Deputy Counsel is two Congresses. The appointment of the Counsel and Deputy Counsel and the Counsel's appointment of Assistant Senate Legal Counsel are required to be made without regard to political affiliation. Ethics Act, § 701(a) and (b); 2 U.S.C. § 288(a) and (b). The office is responsible to a bipartisan Joint Leadership Group, which is comprised of the Majority and Minority Leaders, the President pro tempore, and the chairman and ranking minority member of the Committees on the Judiciary and on Rules and Administration. Ethics Act, § 702; 2 U.S.C. § 288a. As the Senate report on the Ethics Act states, "[t]he purpose of the Office is to serve the institution of Congress rather than the partisan interests of one party or another." S. Rep. No. 95-170, at 84; 1978 U.S. Code Cong. & Admin. News 4300.

## 2. Defense of the Senate, its committees, Members, officers, and employees

Defensive representation may be authorized when the Senate, a committee, Member, officer, or employee is named as a party defendant in a civil lawsuit, Ethics Act, Sec. 704(a)(1); 2 U.S.C. § 288c(a)(1), about the validity of a proceeding or action that was undertaken in an official or representative capacity. "The Counsel may not be directed to represent a defendant in a criminal action or an action involving the unofficial activity of the defendant.... [N]o representation may be provided in contested election cases." S. Rep. No. 95-170, at 87; 1978 U.S. Code Cong. & Admin. News 4303. The report of the Committee on Governmental Affairs sets forth the intention of the Committee that "[o]fficial capacity will cover any actions a Member of Congress or employee takes in the normal course of his employment," and that, in deciding whether a Senate defendant has acted within that individual's official duties, "the scope of the legislator's or aide's official duties be broadly construed." S. Rep. No. 95-170, at 87; 1978 U.S. Code Cong. & Admin. News 4303.

Examples in recent years of damage claims against Members, officers, and employees of the Senate include a defamation action by a government-funded researcher against a Member and legislative assistant for statements in a news release, *Hutchinson v. Proxmire*, 443 U.S. 111 (1979), a claim by a nursing home operator that communications by a committee chairman with federal and state health care financing agencies interfered tortiously with the business relationship between the operator and those agencies, *Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155 (3d Cir. 1988), a claim against a committee chairman, counsel, and investigator for damages for violations of the constitutional rights and common-law privacy rights of persons whose documents were obtained by the committee during an investigation, *McSurely v. McClellan*, 753 F.2d 88 (D.C. Cir.), *cert. denied*, 474 U.S. 1005 (1985), and a discrimination claim by a dismissed Capitol telephone operator against the Senate Sergeant at Arms. *Hanson v. Hoffmann*, 628 F.2d 42 (D.C. Cir. 1980).

The provision of counsel by the Senate does not commit the Senate to pay for damages that may be awarded. Thus, in reporting S. Res. 463 of the 94th Congress, a resolution (prior to the creation of the Office of Senate Legal Counsel) to authorize the payment of fees for defense counsel in *Hutchinson v. Proxmire*, the Committee on Rules and Administration expressly stated that those payments "would not include any amount that might possibly be obtained in the nature of a money judgment." S. Rep. No. 1041, 94th Cong., 2d Sess. 2 (1976). Payments of damages would require separate action by the Senate.

Thus, disavowing the intent to create a precedent on indemnification by the Senate for the constitutional torts of its employees, the Senate, in agreeing to S. Res. 337 of the

99th Congress, determined that "the unique circumstances" of a judgment in *McSurely v. McClellan* against the widow of a former Senate employee, as representative of his estate, warranted the acceptance by the Senate of the responsibility of paying judgments resulting from the former employee's actions. 132 Cong. Rec. 1924 (1986)(remarks of Sen. Roth). *See also* 136 Cong. Rec. 13151-52 (1990)(text of S. Res. 294, 101st Cong., and remarks of Sen. Ford on authorizing Senate contribution to settlement of damage action, *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977), *cert. denied*, 438 U.S. 916 (1978), against Chief of the Capitol Police); 126 Cong. Rec. 22771 (1980) (text of S. Res. 497, 96th Cong., authorizing back pay for Capitol telephone operator reinstated as a result of a settlement in *Hanson v. Hoffmann*).

In various cases plaintiffs have named Senate parties in challenges to the constitutionality of congressional practices or actions. These actions have included claims by an impeached judge that the Senate could not constitutionally receive impeachment evidence through a committee and that his impeachment trial was barred by double jeopardy, *Hastings v. United States Senate*, 716 F. Supp. 38 (D.D.C.), *aff'd on other grounds*, 887 F.2d 332 (D.C. Cir. 1989), a claim by a member of the Senate and members of the House that provisions of the Federal Salary Act of 1967 that were in effect at the time of the lawsuit violated Article I, section 6, clause 1 of the Constitution, which requires that the compensation of Members of Congress "be ascertained by Law," *Humphrey v. Baker*, 848 F.2d 211 (D.C. Cir.), *cert. denied*, 488 U.S. 966 (1988); *see also* *Boehner v. Anderson*, 30 F.3d 156 (D.C. Cir. 1994)(challenge under 27th Amendment to congressional COLA system), a claim by members of the House that the Tax Equity and Fiscal Responsibility Act of 1982 was passed in violation of Article I, section 7, clause 1 of the Constitution, which requires that all bills for raising revenue shall originate in the House, *Moore v. The United States House of Representatives*, 733 F.2d 946 (D.C. Cir. 1984)(the Senate was also a defendant), *cert. denied*, 469 U.S. 1106 (1985), a claim by members of the House and private persons that the editing practices for the Congressional Record, including those of the Senate's Editor-in-Chief of the Official Reporters of Debates, violate their first amendment rights, *Gregg v. Barrett*, 771 F.2d 539 (D.C. Cir. 1985), and a claim by taxpayers that the disbursement by the Secretary of the Senate of compensation to the Senate chaplain violates the establishment clause of the first amendment. *Murray v. Buchanan*, 720 F.2d 689 (D.C. Cir. 1983)(en banc). Both Houses' chaplains, who invite a limited number of guest chaplains, have also been sued for not inviting as a guest a nontheist to deliver secular remarks to open sessions of the Senate and the House. *Kurtz v. Baker*, 829 F.2d 1133 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1059 (1988).

Another source of Senate Legal Counsel jurisdiction, Section 303(f) of the Civil Rights Act of 1991 provides that "[f]or the purpose of representation by the Senate Legal Counsel, the Office [of Senate Fair Employment Practices] shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978...." Pub. L. No. 102-166, 105 Stat. 1071, 1090 (2 U.S.C. § 1203(f)) *See Johnson v. Office of Senate Fair*

*Employment Practices*, 35 F.3d 1566 (Fed. Cir. 1994)(defending final decision in Senate fair employment matter); *Riggin v. Office of Senate Fair Employment Practices*, 1995 WL 452510 (Fed. Cir. July 31, 1995)(same).

The second kind of defensive representation the Counsel undertakes occurs when the Senate, its committees, Members, officers, or employees are subpoenaed to produce documents or provide testimony relating to official or representative functions. Ethics Act, § 704(a)(2); 2 U.S.C. § 288c(a)(2). See, e.g., *In the Matter of the Applications of the City of El Paso, Texas*, 887 F.2d 1103 (D.C. Cir. 1989); *Pittston Coal Group v. International Union, United Mine Workers of America*, 1995 U.S. Dist. LEXIS 11718 n.5 (W.D. Va. Aug. 11, 1995); *United Transportation Union v. Springfield Terminal Railway Co.*, 132 F.R.D. 4 (D. Me. 1990). Although authority to represent Members, committees, officers, and employees as defendants is limited to civil proceedings, authority to represent them when they are subpoenaed as witnesses extends to criminal proceedings as well. S. Rep. No. 95-170, at 88; 1978 U.S. Code Cong. & Admin. News 4304 ("[T]he Counsel may be directed to defend [Senate parties] if the case is civil or criminal in nature but only if the subpoena arises from the performance of official duties. Grand jury subpoenas for congressional documents and testimony are a matter of routine. Most such subpoenas arise when Congress investigates conduct which results in a criminal indictment.").

The representation of Members, committees, officers, and employees, when their testimony or documents are subpoenaed, helps to effectuate the Senate's power over the disposition of Senate documents, and to protect the Senate's interest in the attendance of its Members while the Senate is in session. Resolutions that authorize testimony by senators may recite that "by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave," and that testimony is authorized "except when [the senator's] attendance at the Senate is necessary for the performance of [the senator's] legislative duties." When appropriate, resolutions may state that testimony is authorized "except concerning matters about which a privilege against disclosure should be asserted." E.g., 132 Cong. Rec. 19604-05 (1986) (text of S. Res. 460, 99th Cong.).

The Office of Senate Legal Counsel advises Members, officers, and employees when they receive subpoenas or requests for documents or testimony and assists them in determining whether a congressional privilege should be asserted. The office also assists in preparing Senate resolutions to permit the production of documents and to authorize Members, officers, and employees to testify on matters not subject to a claim of congressional privilege. Apart from language that is particularly applicable to testimony by senators, resolutions that authorize Senate testimony or the production of Senate records recite (with variations appropriate to the case) that "by the privileges of the United States Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from

such control or possession but by permission of the Senate.... [W]hen it appears that testimony of Members or employees of the Senate is or may be needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate." *E.g.*, 132 Cong. Rec. 19604-05 (1986) (text of S. Res. 460, 99th Cong.). Where an issue of Senate privilege might arise, these resolutions often also will provide for representation of the subpoenaed Senate party by the Senate Legal Counsel. *E.g.*, *id.*

The representation of the Senate, its committees, Members, officers, or employees, whether as defendants or as subpoenaed witnesses, may be authorized by a resolution of the Senate. A resolution to direct the Senate Legal Counsel to defend the Senate, a committee or subcommittee, or a member, officer, or employee of the Senate, is subject to special rules on limited debate. Ethics Act, § 711(a)(2); 2 U.S.C. § 288j(a)(2). To enable the Senate Legal Counsel to take initial necessary steps to defend Senate parties effectively in "emergencies," particularly matters that arise during adjournments, S. Rep. No. 95-170, at 85; 1978 U.S. Code Cong. & Admin. News 4301, representation of Senate defendants or witnesses may alternatively be authorized by a vote of two-thirds of the Members of the Joint Leadership Group. Ethics Act, § 703(a); 2 U.S.C. § 288b(a). The Senate has also empowered the Joint Leadership Group by a vote of two-thirds to authorize Senate testimony or the production of Senate documents during adjournments. 128 Cong. Rec. 26769 (1982)(text of S. Res. 490, 97th Cong.).

The defense of individuals — Members, officers, or employees — may be undertaken only with the consent of the individual involved. Ethics Act, § 704(b); 2 U.S.C. § 288c(b). It is a basic principle of the American Bar Association's Canons of Ethics that a client be given the freedom to choose the attorney who will represent him. Accordingly, while this bill provides that, with respect to committees ... the representation by the [Senate] Legal Counsel will be mandatory, with respect to the representation of an individual, the Counsel can provide representation only if the individual to be represented consents. S. Rep. No. 95-170, at 88; 1978 U.S. Code Cong. & Admin. News 4304.

In some circumstances, representation of a Member, Officer, or employee by the Office of Senate Legal Counsel may be barred, as a matter of professional responsibility, because of a conflict between that representation and other responsibilities of the Counsel. The Ethics Act establishes a procedure to be followed when such a conflict is presented.

Under the Act, if a "conflict or inconsistency" exists between representation of an individual and other responsibilities of the Counsel, the Counsel is required to "notify the Joint Leadership Group, and any party represented or person affected." Ethics Act, § 710(a), 2 U.S.C. § 288i(a). Upon such notification, the Joint Leadership Group must recommend action to resolve or avoid the identified conflict. Ethics Act, § 710(b), 2

U.S.C. § 288i(b). If that recommendation is approved by a two-thirds vote of the Joint Leadership Group, the Counsel must follow the recommendation. If the recommendation is not so approved, the Joint Leadership Group is required to publish notification of the conflict and the proposed recommendation in the Congressional Record. *Id.* If after fifteen days the Senate has not directed that the conflict be resolved in another manner, the Counsel is required to follow the recommendation published in the Record. *Id.* Where an individual is not represented by the Counsel because of the existence of a conflict, the Senate may authorize reimbursement for that individual's fees and costs incurred in obtaining other representation. Ethics Act, § 710(d); 2 U.S.C. § 288i(d). For an illustration of this process, *see* 137 Cong. Rec. S10553 (daily ed. July 22, 1991) (text of recommendation of Joint Leadership Group on avoidance of potential conflict and S. Res. 156, 102d Cong., on the payment of legal expenses from the contingent fund).

### **3. Proceedings to aid investigations by Senate committees**

The Senate Legal Counsel may represent committees in proceedings to obtain evidence for Senate investigations. Two specific proceedings are authorized. 18 U.S.C. § 6005 provides that a committee or subcommittee of either House of Congress may request an immunity order from a United States district court when the request has been approved by the affirmative vote of two-thirds of the Members of the full committee. By the same vote, a Committee may direct the Senate Legal Counsel to represent it or any of its subcommittees in an application for an immunity order. Ethics Act, § 703(d)(2), 707; 2 U.S.C. § § 288b(d)(2), 288f. The Attorney General is entitled to ten days' notice of the intention of the committee or subcommittee to apply for the order, although the Attorney General may waive the notice period and enable the committee or subcommittee to proceed sooner. *In the Matter of the Application of the United States Senate Permanent Subcommittee on Investigations*, 655 F.2d 1232 (D.C. Cir.), *cert. denied*, 454 U.S. 1084 (1981). On the request of the Attorney General, the district court is required to defer action on the immunity application for up to twenty days. The district court must grant the application for an immunity order if it determines that these procedural requirements have been satisfied. The witness may not refuse to testify on the basis of the constitutional privilege against self-incrimination after the immunity order has been communicated to the witness by the chairman of the committee or subcommittee.

The Senate Legal Counsel may also be directed to represent a committee or subcommittee of the Senate, and also the Office of Senate Fair Employment Practices, Civil Rights Act of 1991, § 307(f); 2 U.S.C. § 1207(f), in a civil action to enforce a subpoena. Prior to the Ethics in Government Act of 1978, subpoenas of the Senate could be enforced only through the cumbersome method of a contempt proceeding before the bar of the Senate or by a certification to the United States attorney and a prosecution for criminal contempt of Congress under 2 U.S.C. § § 192, 194. The Ethics Act authorizes a

third method to enforce Senate subpoenas, through a civil action in the United States District Court for the District of Columbia. Ethics Act, § 705(f)(1); 28 U.S.C. § 1365. The House chose not to avail itself of this procedure and this enforcement method applies only to Senate subpoenas. Senate subpoenas have been enforced in several civil actions, most recently in aid of an Ethics Committee inquiry concerning Senator Packwood. *Packwood v. Senate Select Committee on Ethics*, 845 F. Supp. 17 (D.D.C. 1994); *id.*, 114 S. Ct. 1036 (1994)(Rehnquist, C.J., in chambers); *see also* S. Rep. No. 98, 101st Cong., 1st Sess. (1989) (proceedings to enforce subpoena of a recalcitrant witness in the impeachment proceedings against Judge Alcee L. Hastings).

The new civil action has important advantages, both for investigating committees and for witnesses. For committees, it establishes an expeditious procedure to test the objections offered by a witness and, if those objections are insufficient, to obtain by a judicial proceeding an order directing the witness to testify. A failure to comply with the order is a contempt of the court and may lead to the imposition of coercive sanctions. For the witness who asserts in good faith a legal objection to a congressional inquiry, the civil proceeding provides a neutral forum to determine the validity of the objection, without the initiation of a criminal prosecution.

The statute details the procedure for directing the Senate Legal Counsel to bring a civil action to enforce a subpoena. In contrast to an application for an immunity order, which may be authorized by a committee, only the full Senate by resolution may authorize an action to enforce a subpoena. Ethics Act, § 703(b); 2 U.S.C. § 288b(b). The Senate may not consider a resolution to direct the Counsel to bring an action unless the investigating committee reports the resolution by a majority vote. For fair employment matters, the Select Committee on Ethics has the responsibility for reporting to the Senate recommendations for the commencement of subpoena enforcement proceedings. Civil Rights Act, § 307(f); 2 U.S.C. § 1207(f). The Ethics in Government Act specifies the required contents of the committee report; among other matters, the committee must report on the extent to which the subpoenaed party has complied with the subpoena, the objections or privileges asserted by the witness, and the comparative effectiveness of a criminal and civil proceeding. Ethics Act, § 705(c); 2 U.S.C. § 288d(c).

There is a significant limitation on the civil enforcement remedy. The statute excludes from its coverage actions against officers or employees of the federal government acting within their official capacities. Its reach is limited to natural persons and to entities acting or purporting to act under the color of state law. 28 U.S.C. § 1365(a).

## 4. Representing the interests of the Senate as intervenor or amicus

The Senate by resolution may direct the Counsel to intervene or to appear as amicus curiae in the name of the Senate, or an officer, committee, subcommittee, or chairman of a committee or subcommittee, in any federal or state proceeding in which the powers or responsibilities of the Congress are placed in issue. Ethics Act, § § 706, 713(a); 2 U.S.C. § § 288e, 288l(a).

The Counsel may not be directed to intervene or appear in the name of an individual Member or any group of Members. Primarily the Counsel should represent the institutional interest of Congress. Individual Members have often brought successful legal actions in their own names which have benefitted Congress as an institution, but for the Counsel to represent such individual Members is likely to involve partisan considerations. S. Rep. No. 95-170, at 98; 1978 U.S. Code Cong. & Admin. News 4314. The Act provides that "[t]he Counsel shall be authorized to intervene only if standing to intervene exists under section 2 of article III of the Constitution...." Ethics Act, § 706(a); 2 U.S.C. § 288e(a).

This authorization permits the Senate to advocate an interest of the Congress in cases in which the Department of Justice has challenged the constitutionality of a statute. To enable the Houses of Congress to determine whether they should appear in litigation to defend Acts of Congress, the Attorney General is required to report to each House whenever he or she "determines that the Department of Justice will contest, or will refrain from defending, any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional." Department of Justice Appropriation Authorization Act, Fiscal Year 1980, Pub. L. No. 96-132, § 21(a)(2), 93 Stat. 1040, 1049-50, extended by Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. No. 102-140, § 102, 108 Stat. 1724, 1734 (1994). The Attorney General is also required to provide timely notice to the Senate Legal Counsel of any determination by the Department of Justice not to appeal, in a case in which the United States is a party, any decision affecting the constitutionality of an Act of Congress. Ethics Act, § 712(b); 2 U.S.C. § 288k(b).

The Senate Legal Counsel represented the Senate as amicus curiae in defense of the constitutionality of the independent counsel law. *Morrison v. Olson*, 487 U.S. 654 (1988). Other cases in which the Senate Legal Counsel has appeared to defend acts of Congress that were being challenged by the executive branch include *Metro Broadcasting, Inc. v. Federal Communications Commission*, 497 U.S. 547 (1990)(constitutionality of Congressionally mandated affirmative action requirement);

*Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983) (constitutionality of legislative veto); *Ameron v. U.S. Army Corps of Engineers*, 809 F.2d 979 (3rd Cir. 1986), *cert. dismissed*, 488 U.S. 918 (1988)(constitutionality of Comptroller General's role under Competition in Contracting Act); *Lear Siegler, Inc., Energy Products Division v. Lehman*, 842 F.2d 1102 (9th Cir. 1988)(same); *In re Benny*, 812 F.2d 1133 (9th Cir. 1987)(constitutionality of provisions of Bankruptcy Amendments and Federal Judgeship Act of 1984); *In re Koerner*, 800 F.2d 1358 (5th Cir. 1986)(same). The Senate Legal Counsel has also appeared in litigation to suggest prudential grounds for the Court not to decide the merits of an executive branch challenge to the constitutionality of an act of Congress. *American Foreign Service Ass'n v. Garfinkel*, 490 U.S. 109 (1989). In some cases the Senate Legal Counsel has joined the executive branch in defending certain features of a statute, while defending against the executive branch's challenge to other aspects of the law in question. Thus, in *Bowsher v. Synar*, 478 U.S. 714 (1986), the Senate joined the executive branch in defending the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings") against a challenge that it constituted an unconstitutional delegation of congressional power, while opposing the plaintiffs' and the executive branch's claim that the Comptroller General's role under the Act violated the separation of powers. In *Mistretta v. United States*, 488 U.S. 361 (1989), the Senate Legal Counsel appeared in the name of the Senate in the Supreme Court to support the United States Sentencing Commission's defense of the Sentencing Reform Act of 1984 after the executive branch, which generally supported the Act, questioned the constitutionality of the provision of the law that placed the commission in the judicial branch. See 134 Cong. Rec. 12100 (1988)(statement of Sen. Byrd on S. Res. 434, 100th Cong.).

The Senate has also directed the Senate Legal Counsel to defend the constitutionality of a federal statute where the executive branch, without challenging the statute, has failed to defend it, *e.g.*, *United States ex rel. Kelly v. The Boeing Co.*, 9 F.3d 743 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 1125 (1994) (constitutionality of qui tam provisions of the False Claims Act); *United States ex rel. Taxpayers Against Fraud v. General Electric Company*, 41 F.3d 1032 (6th Cir. 1994)(same), and also to defend the constitutionality of a statute where there was concern that the executive branch's defense, in light of legislative positions it had taken before the Congress, might be ambivalent. See *United States v. Eichman*, 496 U.S. 310 (1990); 135 Cong. Rec. S16191-92 (daily ed. Nov. 19, 1989) (statement of Sen. Mitchell on S. Res. 213, 101st Cong., authorizing appearance of Senate as amicus curiae to defend the constitutionality in that case of the Flag Protection Act of 1989).

The Senate Legal Counsel has also represented the Senate as plaintiff-intervenor in an action brought by members of the House to invalidate the President's use of a pocket veto in an intersession adjournment of the Congress during which each House had authorized an officer to receive veto messages from the President. *Barnes v. Kline*, 759

F.2d 21 (D.C. Cir. 1985), *vacated as moot sub nom. Burke v. Barnes*, 479 U.S. 361 (1987).

In several cases the Senate Legal Counsel has appeared as amicus curiae in the name of committees of the Senate in support of requests or subpoenas to obtain information in the possession of the Department of Justice. *In re Grand Jury Impanelled October 2, 1978 (79-2)*, 510 F. Supp. 112 (D.D.C. 1981)(appearance on behalf of Committee on the Judiciary to obtain Department of Justice documents relating to Robert Vesco); *United States v. Dorfman*, No. 81 CR 269 (N.D. Ill. 1981)(appearance on behalf of Select Committee on Ethics to obtain wiretap evidence relating to alleged conspiracy to bribe member of the Senate). A description of the proceedings and the transcript of the court proceedings in this case are found in Report of the Committee on the Judiciary Identifying Court Proceedings and Actions of Vital Interest to the Congress, 97th Cong., 2d Sess., H.R. Prt. No. 11, at 294, 407 (Comm. Print 1981).

Additionally, the Senate or its committees have appeared as amicus curiae in cases in which the interests of the executive and legislative branches are in harmony, but where there is still a special interest in separate Senate representation. *Turner Broadcasting System v. F.C.C.*, 819 F. Supp. 32 (D.D.C. 1993), *vacated and remanded*, 114 S.Ct. 2445 (1994) (constitutionality of must carry provisions of Cable Act). *Nixon v. United States*, 113 S.Ct. 732 (1993) (procedures used by the Senate in conducting the impeachment trial of former United States District Judge Walter L. Nixon, Jr.); *Bardoff v. United States*, 628 A.2d 86 (D.C. 1993) (subpoenas to senators). The Senate Legal Counsel appeared on behalf of the Senate in an action to support the executive branch's defense of the congressional frank, which had been challenged on the theory that it unfairly advantages incumbents over challengers. *Common Cause v. Bolger*, 574 F. Supp. 672 (D.D.C. 1982), *aff'd*, 461 U.S. 911 (1983). The Legal Counsel also appeared on behalf of the Committee on Governmental Affairs as amicus curiae in an appeal concerning a senator's participation in an oversight investigation of an executive department, *Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers*, 714 F.2d 163 (D.C. Cir. 1983), and intervened in the name of the Select Committee on Intelligence to represent the committee's interests in litigation under the Freedom of Information Act involving documents in the possession of an executive agency that the committee had generated in the course of an investigation. *Paisley v. CIA*, 724 F.2d 201 (D.C. Cir. 1984).

## **5. Advice to committees and officers of the Senate**

The Ethics Act details a number of advisory functions of the Office of Senate Legal Counsel. Principal among these are the responsibility of advising officers of the Senate with respect to subpoenas or requests for the withdrawal of Senate documents, and the responsibility of advising committees about their promulgation and implementation of rules and procedures for congressional investigations. The office also provides advice

about legal questions that arise during the course of investigations. Ethics Act, § 708(a)(5) and (6); 2 U.S.C. § 288g(a)(5) and (6). *See Report of Temporary Special Independent Counsel*, S. Doc. No. 20, 102d Cong., 2d Sess. 73 n.344 (1992).

## 6. Other duties

Section 708(c) of the Ethics Act, 2 U.S.C. § 288g(c), provides that the Counsel shall perform such other duties consistent with the purposes and limitations of Title VII as the Senate may direct.

When the office was changed in conference from an Office of Congressional Legal Counsel to an Office of Senate Legal Counsel, no specific provision was made for the representation of Senate interests concerning agencies which serve the entire Congress. One such entity is the Congressional Research Service. After an administrative law judge at the Federal Trade Commission issued a subpoena to CRS, at the request of oil company respondents in an FTC antitrust proceeding, the Senate used the catchall authority of section 708(c) to direct the Office of Senate Legal Counsel to represent CRS in order to protect the confidentiality of communications from CRS to the members and committees of Congress. *See* 126 Cong. Rec. 6892-93 (1980)(text of S. Res. 396, 96th Cong.). The Senate Legal Counsel has also defended the Public Printer in actions brought to restrain the printing of Senate documents. *See* 135 Cong. Rec. 11370-71 (1989)(text of S. Res. 143, 101st Cong.).

Section 708(c) was also used in the investigation relating to Billy Carter and Libya when the Senate directed the Counsel and Deputy Counsel to work under the direction of the chairman and vice chairman of the subcommittee charged with the conduct of that investigation. The Senate turned to the Office of Senate Legal Counsel as a nonpartisan office; the office became the nucleus of the investigating staff, and continued in that role under the direction of former Judge Philip Tone, when he was appointed to be Special Counsel to the subcommittee. *See* S. Rep. No. 1015, 96th Cong., 2d Sess. (1980).

Members of the office have undertaken other special assignments. In the Senate's investigation of Abscam and other undercover activities, the office detailed an Assistant Senate Legal Counsel to work on the committee staff. *See* S. Rep. No. 682, 97th Cong., 2d Sess. (1982). The Senate Legal Counsel served as counsel to the Senate Impeachment Trial Committee that received evidence in the impeachment proceedings concerning Judge Harry E. Claiborne. *See* S. Hrg. No. 812, 99th Cong., 2d Sess. (1986). An Assistant Senate Legal Counsel served as counsel to the Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr., *See* S. Rep. No. 164, 101st Cong., 1st Sess. (1989), and the office provided extensive assistance to the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings. *See* S. Rep. No. 156, 101st Cong., 1st Sess. (1989). The Senate has assigned the Legal Counsel duties in connection with the consideration of claims presented under the Federal Tort Claims Act. 128 Cong. Rec.

29927 (1982) (text of S. Res. 492, 97th Cong.); S. Rep. No. 649, 97th Cong., 2d Sess. 2 (1982).

In addition, the Legal Counsel provides informal advice to Members, officers, and employees on a wide range of legal and administrative matters relating to Senate business.

# CHRONOLOGY ON HUMAN CLONING ISSUE

Everything that has been done on the human cloning issue has been done by a team, including many members of the Executive Committee/Board/ECS, Carl, Chuck, Nancy, Suzanne, Dan, Libby, Megan, Patrick, our political consultants (Jack Clough, Dave Bockorny, and Bitzie Beavin), many members of our Government Relations and Bioethics Committee, and many other organizations including PhRMA, ASRM, AAMC, patient groups and medical societies.

## 1997

1. On February 19, 1997 the Dolly story breaks in New York Times
2. BIO supports President's call for a moratorium while NBAC reviews issue for 90 days.
3. During March, April and May BIO tries to persuade NBAC not to recommend enactment of a law. Submit statement recommending moratorium continue.
4. When it was clear in June of 1997 that NBAC would, in fact, recommend enactment of a law, BIO met with White House staff and tried to focus White House proposed law as narrowly as possible (making it clear that BIO does not support enactment of a law).
5. When it became clear in July that the House Science Committee would take up the bill BIO met repeatedly with committee staff and Congressman Ehlers about focusing on a narrowly crafted bill (making it clear that BIO does not support enactment of a law). Alison Taunton-Rigby appeared at a last minute hearing on the issue on July 22. BIO supported Rep. Rivers who offered several amendments to the Ehlers substitute, which had refocused the bill entirely on creation of an embryo, an issue not addressed by NBAC or in the President's bill. On July 29 the Science Committee reported the new Ehlers bill.
6. In July and September/October of 1997 BIO focused on a House and Senate appropriations bill amendment to include a ban on Federal funding of embryo research with "diploid cells" (a reference to cloning). Bill with this amendment become law.
7. In September/October of 1997 BIO worked closely with Senator Frist's office on strategy in case Bond, et. al., were to offer a Senate cloning amendment (never offered). Gave Frist's staff legislative language (making it clear that BIO does not support enactment of a law).
8. In Fall of 1997 made repeated attempts to recruit patient/academic groups.
  - A. Organized a briefing on September 27 (Alison Taunton-Rigby was presenter) attended by 20 patient groups and medical societies.
  - B. Held meeting of patient groups on October 23 attempting in unsuccessful attempt to organize a coalition.
  - C. Held multiple follow-up meetings with patient groups in unsuccessful attempt to organize a coalition.

9. In November/December of 1997 met with staff of Senators Bond, Frist, and Ashcroft to firm up relationships and gather intelligence about Second Session prospects.

10. In Fall of 1997, at suggestion of Senator Ashcroft's staff, met systematically met with Senate leaders of partial birth abortion issue.

### 1998

11. Nancy Bradish starts work at BIO on January 5.

12. Dr. Seed makes his announcement on January 7.

13. BIO researches whether we should call for FDA assertion of jurisdiction over human cloning. On January 21 BIO publicly calls on FDA to assert jurisdiction, which it does.

14. BIO develops list of 9 key drafting points for any bill on human cloning. Worked closely with PhRMA, which adopted the BIO list.

15. During this time BIO circulates letter to representatives of patient advocacy, academic research, and medical societies urging Congress to ensure that biomedical research is not damaged by any human cloning bill.

16. On January 12 BIO had a conference call of key members of the Government Relations and Bioethics Committees to discuss science at risk with a Ehlers-type bill. We thought we were least prepared on this issue.

17. On January 13 met with Senate Labor Committee majority staff (Jeffords) regarding bill.

18. On January 13 briefed staff of all minority members (Democrats) of Senate Labor Committee.

19. On January 14 BIO briefed 13 White House and Administration staffers regarding impending cloning debate. Urged them to get out-in-front of the issue so that they would not have to veto a poorly-crafted bill.

20. On January 15 met Senator Feinstein's staff to help her draft a bill which would not adversely affect biomedical research. Without any urging from BIO she had announced that she would be introducing a bill. We reviewed 10 drafts of her bill over the next few weeks and she introduced it on February 2 (S. 1602).

21. During this period met and talked repeatedly with staff for Senators Bond and Frist to make sure they completely understood the problems with the Ehlers bill approach (the science at risk) and the key drafting issues. Our strategy during this period was to keep Senator Frist off of the Bond bill.

22. By January 20 had met with staff of every member of House Republican and Democratic

- Leadership. When Speaker Gingrich says at a Republican Caucus meeting that banning human cloning is a "no brainer," House Whip Tom DeLay says, "It's more complicated than you think."
23. On January 20 met with House Commerce Staff (Howard Cohen, Rodger Currie, and Pattie DeLoatche) to discuss human cloning issue. Very cordial meeting. Entered into Email follow-up with Rodger Currie. A complete copy of all of the Emails which were exchanged is available.
  24. On January 20 the Society for Reproductive Medicine announced support for human cloning legislation (advancing a draft prepared by BIO).
  25. On January 21 BIO Executive Committee held conference call on human cloning legislation to review status and BIO strategy.
  26. On January 22 BIO met for first time with Senator Mack's staff to recruit the Senator as a champion.
  27. On January 22 got leaked copy of new bond bill. Set emergency conference call for next day to analyze it. Based on two hour conference call prepared memorandum identifying 24 problems or issues with the bill.
  28. During this period met with staff for 40 Hill offices.
  29. During this period Patrick Kelly was focusing the flood of Senate cloning bills. BIO drafted legislative language appropriate for a state legislature and used it to try to focus the Senate bills (while maintaining that BIO does not support enactment of a law).
  30. During this period had repeated contacts with White House and NIH staff urging them to become involved in the debate. White House finally put out a Statement of Administration Policy (consistent with BIO's position) on February 9.
  31. During this period coordinated with lobbyists for Merck (Victoria Blatter and Laurie Michel) and SmithKline Beecham (Eleanor Kerr), who were the most active Washington offices helping us on this issue. Merck has facilities in Mississippi and met with Lott's staff.
  32. Throughout this period consulted frequently with scientists at Geron and Origen about science at risk. Did same with academic scientists at University of California, University of Wisconsin, Harvard, and Johns Hopkins. Made sure that did not make misstatements about science at risk.
  33. On January 26 mailed letter of signed by 53 patient groups to Capitol Hill cautioning about potential impact of human cloning legislation. Letter not then supported by American Association of Medical Colleges (AAMC) or Federation of Societies of Experimental Biology (FASEB), which later signed the letter and joined in the effort along with other groups (for a total of 60 signers).
  34. On January 28 sent first BIO letter to the Hill on human cloning issue urging caution.

35. On January 28 sent letter to Speaker Gingrich outlining our concerns.
36. On January 28 invited to participate in a meeting in Senate Majority Leader Lott's office with Senators Bond and Frist, staff for many key members, a PhRMA representative, and representatives of 10 patient groups (recruited by BIO). Inconclusive discussion. Senator Lott did not attend. Frist staff asks those in attendance to submit draft legislative language.
37. On January 26 held BIO Gov. Rel./Bioethics Committee meeting regarding human cloning legislation.
38. On January 29 sent memo to Gordon Binder, Henri Termeer, Vaughn Kailian, Alison Taunton-Rigby, and Mitch Sayare regarding meeting in Lott's office. Sent draft of bill to submit to Bond and Frist in last ditch attempt to craft narrowly crafted bill. Later on this day sent a second memo with a revised draft. We submitted our draft language to Senators Bond and Frist on January 30.
39. On February 2 Senators Feinstein and Kennedy held a press conference to describe their human cloning bill (S. 1601).
40. On February 2 held last-ditch meeting with staff of Senator Bond and Frist to persuade them to introduce narrowly focused bill. Wanted to make sure that every possible effort had been made to avoid confrontation or surprise on their part about our views.
41. On February 2 held BIO Gov. Rel./Bioethics Committee meeting regarding human cloning legislation.
42. On February 3 met with staff of Congressman Ehlers to ascertain his intentions.
43. On February 3 Senators Bond/Frist/Lott held a press conference to describe their human cloning bill (S. 1599). Senate Majority Leader Lott introduced an identical bill, S. 1601, which was the bill for purposes of the Senate debate.
44. On February 3 within two hours of the release of the Bond bill, BIO had completed its analysis of its impact and began circulating it to our supporters. At same time drafted description of the science at risk with the Bond bill. The analysis and statement have proven to be accurate in all respects.
45. On February 3 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.
46. On February 4 BIO met with Senator Hatch's key staffers for two hours regarding the human cloning issue. Brian Moss of the Utah Life Sciences Industry Association arranged the meeting and attended. Hatch is chairman of the Senate Judiciary Committee, to which the Bond bill was referred.
47. On February 4 Carl sent memo to BIO Board of Directors with update on human cloning

debate and forwarding our analysis of the new Bond bill and the science at risk.

48. On February 4 heard indirectly that Frist staffer Jennifer Van Horn had thought BIO had questioned her competence (not a true statement). We wrote friendly letter to Senator Frist praising Van Horn.

49. On February 4 drafted statement for Senator Feinstein's use the next day for the opening of the Senate floor debate (submitted for the Record). Statement formed the basis for House Commerce Committee testimony on February 12.

50. On February 5 Senate Majority Leader Lott took S. 1601 off of the calendar -- after no referral to committee. An objection was made to the motion to proceed (from Feinstein and Kennedy) and Senator Lott immediately filed a cloture petition to end debate on the motion to proceed. Senator Mack made a powerful statement against precipitous action on the bill.

51. On February 5 BIO recruited Dr. Roger Pederson, consultant to Geron, to take the red-eye flight from California for briefings the next day. Briefings were for staff of all Senate Democratic offices and 20 science reporters (hosted by Feinstein/Kennedy offices). We took Roger over to meet with House Commerce Committee staff (Howard Cohen and Rodger Currie).

52. On February 6 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.

53. On February 9 New York Times publishes editorial entitled "A slapdash proposal on cloning." (Carl and Alan had met previously with NWT editorial staff in New York.)

54. On February 9 American Society for Cell Biology sends letter against Bond bill signed by 27 Nobel Prize winners.

55. On February 9 held BIO Gov. Rel./Bioethics Committee meeting regarding human cloning legislation.

56. Late on February 9 BIO is informed that the House Commerce Committee has invited BIO to be represented at its hearing on February 12 and that testimony is due by noon on February 11. We recruit witness that afternoon and next morning (a complicated process). Testimony is drafted on February 10 and morning of February 11 based on the earlier statement submitted to Senator Feinstein, the analysis of S. 1599, and the description of the science at risk -- no time to do new draft and drafted before we know the outcome of the Senate vote. Submitted on time to the Subcommittee. Send copy to PhRMA to help coordination.

57. On February 10 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.

58. On February 9 and 10 many rumors circulate that Senator Lott will not take the cloture petition to a vote moving instead to refer the matter to the relevant committees for 45 day review (a proposal made by Senator Mack).

59. On February 11 the cloture petition ripened and Senator Lott called for a vote. We had been quite sure he would lose any such vote and heard repeatedly that he would not, in fact, call for the vote. For reasons we do not understand, he did call for the vote, 12 Republicans voted against cloture, and the cloture petition (which needed 60 votes to pass) received only 42 votes -- 18 short. We heard that Senator Lott had termed this vote a "leadership vote" -- raising the stakes. Senators Mack and Thurmond made eloquent statements against precipitous action on the bill.
60. On February 11 and morning of the 12th spend ten hours prepping our witness for hearing.
61. On February 12 BIO was represented at hearing of the House Commerce Committee by Dr. Michael West, founder and Chairman of Origen. (Mike was the founder of Geron which he has left to found Origen.) Howard Cohen states that Mike's testimony is "balanced" and "substantive." We had met with virtually every member of the Subcommittee by then and all but one supported our position -- Republicans and Democrats.
62. On February 12 after the hearing House Commerce Committee staff (Howard Cohen, Rodger Currie, and Eric Berger) invite Michael, Chuck and Nancy for an hour-long discussion of the science at risk. A representative of the Catholic Bishops attends. Very cordial and substantive meeting.
63. On February 13 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.
64. On February 17 attended meeting with House and Senate Republican leadership and key committee staff. PhRMA also attended. Meeting focused on understanding each other's position and moving on to resolve the controversy.
65. Agenda for week of February 16 includes (a) beginning to draft options which bridge the gap between Feinstein and Bond bills; (b) meeting with staff of House Commerce Committee minority (Cong. Sherrod Brown) regarding their draft human cloning bill; (c) sending out thank-yous to Senators and Subcommittee members; (d) assisting National Health Council organize its forum on human cloning on March 26; (e) meeting with other House Commerce Committee members; (f) ascertaining plans of the Senate Judiciary and Labor Committees for hearings/mark-ups, etc.; (g) preparing to testify at any such hearings; (h) many meetings on the Hill with key players; and (I) continuing work with coalition partners, NIH/Administration, BIO members, PhRMA, etc. to resolve the controversy.

# **Aspiration Statement**

**Chuck Ludlam**

**(serving with wife, Paula Hirschhoff)**

**Senegal**

**September 25, 2005**

## **Expectations about Peace Corps Service**

My desire to rejoin the Peace Corps is based on the simple fact that, aside from the decision to marry Paula Hirschhoff, joining the Peace Corps (Nepal 17, 1968-1970) was the best decision I've ever made. Over the 35 years since I served in Nepal, the pervasive and positive impact of this experience has become increasingly clear to me.

Serving again would be the latest and best way to express and realize the humanitarian values embedded in this service and gain the perspective and gratitude that such service yields.

While I've done my best to incorporate Peace Corps values and commitments into my hectic and highfaluting life as counsel in the U.S. Congress and White House, and as a lobbyist, it should be more straightforward to live these values and commitments in a village in Africa where the needs are so basic and obvious and the lifestyle is slower and less materialistic. I was never a kinder, more generous, more humble, and more patient person than when I served as a Volunteer and I want to return to this state of being in full measure.

This time around I'm excited about serving with my wife, Paula Hirschhoff, another former Volunteer. She and I met in 1988 at a Peace Corps function and it is clear that our relationship is grounded in the values that led us both to serve. I founded Friends of Nepal and she is a member of the Board of Friends of Kenya. I am involved with the FON Peace Initiative, seeking to quell the violence in Nepal. We have organized FON and FOK events at the NPCA conferences in D.C. I funded the construction of a science building in my Nepal village and we both provide financial support to many Nepali and Kenyan families. I have developed legislation and regulatory proposals in support of the Peace Corps. Many members of our social circle are former Volunteers. Serving together will surely deepen our relationship and the respect we have for each other, based on the experiences that brought us together.

I am very inquisitive and love to learn, and there is no subject more complex and fascinating than that of human culture. Learning how other cultures see and deal with the world, and learning to respect their choices, is an enriching process. I am confident that I'll learn many more lessons in life from the supposedly "less developed" world, and I am sure it will give me a sense of gratitude for the bounty in America.

I don't much like my relationship to goods and possessions. I look forward to living without many of them. In Nepal I learned that good health is not a given and rats, lice and physical inconvenience are the common experience for many millions of people. That is a sobering and useful lesson to learn again. I am rugged and do not anticipate that I will have much difficulty adjusting to the Third World living conditions. In fact, I prefer to serve in a community without modern conveniences. To me this is simply more natural.

My assignment as an AgroForestry extension agent -- essentially the same assignment I had in Nepal -- will focus my energies on basic human needs in Senegal, what I believe to be the highest calling of a Volunteer. Recalling my visits to my grandfather's apple farm, my seven summers of work on a cattle ranch in Arizona, and my gardening at home, I look forward to being intimately connected to the earth.

In addition, I have extensive experience with adventure travel and have some ideas how we might try to associate our village into that market. This would depend on its proximity to the "beaten path" for world travelers. If we are near the coast or a river, I have extensive experience in sea kayaking and whitewater kayaking and rafting, as well as snorkeling. This might be relevant to ecotourism promotion. My wife is an experience sailor, having grown up sailing in the Minnesota lakes.

## **Strategies for Adapting to a New Culture**

As a PCV agriculture extension agent in Nepal, I believed in the Green Revolution and the benefits it would provide -- nutrition and cash -- to my community. I came to live comfortably with what was possible in my village, to be nonjudgmental and nonpejorative about their response to my mission, and to work for change on terms the villagers could understand and accept. The village tea shop and twice-weekly market, not the paddy fields, were where I came to understand the culture and spread my message of change.

The Tharus, the aboriginal people with whom I lived and worked, had experienced essentially no contact with the outside world. I was the first westerner most of them had ever met. My Nepali coworker and I planted demonstration crops alongside the local trails, contrasting the new, high-yielding Green Revolution varieties fertilized by chemicals with the local varieties without fertilizer. The new varieties had a yield of 30-40 fold that of the local varieties.

The villagers would see this and say, "Chuck Ji, you are a good farmer." That was pretty much the end of their analysis. They didn't ask how I did it, or whether it was something they could try, nor did they proceed to change their own practices. Their approach to their world was accepting, or as we might say, passive or fatalistic. I had to learn to live patiently with this response and understand that they simply had little

experience or positive experience processing new ideas.

They did not tend to analyze problems, nor were they grounded in cause-and-effect, risk-taking, or trial-and-error. Theirs was a conservative approach, preferring the prevailing norm to the new, untried, and risky.

I came to believe that my role in the village was mostly to introduce the idea of change itself, to explain patiently that new ideas would soon impinge on their world, but not to assume that I would see many concrete changes during my two years of service. When I returned to Haripur in 1998, I found that every farmer had adopted the new agriculture techniques I'd advocated. I hope that I had eased the way to that end with my work thirty years before.

I have traveled in approximately 65 countries, many of them in the developing world, including Zaire, Rwanda, Uganda, South Africa, Morocco, Egypt, Afghanistan, Nepal, India, Burma, Cambodia, Thailand, Malaysia, Indonesia, China, Mexico, Belize, Costa Rica, Guatemala, Venezuela, Ecuador, Peru, Chile, Argentina, Palau, Yap, Papua New Guinea, Canada, and most of Europe. This travel has exposed me to many cultures and given me the skills to adapt to them. It's also given me an intense appreciation for the joys of interacting with other cultures.

It is obviously critical to learn the languages of my community. I took French in high school and have been taking French classes and private lessons all year in anticipation that we'd serve in a Francophone country. We understand we may also need to learn Wolof or Pulaar or another local language.

## **Personal and Professional Goals**

At age 60, I am retiring from the Federal government after a 33-year career as a lawyer, and am seeking to define my role in retirement. Serving again in the Peace Corps is sure to help me with that task.

We may well decide to extend our service in Senegal or find other international opportunities to serve throughout our remaining years. I may well identify organizations with respect to which to affiliate or even found a new one. I will certainly look for further ways to serve the people of Senegal, as I have found many ways to continue to serve the people of Nepal.

**Aspiration Statement**  
**Paula Hirschhoff**  
(Serving with husband, Chuck Ludlam)  
Senegal

September 25, 2005

## **Expectations about Peace Corps Service**

Expectations about my impending Peace Corps service in Senegal range from the broad scope of service to my country and my adopted continent of Africa to a narrow focus on personal and professional goals. I'm still idealistic enough to believe that the person-to-person ties established by volunteers make the Peace Corps one of the best foreign policy programs that our government has ever devised. I'm especially pleased to be assigned to a country that's predominantly Muslim during this crucial time for U.S. relations with the Islamic world. As for Africa, I am thrilled to be returning there once again. I believe that Africans have given the world more than most people realize or acknowledge. I look forward to enjoying those gifts and living again in a place where I feel so at home.

My expectations about my assignment (micro enterprise development for women) are still developing. I anticipate satisfaction as well as frustration in this work to empower women. Economic independence for wives and mothers in Africa, as elsewhere in the world, leads to a higher level of education for the next generation, as well as to better nutrition and health for the entire family. I recall those women in my community in rural Kenya who brewed gin or beer in their compounds. They generally used the proceeds to pay school fees for their daughters and sons.

The women in our town will probably have developed micro enterprises in the past. Perhaps their efforts have foundered or need to be expanded. Were I to return to the changaa-brewing regions of Kenya, I might try to steer the women to more legal, healthful enterprises. It may be that I'll be able to help Senegalese women analyze whether they are making the most of the resources at hand. It may be that they will need help to better organize their enterprise, which could bring my teaching skills into play. It's exciting to anticipate examining the natural environment to seek potential for income generation. Ecotourism might be a promising enterprise, depending on our site placement. My experiences in southern Africa taught me that promoting appreciation of natural resources in outsiders builds respect and conservation in the local people.

## **Strategies for Adapting to a New Culture**

Narrowing the focus of my expectations, I foresee that my husband, Chuck Ludlam, and I will participate actively in Senegalese family life as well as local community activities. We'll have to figure out how best to dress, eat, talk, and in general, behave, to be accepted and respected among the villagers. Fortunately, we both love trying unusual foods, so enjoying the meals we're served will be one way to adapt.

Getting to know the music and attending local celebrations including dances, funerals and weddings will be another means. Setting boundaries is, oddly, a means of adaptation too. We don't want to get overwhelmed and burned out. We'll need time alone and time with just the two of us to write and read and to discuss and consider what's happening to us.

At times we will feel impatient or guilty about our lack of progress and fatigued or disgruntled about the living conditions. These feelings may lead to annoyance or even anger. Fortunately, Chuck and I have been Peace Corps volunteers before. We can serve as a reality check for each other, and we can also draw on memories of our past service to provide perspective on the situation at hand. Moreover, we also have complementary personality traits: Chuck is bolder and more apt to forge ahead at times when I may feel it's inappropriate. I am more reticent, so I'm apt to hold back at times when I should push forward. We respect and embrace each other's personal traits and, as we do every day here in Washington, we'll practice our system of checks and balances.

However, we both agree that the best plan for adapting to a new culture is to be open and friendly, to ask many questions, and to make many quiet observations. During recent travels in Turkey and Egypt, for example, we often broke away from the small tour groups we were with and wandered together through the villages. As a result, we had some moving experiences: We were welcomed into homes, served food, and given gifts that we cherish, all with only a few words of the same language in common with our hosts.

We both acknowledge that learning the language is the key to in-depth understanding of another culture. To that end, I intend to review French intensively for the next four months and then embark on learning a local language when training starts in Senegal. In that way, I'll be able to ask many questions at the outset. In anthropologist style, I tend to keep many notes and journals, especially when I'm in a foreign land, so recording and reviewing my impressions of the culture will be an important means of adapting. It may be that we spend the first few months of our life in Senegal learning the language and culture well enough so that we can eventually have some impact in our job assignments.

## **Personal and Professional Goals**

My goals for applying to join the Peace Corps at this stage of life are much the same as they were in my youth: to explore a deep love of Africa, to fulfill a strong commitment to serve, and to address a temporary need to leave my easy American life to face new challenges in the world.

More specifically, I anticipate that this experience will enable me to fulfill some of the goals I set when I was pursuing a graduate degree in anthropology. For example, one of my aims was to incorporate values and practices of local cultures into

development/conservation strategies. I had worked as a senior writer/editor for about five years for U.S. Agency for International Development consulting firms, where I observed that development projects often employed a top-down approach that failed to involve the local people. I sometimes doubted that the projects themselves had much impact at the grassroots level. I also became disillusioned with my own work, because I saw no evidence that the publications I produced had much effect.

When I applied for Peace Corps, I assumed that I would be placed in an education program, since I 'd been teaching for several years. Now that my assignment is in micro enterprise development, I anticipate that I will have a chance to explore some of the ideas and theories about utilizing indigenous knowledge that I studied in graduate school.

Perhaps I could continue to fulfill many of these goals here at home. But serving in Peace Corps again has always been a personal goal. I said that I wanted to serve three times—once in my youth, once in middle age, and once in my older years. I'm not sure whether this is my middle age or my older years; if it's the former, then I'll have to serve again at a later date. And of course, learning French has been a personal goal too, as indicated by the various studies listed under the Foreign Language Section on my resume. This time I won't be able to put it aside after intensive study; I'll be called upon to use it daily.

A final personal goal is to share the Peace Corps experience with my husband. After we met at a Peace Corps event in 1988, I returned to Kenya for the first time in 20 years; he listened carefully to stories of my joyful reunions and decided to return to Nepal—his country of service. We traveled together and reunited with his Nepali friends for the first time in 30 years. We often explore other countries together in a traveling style that is closer to the ground and the local people than most tourists tolerate. And we also love going out of our way to help other people, whether it be our neighbors in Washington, DC or villagers in Africa. Serving together in Africa will be a logical extension of these experiences and will deepen our relationship and enrich our marriage.

**ON THE STAFF OF SENATOR LIEBERMAN**

**Interview #4**

**Wednesday, October 20, 2004**

**RITCHIE:** We talked the other day about some of the issues you have been working on with Senator Lieberman, including bioterrorism and debt. We didn't finish that discussion. I wondered if you could talk about some of those other issues.

**LUDLAM:** There are three other issues which I'll just mention briefly. I have been working a lot on the subject of charitable giving incentives and individual development accounts (IDAs). We just had the CARE Act go down in the conference on the Foreign Sales Corporation tax bill. We lost everything, the whole CARE Act and the IDAs.<sup>162</sup>

I've been working on the charitable giving incentives and IDAs for three years. Losing this bill, and the IDAs, is a bitter defeat. It's bitter because IDAs provide a whole new way of attacking poverty. The idea behind IDAs is that even poor people can save. If poor people do save, if they buy a home, they can invest in a business, and they can accumulate assets. Income alone is not sufficient to create wealth in our society. You have to own assets.

Most people, especially in the District of Columbia, find that their homes have been the ticket to wealth. I invested \$30,000 in a house in upper Northwest D.C. in 1975, and the house I'm in now is worth probably \$1.5 million. I think that's a little excessive in the District of Columbia but not unknown in this area.

**RITCHIE:** You moved up and used your equity?

**LUDLAM:** I only sold the first home and bought a second, and I've gone from \$30,000 in equity to about \$1.5 million in equity. For poor people to become members of the middle class, they have to own a home. No question, that's the principal ticket to wealth in our society. Most people use their home to borrow against to pay for big expenses like college.

The idea of IDAs is to help poor people to save, a radical idea. Most Democrats think

that the ticket to the middle class for poor people is income support, and there's certainly some truth to that. But if these people don't end up owning assets, they will never get in the middle class. They will never have a margin for error when they face unforeseen financial demands. If their car breaks down, or they have some big medical expense or something else, they need assets as a margin, as a hedge against the uncertainties of life.

I've been working on the CARE Act and IDAs very hard for three years, and we just lost it in the conference. President Bush said he supported the CARE Act and IDAs, and he's in favor of an ownership society. I think he's really only in favor of ownership by people who already own plenty, and not ownership by people who don't.

**RITCHIE:** So why do you think it didn't get through? Where was the main opposition from?

**LUDLAM:** It wasn't opposition. It was just the K Street lobbyists grabbing some expensive business tax cuts. They have more clout than poor people will ever have. So we were just outclassed in the competition for a limited pot of money.

**RITCHIE:** This was Lieberman's bill?

**LUDLAM:** Yes, with [Senator Rick] Santorum. We've had a wonderful relationship with Santorum on it. Randy Brandt was his staffer, and I worked very well with Randy. He's a dedicated, resourceful professional and fought every step of the way. But we didn't have the guns to win. It's a bitter defeat.

One aspect of it that's been fun is that Jim Davidson has been one of my allies on IDAs. Jim protected me when Abourezk retired and I was moving to the Carter White House. He said I could take as long as I needed to make the transition. I'll never forget that. Jim then turned out to be my antagonist on the Regulatory Flexibility Act. In recent years he surfaced as a big champion for IDAs. I admire Jim for his commitment to public policy. He's a first-rate player and an old and reliable friend. Ray Boshara is the leading advocate for IDAs and other savings programs for low income individuals. He's one of the smartest, most effective advocates I've ever worked with.

Working with people like them is what makes this political game so rewarding.

Despite our best efforts, so far we've lost. The IDA fight has been a labor of love for me and one of my most bitter defeats.

In October of 2003 Lieberman and Santorum approached the Census Bureau, which had just released the official poverty rate for 2002. It was using a method of calculation that was created by a government statistician some forty years ago that focuses on income rather than assets.<sup>163</sup> We argued that a better measure of the poverty rate is to focus on assets and not just income. Sufficient levels of income can generate wealth, and most types of assets can quickly be turned into income, making it a convenient source of potential consumption. Both are important to well-being.<sup>164</sup>

Yet, when judging the well-being of families and individuals, especially over the long term, assets are an even more pertinent indicator. While income is used for day-to-day necessities, assets, by contrast, can be turned into income, relieve individuals from being dependent on others for income, and provide a crucial safety net during times such as unemployment or illness, when income is disrupted. Assets are also directly transferable from generation to generation and are critical to planning for the future, including for retirement and education. Assets are a basic statement of what one owns and a sure indicator of one's capability to be truly self-reliant.<sup>165</sup>

Because it is so pertinent to well being, the accumulation of assets has always been an essential element of the American dream. Indeed, for millions of Americans, their ticket into the middle class rests primarily on the fact that they own their own home—a process that, as a matter of public policy, is supported by billions of dollars in mortgage interest tax deductions each year. Those Americans whose claim to middle class status rests solely on income, without any real wealth or assets to back it up, often and unfortunately find that their claims are precarious at best.

This is why I fought so hard for IDAs and why losing them is such a bitter defeat.<sup>166</sup>

**RITCHIE:** It's interesting, you mentioned Lieberman did this in conjunction with Santorum. Santorum, of course, has been a hard-line person in his party, very partisan, very conservative. How does somebody like Lieberman make an alliance with Santorum on an issue like this?

**LUDLAM:** Spirituality. They're both spiritual individuals. Santorum is very religious. I think he attends Mass every day. Lieberman, of course, is an Orthodox Jew. They actually believe that faith-based organizations, and people of faith, and religious institutions can provide tremendous value in social services. The IDAs have been part of the larger faith-based, charitable-giving incentive package.

It's a bit strange for me to be involved as Lieberman's champion on the bill, given the fact that I'm a hard-core atheist. But I do believe, based upon a lot of experience, that faith-based organizations provide wonderful quality service to people in the greatest of need. So I'm not troubled by the church-state issues. Lieberman is not troubled by them, and Santorum is not troubled by them. Some of our liberal friends are certainly troubled by them. I guess I'm practical. I will go anywhere it takes to get the services provided.

Another bill that I'm working on which addresses another overriding issue is a bill I'm drafting on the economics of global demographics. We're already dealing with the demographics issue as it impacts spending on Social Security and Medicare. But we're also drafting up a bill—that we haven't briefed Lieberman as yet—which will focus on the impact of global demographics on world GDP growth. If we see a massive aging of the populations in developed countries, and massive numbers of young people in the less developed countries, where will global GDP growth come from? The implications for global macroeconomics are very frightening. That's another case where I'm trying to deal with the biggest forces that we can possibly see.

**RITCHIE:** But the senator hasn't expressed interest in this yet?

**LUDLAM:** I haven't fully taken it to him for his final approval, but he tends to be a member who loves big ideas and this is another big idea.<sup>167</sup>

Finally, because my wife and I are now focusing on joining the Peace Corps, and we're both just about sixty years old, we have run into a whole series of policies that are disincentives for people of our age, our financial status, and our vested financial interest in rejoining the Peace Corps. So naturally, I am now working to eliminate these disincentives!

For example, when I retire from the federal service, I can buy federal employee health insurance. But there's a "continuity" rule saying that you must continue to buy it. As soon

as you cease buying it, you cannot re-buy it at a later point in time. Well, I don't need to maintain my health insurance coverage while I'm in the Peace Corps. But, we'll only be sixty-two or sixty-three when we finish our service, so we need to maintain continuity—and spend about \$8000 buying this insurance while we serve. So the Office of Personnel Management has agreed to adopt a rule to waive the continuity rule for people serving in the Peace Corps. They haven't finalized the rule yet. It would help me personally, but it's obviously a legitimate policy response. There's no reason to require continuity in the purchase of health insurance for federal annuitants who are serving in the Peace Corps.

**RITCHIE:** They just hadn't thought about it.

**LUDLAM:** They hadn't thought about it. In terms of the Peace Corps disincentives, I'm also focused on capital gains on home sales. They just passed a law that said that if you're serving in the military overseas and you rent your home while you serve, the new capital gains rules would not discriminate against you. The new rules are you must live in your home two out of the last five years before you sell it to qualify for the massive \$250,000/\$500,000 capital gains exclusion. The new rule for military is that the two out of five rule does not apply during the time a military person is residing abroad.<sup>168</sup> Well, that also should apply for the time that a Peace Corps Volunteer is living abroad. I'm trying to work with the two tax committees on that issue.<sup>169</sup>

So that sums up my agenda for Senator Lieberman. The point is that there is ample running room to take on the big issues and propose creative and ambitious solutions. The Hill is a fantastic pulpit, at least when you're working with superb people like Bill Bonvillian and Joe Lieberman.

**RITCHIE:** That's interesting. In wrapping up this discussion, are there any other initiatives of yours over the years that you want to mention?

**LUDLAM:** Yes, I'd like to mention a few other initiatives that run as themes through my career. I want to mention them because it may be interesting to outsiders, and to Stanford students, just how wide-ranging the agenda can be when you're up here, and just how fascinating it can be. The Senate is an extraordinarily stimulating place intellectually.

First, let me take one subject matter that I've worked on now for twenty years,

industrial policy. Industrial policy focuses on the competitiveness of the United States. Back in 1984, I was deeply involved with the question of the competitiveness of the United States. Then, the challenge was from Japan, and everybody thought that Japan was going to eat our lunch. President Reagan set up what was called the Young Commission, which focused on the policies that would make America more competitive. One of the proposals that arose at that time from the Democrats was the idea to set up an Industrial Development Bank. The bill was H.R. 4360, introduced by Congressman John LaFalce. The bill was reported from the Banking Committee. He had 132 cosponsors. And it looked like it was going to be one of the Democrats prime ideas to make America more competitive.

I thought it was a thoroughly stupid idea, because basically it would be a bank to fund all of the losers who couldn't get funding any other way. It would be like a Reconstruction Finance Corporation. Eventually, the RFC was terminated because of the scandals. It was giving money away based upon political criteria. So I was looking for ways to kill this stupid idea. I cared about industrial competitiveness in general, but I thought this idea, which was the lead idea of the House Democrats, to be a truly stupid idea.

So I worked with a dear friend of mine, Mark Goldberg, who was the editor of *The Brookings Review*.<sup>170</sup> Mark got Charlie Schultze, the former CEA chairman under Carter, to write an article in the fall of 1983 referring to this idea as "a dangerous solution for an imaginary problem." He went on to say, "We have enough real problems without creating new ones," and went on and on and on.<sup>171</sup> The article was a key element of my strategy to kill the LaFalce Industrial Development Bank. And it worked. The bill died and never even came up for a vote in the House. You can kill a bill in lots of different ways around here. And this was actually a proposal we could kill with a trenchant analysis.<sup>172</sup>

Now we're having another massive debate on industrial development policy vis-à-vis the Chinese. And the fear is the Chinese will eat our lunch. On that subject, we have just introduced a bill, which I worked on with Sara Hagigh and Elka Koehler in our office, to set up a second John Young Commission.<sup>173</sup> The first one was the very useful commission back in 1984-1985, under Reagan, and it focused on all of the things we could do to make America more competitive. Our idea is we ought to try the same thing again. Sara and Elka wrote a brilliant report on this.

We have also introduced a bill focusing on Chinese currency manipulation, which is

thought to be a big part of this problem,<sup>174</sup> because they have a cheap currency and a strong dollar that permits them to steal our manufacturing jobs. So we've introduced a bill on that subject. Michael Baum, a Fellow from NIST, was our capable lead on that.

Finally, we have issued a series of massive reports about U.S. competitiveness. One of the reports focused on deployment of broadband, which might be very important for our competitiveness. We introduced a bill on that subject.<sup>175</sup> Skip Watts, a fellow from Radford University, was our lead on that. He's a geologist, but he became a world-class expert on broadband deployment issues. These fellows, and my current fellow, Paul Brand of NIST, are a God-send for our office. They are sophisticated professionals and wonderful people to work with. Bill Bonvillian gets credit for setting up our system of fellows in our office and turning them loose to produce sophisticated and influential work products.

The point is that in my career, over a period of twenty years, I've played a constructive and leadership role on an ongoing issue like U.S. competitiveness. I've seen the issue ebb and flow and recycle back onto itself. This time it's the Chinese, not the Japanese, but in all other respects it is exactly the same issue as it was twenty years ago.

So in this game, you keep your files, because issues are recycled. You may think that you're finished with an issue, but you'd better keep your files because five or ten years later the same issue may come back again.

**RITCHIE:** I remember back in the 1980s, some were using Japan to justify the deregulation of the banks, saying that since the Japanese have a different banking system and theirs seemed to be working better, we had to copy the Japanese banking system. Right after that the Japanese banking system went bust. The instinct is: we need to change our system to be like another system because it is doing better.

**LUDLAM:** It's a fascinating debate that arises when we are pressured, when jobs are in jeopardy. Since the Second World War, the U.S. has worked to create an international free-enterprise economy, with peaceful economic competitiveness among the countries rather than war. We don't always believe that free enterprise applies to us! Sometimes we run into competitors who are better at free enterprise than we. We may find with the Chinese that they are better at free enterprise than we are in many different sectors. They will be phenomenal competitors.

At some point, the U.S. is tested on the consistency of our beliefs. Do we believe that we are, in fact, capable of competing with anybody on fair terms or don't we? Do we need to rig the game to avoid competition or compete with brighter people who have greater skills, and more innovation? This is always the debate between the protectionists and the people who want competition. I've always been on the competition side and not on the protection side. But it's a debate that will cycle back again, and again, and again. You will have one sector, like the automobile sector, or the textile sector, or some other important sector that will be aggravated and lead the opposition to free trade. It's been a privilege for me, over twenty years, to be in the middle of these industrial policy debates. And Lieberman is very much on the competition side, so it's been lots of fun working with him on these complex issues.

As I mentioned in my first interview, the conflict of interest issue for the Legal Counsel led to a major investigation of the Justice Department and its defense of the COINTELPRO operations of the FBI and CIA, which were targeted at the Weathermen and other radical underground groups in the '70s. The FBA and CIA had bugged the radicals without warrants, broken into their homes and offices, and otherwise violated their rights.<sup>176</sup> When this got public, the radicals sued the FBI and CIA director and many others alleging constitutional torts. Today, we probably call the radicals "terrorists," but back then we probably called them "protestors."

The lawsuits by the radicals put the Justice Department in a fascinating conflict of interest position, because normally the department would defend these executive branch officials. But at the time the department was investigating whether or not it should prosecute [Richard] Helms and other COINTELPRO operatives for violating the law, for break-ins or other illegal activity. So the department was supposed to represent government employees at the same time it was investigating them for criminal acts.

The Justice Department said, "This is too much for us" and it hired private legal counsel to represent all of these guys, and paid the private legal counsel. They even paid the private legal counsel in a bunch of cases because the defendant wanted to raise Nuremberg defenses, superior orders defenses. The Justice Department said, "We will never, in our own name as your defense counsel, raise a Nuremberg defense." But it did agree to pay private counsel to raise Nuremberg defenses on behalf of public employees. I thought that was rather outrageous.

I wanted to kill these private counsel contracts. As part of my strategy, I researched a legislative history of the Justice Department to find out whether it has the authority to hire private legal counsel to represent the “United States.” I found at least forty cases saying they couldn’t do it, and did a definitive legislative history saying that this was totally illegal. Mort Rosenberg at CRS—you ought to bring Mort in here because Mort is a fabulous resource for the history of the Congress and its powers—confirmed in a big CRS memorandum that the Justice Department had no legal authority to hire a private legal counsel to do indirectly what it would not do directly. My thirty-seven page history and his tome reviewed dozens of cases involving lawyers hired to condemn land that became Rock Creek Park.

Ultimately, the legality of these contracts went to the GAO [Government Accountability Office] because it rules on the validity of contracts. In an outrageous violation of its fiduciary duty to the government, the GAO said that these contracts were perfectly legal. The GAO said, “Oh, my God, this is the director of the FBI, this is the director of the CIA, this is half of the CIA, and half of the FBI. We’ve got to defend them.” They basically rigged the outcome and said these contracts were legal, and authorized the retention of the private counsel.

So not wanting to completely concede defeat, I wrote a massive “staff report” on the whole investigation and issue—1120 pages long—prefaced by a very critical commentary on what the Justice Department was doing, its legal authority, and the issue of Nuremberg defenses.<sup>177</sup>

I was able, however, to kill the department’s proposed tort immunity bill. The department wanted to grant immunity to FBI and CIA agents in civil suits brought against them for violating the civil rights of suspects and protestors. You can see that whole story—all about S. 2117 and S. 3314—outlined in the October 14, 1978, *Record* at 37897-06. Abourezk said, using my words, “It is not possible to overstate how dangerous the provisions of the original Department bill, S. 2117, were. That bill can fairly be characterized as a private relief bill for every Federal official who violates the constitutional rights of American citizens.” It was a sweet victory—all in a day’s work on the Hill. I just wish I’d managed to kill those private counsel retention contracts.

In the end, the department spent millions and millions of dollars on these private legal counsels to represent these guys. It was all part of the Watergate abuses of power. The

Weathermen were terrorists. I understand that. But what the government did to undermine them, the COINTELPRO program against the Weathermen, was a sorry chapter in our country—an illegal witch hunt. The agents violated every law available. Illegal wiretaps, illegal break-ins, all kinds of things. We can't tolerate that even when we're dealing with terrorists.

Let me give another example of the same point—the range of issues on which staff focus up here. I've been handling tax issues going back to 1982. One idea I had back in 1992 was that women who are not able to collect child support should be entitled to a bad debt deduction on their tax returns. The idea came from a relative who had been unable to collect child support from her deadbeat husband in Texas. She said to me one day, "I wish I could deduct what the bum owes me." I looked into it and drafted the bill. It gave the women a bad debt deduction and matched this with a "discharge of indebtedness" for the deadbeat dad—forcing him to pay income taxes on the amount he didn't pay to her. So she'd get a deduction and he'd get hit up for taxes.<sup>178</sup> Because the Joint Tax Committee believed that the deadbeat dad would be in a higher tax bracket than the mother, it found that on a net basis my bill actually raised revenue for the government! Unfortunately the IRS hated the whole idea. It didn't want to get dragged into the middle of these messy child support payment fights, so I've never been able to enact the bill into law. It still strikes me as a good idea.<sup>179</sup>

Another bill I drafted focused on ways to reduce unemployment in the country. The idea was to encourage companies to base their compensation more on profit-sharing and less on fixed wages. When wages are fixed, companies have a fixed overhead per employee, and they are more likely to lay people off in a downturn. If their wage structure is flexible and based on profits, when bad times come, the company's compensation budget falls with a decline in profits. Then the company has less need and reason to lay people off.<sup>180</sup> The bill I drafted provided a "human capital gains incentive" in favor of that portion of an employee's compensation that came from cash profit sharing.<sup>181</sup> I loved this project, but it was doomed when all the unions and others—who love fixed wages and hate flexible wage formulas—opposed it. I guess they'd rather see people laid off. I argued it was better for these employees to see their fixed wages decline than to be laid off. When you're laid off, your wages are zero!

I also drafted and secured introduction of a bill to provide value for unprofitable companies that only generate net operating losses.<sup>182</sup> These would be principally companies

like biotech companies that run losses for a great number of years. The question is: how can you provide liquidity for their losses and enable them to use those losses as a form of capital? It's a fascinating question for a small, struggling company. I did this work when I was at BIO. I repeatedly warned the board that this proposal would be DOA [dead on arrival] on the Hill, which was exactly correct, but I enjoyed working through the technical issues with Jim Rafferty, my consultant at Harkins Cunningham. Jim is a first-rate legal thinker and it was one of the most stimulating intellectual odysseys working with him on this bill. Jim was later a huge help on the bioterrorism initiative, which contains some very innovative tax incentives.

I've written legislation on the subject of stock options.<sup>183</sup> Lieberman has been involved with the stock option accounting issue for eleven or twelve years now, and he's been vulnerable to attacks for his role in 1994-'95 pressuring the Financial Accounting Standards Board not to force companies to take a charge against earnings for their stock option grants. That move, which I think was correct on the merits, left Lieberman vulnerable to charges that he'd contributed to the Enron stock option scandal where the executives were manipulating their earnings statements so they could cash in on huge stock option profits. This was an ugly, and I believe unfair, charge, and it was very unpleasant trying to deflect it. The bill we introduced was part of our strategy to show that stock option accounting was not the key issue in the Enron case and that the stock option abuses addressed in the bill were the culprit. It never went anywhere, but all we were trying to do was use the bill to make a political argument.

I had the great pleasure to work with Katherine McGuire on this issue. She's with [Mike] Enzi. She's smart as a whip and funny. She's got a twinkle in her eye as she wades through the issues and political muck.<sup>184</sup>

If you're serving as a staffer up here over a long period of time, you will never know how many issues you are going to have to deal with. One of the great fascinations of work up here is you never know, day to day, when you come in, what you might be hit with next. Industrial policy, child support, stock options, embryonic stem cells, separation of powers, patents, China—you never know what's next around here.

**RITCHIE:** Do you have some examples of guerilla tactics you've used here to try to secure an advantage? You told us earlier about the ingenious parliamentary tactics you

used to kill the Airline Noise bill.

**LUDLAM:** Sure, in terms of tactics, you have to be creative around here!

When the Senate passed the tax reform bill in 1986, Senator Dole inserted a provision in the bill that repealed the Investment Tax Credit (ITC), saying that the ITC would still be available for aircraft purchased from companies in Kansas. It's called a "transition" rule and it was worth tens of millions of dollars to the aircraft manufacturers in his home state. Well, there were aircraft manufacturers in Arkansas, and my boss was the senator from Arkansas, and the Dole deal was going to screw them. I worked hard to get this provision deleted, but when I failed I introduced a bill—the last bill introduced in that Congress—saying that no one should rely on the Dole transition rule because it was going to be repealed! It was a bluff, of course, but I was attempting to deter companies from buying these planes in Kansas.<sup>185</sup> I have no idea whether it intimidated anyone, but it was the best I could do under the circumstances!

Actually, I wanted to introduce this bill on the last day to prevent Dole from doing anything to counter my move, but I lost track of time and suddenly discovered that the Congress had adjourned Sine Die. So I ran over to the floor and no one was there! I ran down to my friends in the parliamentarian's office and they did me a favor by permitting me to introduce the bill three to four hours after the Congress had adjourned!

There was one other gambit like this. I was working on a Bumpers capital gains amendment and I didn't want anyone to know how I was paying for it. I had to include an "offset" so that the amendment was paid for. I didn't want the interest groups who were representing those who would be asked to pay more taxes to know that they were targeted. If they knew, they'd organize against me. So I circulated the amendment widely and said, "I'll tell you the offset as long as you keep it confidential." This kept the interest group in the dark. The interest group was the one that represented those who take the moving expense deduction—when their company doesn't pay the full cost of a transfer or something. The deduction said that you had to move at least a certain number of miles away from your current home to qualify, and I'd found out how many more miles we'd have to add to raise the revenue I needed to pay for my amendment. My strategy worked. The interest group was totally surprised, and we passed the amendment, but later the whole bill died for other reasons.<sup>186</sup>

So you have to be tough and sneaky sometimes around here.

**RITCHIE:** You mentioned that over time you see these issues recur and you develop a depth of knowledge about them. But the average person who works on Capitol Hill these days is here for about two years at the most. Do you think that's a detriment to the system, that there's so much turnover in the staff?

**LUDLAM:** I think it's a massive problem for the institution. The members tolerate it for reasons I don't really understand. The solution is obviously to provide much higher salaries for the staff. I'm currently paid \$86,000 a year. I'm on personal staff and they are not paid as well as committee staff. I graduated from law school, a first-rate law school, in 1972 and I have thirty-two years of experience on the Hill and other professional positions.

Compare my current salary with the starting salary at a law firm downtown for a first-year associate, directly out of law school; that's about \$125,000 a year. At Baker and Botts it's \$135,000 a year. At Akin Gump it's \$135,000. At Covington and Burling it's \$162,000. At Dickstein Shapiro it's \$185,000. At Fish and Richardson it's \$171,000. And at Hogan Hartson it's \$152,000. The salary in the eighth year averages at Baker and Botts \$250,000. At Akin Gump, \$235,000. At Covington and Burling, \$272,000. At Dickstein, \$302,000. At Fish and Richardson, \$286,000. And at Hogan and Hartson, \$262,000.

The Congressional Management Foundation puts out surveys of House and Senate salaries. Its latest survey finds that House salaries are 48 percent less than comparable federal government salaries and, of course, much worse than private sector salaries. For staff with doctorates, the pay gap is 65 percent. In a very expensive town, these discrepancies are a massive problem for the Congress.

For a variety of reasons, I can afford to live on my salary. When I was working at BIO, I was earning up to \$275,000 as VP for government relations. They were putting aside, free to me, \$30,000 a year in my retirement fund. I don't have any kids. My wife works. I've had phenomenal appreciation of my home. I am qualified for a civil servant annuity and my wife and I are both qualified for a Social Security annuity. So we can live on that salary.

We're not saving much more at this point, but I can afford to work at that salary because I love the work and I respect Lieberman. Obviously, if I had kids, and my wife didn't

work, and I didn't have all of the equity buildup in my home, this salary would be completely intolerable. If the institution really cares about keeping people like me around, to get the continuity of vision and skills that I have, it needs to drastically overhaul the compensation system. I mean drastically.

One of the barriers there is that they are afraid to raise their own salaries, and they don't want staff people to earn more than they do. But I think they need to get over that if they want to upgrade the staff. Many members hate their salary also because many of them struggle to remain in public service, maintaining two homes. Politics is a very expensive business for them. When they leave, they can earn \$1 million. The bidding now for John Breaux and Don Nickles will go up well above \$1 million. The bidding for Congressman [James C.] Greenwood, who went to my old firm at BIO, was intense and he'll be paid \$750,000.<sup>187</sup>

These salary issues are incredibly important questions for the institution. If they don't maintain the institutional memory, and they don't have the staff who know how to draft a bill, and they don't have the staff who understand parliamentary procedure, who understand the Budget Act, who understand administrative law, who understand the technical issues, they can't govern effectively.

Another part of the problem is the uncertainty of the employment itself. Not just the rate of employment, but the uncertainty of it. I have been through four major transitions in my career. I was working for Jim Abourezk on the Senate Judiciary Committee when he retired. Jim Davidson protected me, and I got a job in the Carter White House. If it hadn't been for Jim, I could have been unemployed. The new chairman of that subcommittee, John Culver, brought in a whole new staff.

I was in the Carter White House when he got beat by Reagan. At that point I got a six month transition because I worked for Harrison Wellford. I then went on unemployment for six months and finally got a job at a very low rate of pay at the Alliance for Justice. Eventually, I ended up back with the Joint Economic Committee and Gillis Long. Then Gillis died in 1985. At that point, I was told by the new staff director that I had two more weeks to go and I would be unemployed. At the last minute, I managed to land a new job with Dale Bumpers, and moved from the Joint Economic Committee over to Bumpers and the Small Business Committee.

I was at BIO in my seventh year and for a variety of reasons which I will not go into, I left BIO. I can say that I had a demonic boss who was a monster of epic proportions. The process of leaving BIO on my terms took several years. It was clear to me that this monster and I could not continue to work together. His temper tantrums and narcissism were endless and destructive. I spent huge amounts of time defending my staff and myself. Even before I took the job at BIO, I had a special understanding of the man I was dealing with.<sup>188</sup> Nothing he did surprised me and I took none of it personally. To protect myself, for the last several years at BIO, I had a lawyer on retainer, Peter Kolker, to counsel me. Peter was a first-rate professional and I will always be grateful to him for his sage advice on how to handle this situation. On Peter's advice, I wrote endless memos to the file to document events so that BIO would have no basis for firing me for cause and not paying me severance.

At one point, this boss—in a truly ironic gesture—brought in a management consultant to help all the vice presidents become better managers! I found this rather humorous. During the session the consultant went off for awhile about how destructive it is to yell at your employees. So I looked right at the consultant and went off for awhile agreeing with him and amplified his point with some fervor. I did this right in front of my boss, but I didn't look at him as I talked. Everyone in the room—except the consultant—knew I was talking about the boss. What I did was quite outrageous. Then, to make it all even more delicious, the sycophant who the boss had hired started yelling at me that I was criticizing the boss and arguing that the boss had reasons for yelling at people! Of course, I loved this. It couldn't have been more perfect. I kept my cool and just shrugged my shoulders, as if to say “who, me?” and laughed inside.

My point here is that you have to be tough in this town. You may well run into monsters. You may have to hang tough, like I did when Frank Moore tried to fire me, when I wouldn't blink in the fight on the Airline Noise bill, when I fought for five years to fix the patent term mess, when I fought Lott and Bond on the stem cell bill, and when I fought to save my job after the stem cell victory. This is a rough town and some of the people you run into are pathological.

My strength to handle these confrontations and threats comes in part from my Peace Corps experience. It's clear to me that none of what I face at work is as tough as what I faced in Nepal. If I survived that, and thrived, then what happens here day to day is manageable. After eight months of rest and recreation following my departure from BIO, I landed my

current position with Lieberman. So there are four major transitions just in my career, all of which could have had substantial negative financial implications. I handled all of those transitions well enough: from Abourezk to Carter, from Carter to the Alliance for Justice, from Gillis Long to Bumpers, and from BIO to Lieberman. But they were all struggles and threatening. It was my intense commitment to public service and a supportive network of friends that sustained me.

If the Senate wants people like me to stick around, with the knowledge that I have, where I can follow an issue for twenty years, follow the tax issues for twenty years, follow the budget issues for twenty years, and come up with some really big ideas, where I can figure out how to draft them, and take on the entrenched special interests, they have to change the economics of this profession.

**RITCHIE:** When I first came here, some of the chairmen of committees had smaller staffs on their committees than the ranking minority members did. I came to realize that it was because the chairmen had a handful of people who had been there for a very long time, knew what they were doing, and were getting paid top dollar. The ranking members were taking students straight from college, working them twenty hours a day intensely for two years, burning them out, and then turning them over and getting new people in. They were creating their own committee staffs, in a sense, by having all these bright young people who were just running through the Senate to add a line on their vitae. It seems like the “ranking mentality” has taken over the institution in some respects. The idea of cultivating people and keeping them here for long periods of time really is very much a minority point of view now.

**LUDLAM:** That point of view, with which I agree, is almost non-existent up here. I’m perfectly happy to deal with bright young staffers, but they don’t know anything about the institution. They don’t know anything about the subject matter. They don’t have any sense of their own power. They don’t have a sense of their own responsibility. They don’t know how to draft bills. They don’t know parliamentary procedure. They don’t know the Budget Act. They don’t know what happens to laws after they are enacted.

This is a major problem for the institution. We need people who can take an issue, and I mean a massive issue like bioterrorism, or debt, or demographics, or relationships with China, and fashion a meaningful, substantive, aggressive agenda and then enact it into law. That takes a lot of skills, and a lot of intensity.

You can work people for twenty hours a day but that doesn't give them judgment. In my career, I have never worked nights and weekends. I think the number of times that I have worked nights and weekends in the last thirty-two years up here is less than half a dozen. I won't do it. I refuse. I have better things to do with my time. But I can work very efficiently when I'm here. I can get hit with a new issue, and I can deal with it one way or another, and process it in fifteen minutes or a half an hour.

I try to spend 80 percent of my time working just on the one or two or three big issues where I'm taking the lead. I don't want to spend my time working on somebody else's agenda, just responding to a lobbyist or a vote. I want to cover the daily distractions in the shortest possible amount of time so that I can move back to the agenda where I'm trying to change the world. Time management—keeping your focus—is a critical skill up here. If you let the daily distractions dominate, you'll never get anything done. It takes a ton of effort to keep focused.

I have always had a fellow assigned to me in Senator Lieberman's office and they have been superb people to work with—Skip Watts, Michael Baum, Sarah Hagigh, and Paul Brand. I give them as much of the miscellaneous work as I can. That helps, but in many other cases I duck and run. I avoid pitching in, I avoid certain issues like appropriations, I don't respond to e-mails, I don't respond to phone calls, just so I can concentrate on the few issues where I'm trying to make an impact. I think young staffers don't know how to say "no" and don't know how to do triage on the welter of distractions. That's why they get so little done. Concentration is an acquired skill.

**RITCHIE:** Because you've been here for so long, how much has the institution of the Senate changed, do you think, over that period? Is this the same place that you first came to or do you see significant differences?

**LUDLAM:** I think it's totally different. It's obviously different because when I got here in 1975, the Democrats had 61 seats in the Senate and 291 seats in the House. Now they have 49 seats in the Senate and 204 seats in the House.<sup>189</sup> That is a revolution, there's no question about it. Democrats have lost 12 seats in the Senate and 87 seats in the House over that period of time. Obviously, the Republicans have a very distinctive style and agenda from the Democrats.

This realignment occurred because the Democrats had been in power way too long. They'd become completely entrenched and corrupt in many ways, uninspired, complacent. The Republicans advanced a more interesting agenda, assembled huge amounts of new energy, and they were absolutely right on a few big issues. They have really trumped the Democrats.

The Democrats, I think, have done very little to retool themselves. Clinton retooled himself as a New Democrat and finally got the Democrats back in the White House, but he turned out to be a sex addict. Gore never stood up to Clinton, just as Humphrey never stood up to Johnson, so we got bounced out of the White House. We'll find out in a few weeks whether [John] Kerry can take the White House, and I'm pretty sure he won't win. If he wins, he'd be a throwback to the old liberal times among the Democrats. So Kerry would be quite a swing. He's certainly not a New Democrat. We'll see what happens on November 2. Win or lose, I have to say that Kerry is a loser as a senator. I've followed him closely up here during his twenty-year career and I've never once seen him lead, seen him work hard, seen him say something interesting, or seen him laugh. He walks onto the Senate floor, votes, and leaves without talking with anyone. It's ghostly.

Even if Kerry wins, the congressional mandate for the Democrats has been destroyed and I don't see Democrats regaining control for a dozen or many dozens of years. I don't see how the Democrats can get back in power in the House at least until the next decade. And at the rate they're going in the Senate, they'll probably lose a few seats in this election and more in the next. We'll see.

Aside from the issue of control of the Congress, another major difference is that the country is so evenly split. This means that anybody could win any vote and anybody could win any election. This leads to much of the nastiness and struggle here. For fifty years the Democrats had undisputed control, and there wasn't any ambiguity about it. But now there is ambiguity everywhere you look, which means there is more pandering, there's more campaign finance, and there's more negative advertising. Relationships are more partisan. There's lots of character assassination. There's a lot of instability in the political system, with lots of new members who are less experienced and more ideological. The staffers are totally inexperienced, which is a huge problem. Campaign finance is completely out of control. The lobbying profession and the trade associations are now incredibly professional, and incredibly well-organized, and incredibly well-funded, and very intense. And it's difficult

to deal with them.

The constituents are wildly involved in everything we do here, and are constantly pressuring the members and staff. They're organized by associations or organized by interest groups. The biggest single result of all of that is the irresponsible pandering by both parties. The result of all of this instability, and all of this division, and all this intensity, is that everybody is happy to spend any amount of money, either through the tax cuts or through the spending system, to buy an election. Our fiscal policy is heading towards the rocks. Our public indebtedness is completely unsustainable. We are looking at a run on the dollar or a spike in interest rates, and then we have the baby boom demographics. All of it is totally out of control.

**RITCHIE:** How about just the general day-to-day operations of the Senate? Was there a different atmosphere in terms of what you did on a daily basis when you came in the '70s to today? Certainly the number of staff has increased over that time.

**LUDLAM:** I think the day-to-day job is the same. It's hard to make the institution work given the even division. It used to be when Democrats were totally in control the only fight was among Democrats, and not between Democrats and Republicans. Now, it is difficult for the Republicans to govern the Senate with a one seat margin. And it will be difficult even if they have a two or three seat margin. So it's just harder to get things done around here in general.

I remember back in 1975-1976, Dick Wegman's staff on the Senate Government Affairs Committee successfully enacted fifty-seven laws in just one Congress. One committee, one Congress. The whole Congress hardly enacts that many anymore. So we're vastly less productive.

The budget process is totally broken. I mean it doesn't work at all. Appropriations are totally out of control. The tax cuts are totally out of control. Entitlements are totally out of control. We have responded, I think, fairly well to the 9/11 challenge, but, by and large, it is a bitter and partisan stand-off here.

I've already recounted the story of how we broke the "no pants" rule for women on the floor of the Senate. Let me make several other observations. It so happened that I was the

only male professional employed on the Separation of Powers Subcommittee, and a second Judiciary subcommittee's staff director was a woman, Jane Frank. Later Jane was elected to Congress under her new married name of Jane Harmon. So my experience is anything but typical. There were very few women professional staff in the Senate during this period. Now, women staff—even LDs and staff directors—are pretty common. And of course, there are many more women senators and representatives now.

To show you how times have changed, back in 1975 a dear woman friend of mine from law school was offered a staff counsel position in the House and the subcommittee chairman said, "I'll never hire a woman." She'd been offered the position by the staff director. She only landed the position when the full committee chairman, Jack Brooks, forced the subcommittee chairman to hire her. Brooks threatened to take the case public and that got my friend the job.

I recall when I was on the floor of the Senate after Jim Allen's widow had taken his seat. She asked me for directions to the bathroom for women senators. I had to inform her that no such bathroom existed. Right next to the floor is a bathroom for male senators, but there existed none for women senators. That was remedied in time.

I was here for the confirmation hearings of Justice [Clarence] Thomas. They were held just downstairs from my office in the Russell Caucus Room. There was a massive national debate about why Anita Hill had not filed any complaint about Thomas and had maintained contact with him. Some understood that she was trapped and others just thought this proved she was lying.<sup>190</sup>

At any rate, the year before these hearings, a dear friend of mine here had suffered through some gruesome sexual harassment from her LD. She'd been physically assaulted and when she wouldn't submit to his advances, the LD moved to fire her. She and I met every day for about eight months strategizing how to handle this mess. She and I wrote memos to the file, documented each new incident, explored her legal rights, and commiserated. Eventually, she was forced to confront the LD's boss, the senator. He was skeptical of her complaints and said, "How do I know to believe you?" She thought he was taping the confrontation. She was able to respond that there was a second woman in the office being harassed by the LD, but that did not impress the senator.

Eventually my friend landed a new job and left voluntarily. The LD was never disciplined and is now the head of a major K Street non-profit. The senator is still here and every time I see him I get angry. My friend has had several opportunities to go public—including going public during the senator’s reelection campaigns. It’s safe to say that she has nothing but contempt for him. But she won’t go public and as her friend—and effectively as her lawyer—I will do nothing to “out” her. I have omitted many details from this story that could lead someone to guess the identity of the senator and LD.

Anyway, this experience made it easy for me to understand why Anita Hill never filed a complaint against Thomas and maintained contact with him. I have no difficulty believing her story.

In 1995 the Congress enacted the Congressional Accountability Act (Public Law 104-1), the first legislation enacted in the 104<sup>th</sup> Congress. The bill applies eleven existing employment, civil rights, health, and safety-related statutes and regulations to the legislative branch. I am happy to say that my current boss, Senator Lieberman, was a major player in securing the enactment of this law. So now Senate employees have many more options in protecting their rights. The [Bob] Packwood case shows that they need them.<sup>191</sup>

**RITCHIE:** You mentioned that you’ve worked for a variety of senators over this period of time. I wondered if you might want to talk about the most interesting senators with whom you have worked?

**LUDLAM:** Well, I’ve recounted some crazy stories about Jim Abourezk, who was a fascinating member, unlike anybody we see around here anymore. Gillis Long, who I worked for in the early 1980s, was a brilliant leader of the House Democrats, trying to recover from the Reagan election debacle. Dale Bumpers was a champion of the little man, and a die-hard opponent of constitutional amendments, a wonderful and charming person.

Lieberman is a brilliant conservative Democrat, extremely diligent as a member, very entrepreneurial. I have tremendous respect for some of the members who are no longer here—like Connie Mack and Mansfield, Hart, Ribicoff, Percy, Javits, Danforth, the first John Chafee. In terms of current members, I have tremendous respect for Orrin Hatch and Judd Gregg and Tom Daschle, whom I’ve known since his days as Abourezk’s LD. Ted Kennedy

is an incredibly effective member with superb staff. Breaux is a master manipulator of the system. [Mike] Enzi is a coming member of great talent. So is [Chuck] Hagel. Of course, John McCain is fascinating to watch. [Barbara] Mikulski is a wild individual to be around, and very effective in fighting for her state and her issues. I think Bill Frist is interesting, and sometimes has great vision. Bobby Byrd is still at the height of his powers. Lindsay Graham shows great promise.

**RITCHIE:** I regret when some of them run for president, because I think that the Senate is a great stage for an active person, and there are a lot of them who have contributed so much. You have been working for a senator who has had presidential ambitions. Do you think that the presidential ring has distracted senators from their calling? Or do you think it just inspires them to do better things? I'm not sure. So many of them seem to be so ambitious for the presidency.

**LUDLAM:** Yes, I'm not sure whether this is good or bad. When Lieberman was running, it was distracting because he wasn't around very much and he was focused on his presidential campaign. His presidential ambitions now are over and Lieberman will settle back to be a great member for several more decades here in the Senate. I think it was good for the State of Connecticut that he ran; the state should be proud that they're represented by a man of national stature who thinks nationally, not just about Connecticut.

In some ways, when they run for president, or think about running for president, it gives the senators a different perspective. When you're voting as a senator, you can often be voting because of your committee interests or because of your constituent interests. When you're running for president, you have a different clientele. In some ways, that's helpful. In some ways, it means that they're just pandering to a bigger audience. In many cases, because of the primary process, they are literally pandering right and left to anybody who might promise them anything. The campaign finance pressures, I think, are the worst force around here. That is distracting, literally, to every single member, and every single staff. But in many cases, the national perspective is important and it offsets parochial, narrow, regional interests. We need a balance.

**RITCHIE:** The reforms don't seem to have made it any better, as far as I can see. I'm not sure what your feeling is on that.

**LUDLAM:** Well, I think it was an act of suicide for the Democrats to crack down on soft money.<sup>192</sup> Soft money was the only type of political money where Democrats were competitive with Republicans. Democrats have never been competitive with Republicans on hard money. So why Democrats would be so zealous in favor of a reform that would only hurt them is a little hard for me to understand.

**RITCHIE:** Every time that there is a reform enacted, it just seems to cause the money to shift to another vehicle, which keeps going. There's been just as much fund-raising going on this year as there's ever been.

**LUDLAM:** Well, campaigns cost a certain amount and that's the given. The political system is very competitive, and very evenly divided. So the money will have to be raised, and will be raised. The people who make the investments with campaign donations think they get a very good rate of return on their investment. And I think they do.

**RITCHIE:** That's probably one of the other major changes around here. Senators spend a lot more time now than they did, at one time, raising funds, although raising funds has always been an issue. Maybe it's because campaigns have gotten so much more expensive.

**LUDLAM:** Well, I think that campaigns are more expensive because TV is more expensive. But I think it's also that campaigns are more competitive. Members like Mansfield and [William] Proxmire never had to pay much attention to it, because they became institutions, but all the other members are immersed in fund-raising.

**RITCHIE:** You suggested a question about what were the craziest times you've had here.

**LUDLAM:** Well the craziest interlude was the thirty-six hours I worked the Senate floor killing the Airline Noise bill, when we had Dick Tuck down from the gallery. That was just hysterical fun.

**RITCHIE:** And what are the great regrets? What are the losses that you regret at this stage?

**LUDLAM:** You take your losses in this game. I had a bitter defeat at the Federal Trade Commission in '75 on corporate image advertising. I tried to get them to regulate it, and they wouldn't do it. I had some defeats on the Senate Legal Counsel proposal. Not stopping the retention of private attorneys defending the COINTELPRO perpetrators was a bitter defeat at the hands of GAO.

I had a terrible defeat at the hands of Charlene Barshefsky, my good friend, on the natural resource subsidy issue in the 1984 Trade Bill. I got a new type of capital gains incentive enacted in 1993, but it was gutted by the administration. I had great hopes for the Entrepreneurs Coalition that were not realized. And then a few days ago I lost IDAs. So I have had some bitter defeats in this game. Anybody who wants to have a career in politics is going to have to be ready for that.

**RITCHIE:** Well, then the counterpart to that is what do you measure as the most satisfying moments of the last several decades?

**LUDLAM:** Well, establishing the Senate Legal Counsel, which we talked about in the first interview, was a very satisfying accomplishment. Killing the Airline Noise bill was important and tremendous fun. Enacting the first law on organizational conflict of interest. Killing the constitutional tort claims bill was great victory after losing the COINTELPRO representation fight.

Eviscerating the Regulatory Flexibility Act when I was in the Carter White House, and killing the Bumpers amendment and hybrid rule-making, were great victories. Saving the tax exempt bonds for hospitals and universities was fun and something I believe was due to my efforts. When I was at BIO, enacting the Patent Reform Bill, repealing NIH's reasonable price clause, making the Orphan Drug Tax Credit permanent, defeating the bans on gene patents and the Ganske bill, and defeating the ban on stem cell research were all very satisfying. I managed to get BioShield I enacted. It isn't enough, but it's a start. I'm proud of my work on industrial policy.

I hope that before I wrap up my career I can make more progress on BioShield II, the budget process reform, U.S.-China issues, and maybe IDAs. My legacy on these initiatives will be written after I retire. I have no doubt I can retire on this record. It's enough, it's sufficient for one person in one public service career.

**RITCHIE:** You've talked a lot about the Stanford students and other students coming to Washington, the interns, and the fellows. What advice do you give them in terms of how they can prosper in a career on Capitol Hill?

**LUDLAM:** The single most important skill is to put this work in perspective. If work is the dominant activity and value in their lives, and they let it run their lives, they will burn out. You have to have other interests that are just as important and in many cases more important than the work interests. The work here can be interesting, but they don't call it "work" for nothing. Nothing has given me more perspective on work and public service than the Peace Corps.

In order to prosper here, they have to work in both the House and the Senate, because they are totally different bodies. They need to work in the administration, preferably in the White House, and maybe with a trade association. Once they have worked in all of those places, they will have a clear picture of how all of these institutions and interests interrelate.

They need to become an expert in parliamentary procedure, the budget process, legislative drafting, and administrative law, because these are the basic skills that you need to command in order to work here in any capacity.

After quite a few years here, they should be able to know exactly what it is they will need to do, every single day, to move the ball forward on any initiative on which they are working. They will know exactly what is forward and what is sideways. They will know when they're winning and losing and why. They will know exactly who can help them and who can hurt them. They will know exactly what arguments will advance the ball. They will know exactly how their initiative fits into the larger political agenda. And they will know how to avoid surprises. They will gain peripheral vision in the grandest possible sense. Everything will proceed as if in slow motion.

Another skill is to listen well to the other side. Advocates tend not to listen. They tend to argue and fight, but they don't stop to listen. When you listen, you learn what the other guy is thinking, why he or she is taking a different point of view. If you understand that, you can be a more effective advocate. I didn't come by listening naturally! I have always been an assertive, sometimes argumentative person. I am confident, some would say cocky. But I've seen some humiliating failures in my personal life that forced me to think about me. In

coping with these disasters, I got into art therapy and twelve-step groups.

Regarding the former, my therapist said, “You use words to control and I am going to send you to a therapist who won’t let you use your words”—an art therapist, where I could only communicate in drawings. Regarding the latter, twelve-step groups were relevant in helping me understand a girlfriend who was a dysfunctional adult child of an alcoholic. I was never an alcoholic or an abuser of any substance, but I could learn in these groups to spot and deal with dysfunctional people, of whom there are plenty in this town and on the Hill. In these groups, there is a very heavy emphasis on listening and a bar on “cross-talk,” meaning comments by one member of the group on another’s statements. The discipline of the groups is to listen and listen and listen some more. It’s clear to me that art therapy and twelve-step groups have made me a much more effective advocate.

In addition, I’ve traveled in about sixty-five countries, so I’m constantly immersed in cross-cultural situations. I’ve lived for two years in Nepal, a year or so in Europe, and traveled in such countries as India, Afghanistan, Thailand, Malaysia, Cambodia, China, Indonesia, New Guinea, Chile, Argentina, Peru, Venezuela, Ecuador, Costa Rica, Mexico, Belize, Zaire, Kenya, Uganda, Morocco, Egypt, and South Africa. This gives me an imagination about how people can be different.

Many political fights are essentially cross-cultural. You can learn a good deal by thinking like an anthropologist. My wife is trained as an anthropologist and I might as well have been. When I was meeting with the Right to Life staffers during the stem cell fight, the conversations were cross-cultural.

One key skill in a political career, or any other career, is to hire yourself a great boss. I had great bosses in my career. Jerry Thain at the FTC, Irene Margolis with Senator Abourezk and Judiciary, Si Lazarus at the Carter White House, and now Bill Bonvillian with Senator Lieberman. They are all absolutely first-rate public servants who love to turn their staff loose and give them freedom and responsibility, and who know how to help you to craft the best strategy.

If you don’t have a great boss, you’re in desperate trouble in this game. Unfortunately, there are a fair number of people in this game who take themselves way too seriously and deal with their counterparts way too harshly.

Another key skill is finding superb professionals to work with, like Dick Wegman, Dave Schaefer, Ira Shapiro, Jim Davidson, Dave Schmickel, Nancy Myers, Bruce Artim, Patty DeLoatche, Kira Bacal, Randy Brandt, Frank Rapoport, John Clerici, and Dack Dalrymple, Jeff Kushan, Jim Rafferty, Katherine McGuire and dozens of others. I'd get into any foxhole with them on any issue. They are a credit to the public service.

Another key skill in this game is that they must be fearless. They have to have a sense that, whatever the issue, no matter how complicated it is, no matter how hard or fast the political process is coming at you, no matter how new it is and how confusing it is, they must have the confidence to believe that they can figure it out and make it manageable. If it's learning all about stems cells or stock options or broadband or Chinese currency manipulation or separation of powers or airline noise or organizational conflict of interest or profit sharing or bad debts or net present value accounting, whatever it is, they have to believe they can figure it out and work with it. A huge percentage of this town is bluff and you need to bluff your way through the uncertainties and craziness.

It's quite indispensable to have a fantastic wife, as I do in Paula Hirschhoff. For me, the energy and risk-taking required in this political game are possible because of her. Paula is my rock, my best friend, and my source for endless nurturing. Without her, I'd be vastly less effective and vastly less happy. She's a fantastic source of love and support. She understands what I'm trying to do, and how hard it is; she worked on the House side with Ted Weiss. She replenishes me when I come home whipped. She listens to me kvetch and dream. She helps me keep all this in perspective. And we have just tons of fun together, day and night, week after week. She's simply the finest human being I know, the wisest, the kindest, and the most generous. She's quite perfect for me and I am grateful every day that she's my wife and partner. She gets some credit for everything I've recounted here and when I've failed she's been the one to get me back on my feet to fight a few more rounds in the ring. I can't wait to spend two years with her in a village in Africa—that is a dream. Then I can't wait for what comes next. With her by my side, I'm sure my life will be charmed every day.<sup>193</sup>

**RITCHIE:** Did your father have any influence on your public service career?

**LUDLAM:** Yes, he was a great role model. First of all he went to Stanford and became a lawyer, and so did I. Then, although he never held public office or worked as a

public servant, he was a pioneer and advocate regarding health-care law and policy. It's fair to say that he founded the specialty field of health-care law. His value system has certainly influenced mine. He's a problem solver and he's well known for being able to bring people together. He tackles global issues and works effectively towards a solution. He's a very effective advocate<sup>194</sup> and certainly a role model for me.

**RITCHIE:** You are heading out now to the Peace Corps with Paula. What is it you're hoping to accomplish in the next couple of years?

**LUDLAM:** We've written "aspiration statements" as part of our Peace Corps applications and I'll print them in the appendix. We believe that acts of kindness are the highest calling. In the case of the Peace Corps, we believe trying to help a few people in a small village, in a small place in Africa, is a high calling.

It's easy to talk about all the grandiose issues on which I've worked. But, ultimately, we are measured by how kind we are to one other person, or two other people, or three other people. I have never been as kind a person as I was when I served as a volunteer in Nepal in the Peace Corps. I've never been a better person. I've never been more patient. I've never been more understanding. I think Paula would probably say that about her service in Kenya.

The idea of serving again is to get back to a state where we can be as kind as possible, and as useful as possible, to people who have none of our advantages, and who are suffering in many ways in terms of their health and their economic status, who are probably victimized in many respects by their societies, and to help them, if we can, to find a better life.

It's somewhat selfish of us to do this because they have so much to offer to us. They can teach us so much about patience and about generosity. I've never met more generous people than I have in the developing world.

Spending two years in Africa will provide us with a wonderful transition from the crazy, intense, self-important, aggressive and manipulative life we have here in the Senate. But I'm ready for this transition. I can't wait for the culture shock that this will involve.

**RITCHIE:** What kinds of things do you think you'll actually be involved in? Will you be teaching or what would you be doing?

**LUDLAM:** We've given them a series of ideas about what we could do. Paula is a teacher and could be a teacher again. I could work in community development, or in NGO development, or quite a few other possibilities. When I was in Nepal, I was an agriculture extension agent and Paula was a teacher in Kenya. We've given them a wide range of possibilities.<sup>195</sup>

We've told them that we want to work in a rural area, in a village if possible, and not in a town. We'd much rather live there rather than a town or a city where it's very hard to establish a personal relationship with the community. We're perfectly happy if there's no electricity, no running water, no sanitation, no roads. We expect that. We expect rats, lice, and things like that. That just goes with the developing world.

We expect that we'll be sick because that's the norm in the third world. We want it tough because we don't want to be gypped by our Peace Corps experience. We want the real thing, not something cushy. We're not going because it's easy. We're going precisely because it'll be difficult.

**RITCHIE:** Down the road, when you come back, do you have any long-range plans for your retirement?

**LUDLAM:** I don't know. I think I'll never again work at a desk, work for someone else, or work in public policy. I might try to establish an advocacy center for public policy internships. It would advocate for better funded internships, better structured internships. It would basically take the Stanford intern program and nationalize it so that every college or university would manage a program to recruit members of their community to sample public service. It might try to make those internships more substantive and better funded so that a wider range of individuals could take advantage of the possibility.

But it's also possible that I will apprentice myself to a master baker and learn how to bake really good crusty bread. I would love to spend more time painting watercolors and hanging out with my watercolor painting group. I've been a member of this watercolor painting group—five women and me—for more than twenty years. They are the sisters I never had. I love them dearly and respect them tremendously. Audrey, Barbara, Wilma, Nancy, and Sadie, who died a few years back. They have all been professional art therapists. I joined the group as an offshoot of art therapy—my art teacher, Bernard Levy, was a

legendary art therapist. These women are sensitive, feeling, expressive women. Their love and support—and that of my wife and many other dear friends—give me the strength I need to play this intense political game and take so many risks.

In addition, watercolor painting is the perfect challenge for someone like me, who can be intense and manipulatory. With watercolors you have to let the colors flow with the water—“accidents” are a good thing in watercolor painting. If you go back into the paints, you turn the colors to mud! Spending more time with this group and with my painting would be a dream retirement.

There are lots of aspects of charitable service that I want to pursue. We might take off for one-month stints somewhere in the world to serve—do that two or three times every year. We’ve got all kinds of additional world traveling that we want to do. I still love sea kayaking, listening to classical music, gardening, and working with Stanford-in-Government and all of these kinds of things.

Most important, I’ve got a fabulous wife, a fabulous watercolor group, and fabulous friends to run around with. So I imagine that I will be very busy and all of my friends who are retired say that they are very busy.

**RITCHIE:** People who are retired say that they often don’t have all the time that they thought they were going to have. You think that because you have no set schedule, you can accept every good offer that comes along, and then wind up working twice as hard as you did when you were working. Are you really sure you’re ready to move on?

**LUDLAM:** I think these interviews give me a sense, as I look back, and as I sum up all of what I’ve accomplished or tried to accomplish, that I am justified in ending my public service career. I feel like I’ve done enough, done plenty. I could do more. I’m still enjoying what I’m doing today. I love working with Lieberman and Bill Bonvillian. I’m trying to set up these projects that I’m now working on in bioterrorism, fiscal responsibility, and the U.S.-China bill so that somebody else can handle them and push them through to enactment. I don’t feel as if I’m indispensable and I have a very deep sense that it’s time for me to move on and to go do something else, and to go spend several years in a village in Africa with my wife.

**RITCHIE:** Of course, you never know when one of these issues may call you back. There's always the possibility of extended service, since you've come and gone from the Congress over the years.

**LUDLAM:** Well I intend to be very hard to reach.

**RITCHIE:** Well, thank you very much for participating in this. We will proceed to get you the transcripts and then take them with the other materials you've edited and put them together. We have several different options for making it public.

**LUDLAM:** I'm not afraid to open it up to the public the day I retire. I've said a few harsh things about a few people, but I'm known for being blunt-spoken, so I am accustomed to handling any consequences from that.

Overall I've tried to paint a picture of a career in government. It may not be typical in many respects or in all respects, but here I've outlined what a public service career could entail. I hope it encourages some others to accept public service as a career. It's certainly been a great choice for me. It's been a privilege and tremendous fun. There's been some pain, some risk, and some major defeats. But it's always been stimulating, and given me freedom to fight for good causes. In work and life, it doesn't get any better than that.

**RITCHIE:** Good, your oral history is going to have a strong educational value, so I'm glad to hear you are going to open it up.

**LUDLAM:** Thank you Don. I've thoroughly enjoyed the opportunity to tell my story. You've been very patient with me. I very much appreciate your time and the important work you do in documenting the history of this great institution. Thanks.<sup>196</sup>

### **End of the Fourth Interview**

## Endnotes

<sup>162</sup> The CARE Act was H.R. 7 in the House and S. 476 in the Senate. The House bill passed by a vote of 408-13 on September 17, 2003. The Senate bill passed the Senate by 95-5 on April 9, 2003. Despite these overwhelming votes, we could never get the bills to conference due to the obstructionism of the Senate Democrats and the bills both died. Senators Lieberman and Santorum introduced their version of the CARE Act as S. 272 on January 30, 2003. IDAs were included in the Senate bills.

<sup>163</sup> The data indicated that the official poverty rate in the United States in 2002 was 12.1 percent, up from 11.7 percent in 2001. There were 34.6 million people below the official poverty threshold, an increase of 1.7 million over 2001.

<sup>164</sup> In his book, *Assets and the Poor*, Michael Sherraden observed that over the long term, flows and stocks (income and assets) play complementary roles. It is not a matter of choosing one or the other. Rather, it is a matter of balancing one with the other.

<sup>165</sup> As Ray Boshara, director of the Asset Building Program of the New America Foundation, explains in the September 29, 2002, issue of the *New York Times*, in an article titled, "Poverty is More Than a Matter of Income," "When families don't have enough income, they can't buy enough food, shelter, clothing and other necessities. With 33 million Americans now classified as 'poor,' income poverty is a huge problem. But at least twice as many families don't have enough assets—and so they lose their economic security and their ability to plan, dream and pass on opportunities to future generations. Lack of income means you don't get by; lack of assets means you don't get ahead."

<sup>166</sup> Senator Santorum and Senator Lieberman reintroduced legislation to establish IDAs on April 27, 2005, S. 922. IDAs were also included in the Republican leadership agenda, as one element of S. 6 introduced on January 24, 2005. We're positioning IDAs to remain part of the CARE Act, but we know that Ways and Means Committee Chairman Bill Thomas hates IDAs, so we see that even if we prevail in the Senate, we might well lose IDAs in the conference. So we're also repositioning IDAs for inclusion in the Senate Social Security reform package. When personal Social Security accounts finally die as a concept, which we believe is inevitable, we hope that the debate will focus on enhancing retirement savings incentives, e.g. 401Ks and Individual Retirement Accounts (IRAs). We will press to include IDAs as part of that package, arguing that at a minimum these savings incentives should apply to those at the low end of the income ladder for whom savings is a new and life changing experience. The fate of the CARE Act and Social Security reform effort should be determined in the fall of 2005.

<sup>167</sup> I was not able to complete the drafting of this bill and secure its introduction prior to my retirement.

<sup>168</sup> See Public Law 108-121 (November 11, 2003).

<sup>169</sup> The Peace Corps has shown essentially no interest in working with me to address these disincentives. Out of frustration, I finally e-mailed the Peace Corps director to tell him that his staff was dropping the ball. That got his attention and perhaps these initiatives might be pressed through to completion. If they don't fix the retiree health benefits problem before I join the Peace Corps, I'm inclined to send my premium notices to the Peace Corps director and ask him to reimburse me.

<sup>170</sup> Mark now serves as senior vice president for policy and strategy of the National Coalition on Health Care. He's also vice chairman of the Climate Institute, a non-profit research and educational organization focused on global climate change. At the Yale School of Management as the Lester Crown visiting professor of management and then as distinguished faculty fellow, he taught courses on health-care policy and business strategy, strategic management, political analysis, communications strategy, and entrepreneurship in the non-profit sector. He has been a consultant to the Robert Wood Johnson Foundation; the Brookings Institution; the Carnegie Foundation for the Advancement of Teaching; the Center for Studying Health System Change; and the Annenberg Rural Challenge. He was previously the director of public affairs for the international management consulting firm of McKinsey & Company, and publisher of the *McKinsey Quarterly*, a widely circulated journal on business strategy. At the Brookings Institution in Washington, he was editor and publisher of the *Brookings Review* and the think tank's development officer. He was a member of the White House staff during the Carter administration, where he worked with Ed Cohen on regulatory reform, telecommunications, consumer protection, and environmental issues. He also served on the director's staff at the president's Reorganization Project.

<sup>171</sup> Charles L. Schultze, "Industrial Policy: A Dissent," *The Brookings Review*, Vol. 2, no. 1 (Fall 1983), at page 3.

<sup>172</sup> Mark worked with Ed Cohen, another dear friend of mine going back to 1972. Ed and his wife, Charlene Barshefsky, former U.S. trade representative, were close friends, but I had managed to find some occasions to work with both of them. Charlene was my opponent on the natural resource subsidy issue. Ed worked in the Carter White House and we found some regulatory issues to work on. He's always shown himself to be a fierce public interest advocate and an utterly loyal and delightful friend. Ed now serves as vice president, government and industry affairs for Honda North America, Inc., a position he has held since

September 2000. He first worked for Honda as an attorney with the Washington, D.C., office of Davis Wright Tremaine where for thirteen years he was a federal regulatory specialist. Ed also served as deputy solicitor of the U.S. Department of the Interior and counselor to the secretary (1994-2000) and as deputy special assistant to President Jimmy Carter from 1979-1981 and as general counsel of the White House Office of Consumer Affairs from 1977-1979. From 1971-1977, Ed was a member of the professional staff and counsel to the U.S. Senate Committee on Commerce.

<sup>173</sup> See S. 2747, Second Young Commission (July 22, 2004). This bill accompanied a report issued by our staff entitled, "Offshore Outsourcing and America's Competitive Edge: Losing out in the High Technology R&D and Services Sector," Office of Senator Joseph Lieberman, May 11, 2004. See <http://lieberman.senate.gov/newsroom/reports/ManufacturingReport.pdf>

<sup>174</sup> See S. S. 1592 (September 8, 2003). This bill accompanied a report entitled, "Making America Stronger: A Report with Legislative Recommendations on Restoring U.S. Manufacturing," Office of Senator Lieberman, September 2003. (see <http://lieberman.senate.gov/newsroom/whitepapers/Offshoring.pdf>)

<sup>175</sup> See S. 2582 (June 5, 2002). This bill was accompanied by a report entitled, "Broadband: A 21<sup>st</sup> Century Technology and Productivity Strategy," Office of Senator Lieberman, May 2002. See [http://lieberman.senate.gov/newsroom/whitepapers/Broadband\\_Lieberman\\_5\\_28\\_02.pdf](http://lieberman.senate.gov/newsroom/whitepapers/Broadband_Lieberman_5_28_02.pdf)

<sup>176</sup> One of the defendants was Mark Felt, who has surfaced as Deep Throat. He was indicted for his authorization of illegal activities and then pardoned by Reagan.

<sup>177</sup> See Appendix T, Justice Department Retention of Private Legal Counsel to Represent Federal Employees in Civil Lawsuits, Staff Report, Subcommittee on Administrative Practice and Procedure, Senate Judiciary Committee, May 1978.

<sup>178</sup> See S. 2514 (April 2, 1992).

<sup>179</sup> Senator Boxer has picked up on the idea. She's introduced several bills essentially identical to the one I drafted for Senator Bumpers. See S. 2732, introduced on July 16, 2002, and S. 121, introduced on January 9, 2003. A version of this proposal was accepted as an amendment to the 2003 tax bill on May 15, 2003, but it was dropped in the conference.

<sup>180</sup> Martin Weitzman, in the mid-1980s, proposed a simple recipe to cope with stagflation, namely the substitution of fixed wages with a mixture, consisting of a fixed part and a share of firm's profit, such that, on average, the remuneration is unchanged. This would allow firms to retain workers during a recession. Indeed, this scheme implies a reduction of marginal cost of labor, which drops to the fixed component of wage. As a consequence, the adjustment in response to productivity shocks takes place through prices rather than quantities. Weitzman's recovery of this old idea brought about considerable debate among economists at the time (more than one would expect), and has been often advocated by policymakers (e.g. the Italian central banker) as a possible device to cope with the weakness currently affecting several European economies.

<sup>181</sup> See S. 932 (April 7, 1987).

<sup>182</sup> See S. 1049 (June 14, 2001).

<sup>183</sup> See S. 2877 (August 1, 2002).

<sup>184</sup> Katherine has become staff director at the HELP Committee, where she and I have very worked closely on the bioterrorism legislation.

<sup>185</sup> See S. 2954 introduced on October 18, 1986.

<sup>186</sup> See Bumpers amendment to H.R. 11, September 25, 1992.

<sup>187</sup> The June 22, 2005, *Washington Post* reports that there are more than 34,000 registered lobbyists in Washington and that the amount they charge their clients has doubled. Monthly retainers of \$30,000-\$40,000 are not uncommon. Bidding wars for congressional staff have occurred.

<sup>188</sup> See "Driver Guilty in Fatality During TV Production," Molly Moore, December 15, 1982 *Washington Post* at B2, and "Two Charged in Fatal Crash During TV Filming in Reston," Kenneth E. John, Aug 19, 1982 *Washington Post* at pg. C2.

<sup>189</sup> Democrats lost additional seats in the November 2004 election.

<sup>190</sup> In 1991, upon the resignation of Thurgood Marshall, President George H. W. Bush nominated Thomas to replace him. This was widely considered a move in the conservative direction for the court. His selection as a justice also preserved the presence of a black justice on the court. Liberal organizations including the NAACP, the Urban League, and the National Organization for Women opposed his appointment to the Supreme Court because of his criticism of affirmative action and supposed anti-abortion position. In response to the anti-abortion assertion, Thomas reiterated that he had not developed a stance on the *Roe v. Wade* decision, which legalized abortion. Others thought he was unqualified, having served only two years as a federal judge. He was the first nominee since 1970 (Harrold Carswell) to not receive a “well qualified” rating from the American Bar Association judicial evaluation committee, although he did receive a rating of “qualified.” The Senate Judiciary Committee questioned Thomas about his political opinions and constitutional interpretation over several days. Toward the expected end of the confirmation hearings, Democratic staffers for the committee leaked to the media the contents of an FBI report which alleged that a former colleague of Thomas, University of Oklahoma law school professor Anita Hill, had accused him of sexually harassing her when the two had worked together at the US Department of Education and Equal Employment Opportunity Commission (EEOC). Hill was summoned to testify before the committee, and the hearings were broadcast on national television. When questioned about the allegations, Thomas emotionally called the hearings “a high-tech lynching for uppity blacks,” a charge which brought Thomas sympathy and effectively blunted the assault against him. Thomas avoided answering the charges directly until forced to do so; ultimately he rested on a blanket denial of all the accusations. The chief objection to Hill’s claims was that she did not register her complaint promptly, which Hill’s advocates argue is characteristic behavior in women encountering sexual harassment. In the end, the committee did not find sufficient evidence to corroborate Anita Hill’s claim. Hill’s supporters insisted relevant testimony from Angela Wright, a PR director for the EEOC and a witness to the alleged offensive conduct, was suppressed. Thomas was confirmed by the Senate with a 52-48 vote on October 15, 1991. He took his seat on October 23, 1991.

<sup>191</sup> Bob Packwood was Republican senator from Oregon from 1968-1995, when he was forced to resign after allegations of sexual harassment of women emerged. Packwood’s political demise began in November 1992, when the *Washington Post* confronted him with detailed allegations of sexual misconduct. By threatening legal action, Packwood was able to delay publication of the story until after the election, where he defeated NOW-endorsed Les Aucoin by a razor-thin margin. The National Organization for Women took up the cause of at least twenty-nine women who eventually came forward to allege sexual abuse and assaults, dating back over the years. The sexual abuse side of Packwood’s problems, played up in the public media, obscured charges that he encouraged offers of financial assistance from lobbyists and other persons who had a particular interest in legislation or issues that Senator Packwood could influence. As the situation developed, he was also charged with trying to obstruct the investigation. The Senate decided against public hearings. With pressure mounting against him, Packwood finally announced his resignation from the Senate on September 7, 1995, after the Senate Ethics Committee unanimously recommended that

he be expelled from the Senate for ethical misconduct. Senator Packwood's diary became a key issue: whether a diary can be subpoenaed, whether Packwood attempted to blackmail his fellow senators with threats concerning the purported content of his diaries, and his blatant excisions from it.

<sup>192</sup> Soft money that is given to a political party but is not given specifically to support a particular candidate. This money is supposed to be used for purposes such as voter registration drives, administrative costs, and general political party expenses, but is often used by the parties to help particular candidates.

<sup>193</sup> Paula has had a distinguished career in writing and teaching. For many years, she wrote and reported on social, political and economic issues, as a newspaper reporter/editor/photographer, as managing editor of a publication that covered labor and economic issues, and as editor/writer at a magazine on Africa. From 1989-92 she was Senior Writer/Editor for USAID consulting firms. Since 2002, she has taught English composition and literature at the University of the District of Columbia. In addition, since 1989, she has served as a Smithsonian museum docent, National Museum of African Art, and since 1993, as a mentor/tutor and librarian at Community Club, a tutoring program for public school students. In the Peace Corps she was teacher and headmistress at a girls' boarding school in Kenya, where she secured government accreditation and funding for the school. She earned a B.A. in English from Macalester College and an M.A. in Anthropology from George Washington University, which she followed with field research on community-based natural resource management in Mozambique under a University Cotlow Grant.

<sup>194</sup> From 1940 to today, Dad has led the development of health-care law and policy in California, and had a major impact on health-care law and policy nationally. Beginning with his authorship of model contracts, by-laws, and agreements, he established educational hospital and medical law institutes held throughout the state for professionals, pioneered a standard rationale for hospital rates, initiated uniform safety programs, and drafted and counseled numerous legislative actions concerning the industry and personnel practices among many other successful initiatives. As long-time legal counsel and board member of Blue Cross of Southern California, he fostered relations between the health-care payors, hospitals, physicians, and providers rooted in his over-riding philosophy that "the patient comes first." He's received every available award for lifetime achievement, including the Partners in Care Foundation Award For Vision and Excellence in Healthcare Leadership, the California Hospital Association Award of Merit, American Hospital Association Trustee's Award, honorary fellowships from the American College of Healthcare Executives and the American College of Legal Medicine, UniHealth America Foundation Pinnacle Award, the Boy Scouts of America Award, and the Hospital Council of Southern California Leadership in Health Affairs Award. He was inducted into the Healthcare Hall of Fame in March 2002. He founded the Society of Hospital Attorneys. He served in industry leadership positions on

the boards of the American Academy of Hospital Attorneys; Blue Cross of Southern California; Hospital Council of Southern California; Health Providers Insurance Company; Association of Independent California Colleges and Universities; Association for California Tort Reform; National Health Foundation; California Health Policy Task Force Los Angeles; UniHealth America; and Californians Allied for Patient Protection. He has also served the California Association of Hospitals and Health Systems; American Hospital Association; American Arbitration Association; American College of Hospital Administrators; HEW Secretary's Commission on Medical Malpractice; and the National Commission for the Study of Nursing and Nursing Education. His civic and community involvement spans Good Hope Medical Foundation; California Civic Light Opera; Performing Arts Council; United Way; Welfare Planning Council; Alcoholism Planning Council; Moore-White Foundation; House Ear Institute; Friends of Claremont Colleges; Stanford Associates; Harvard Law School Association of Southern California; USC School of Law; Board of Councilors; USC Health Advisory Board; Pacific Center for Health Policy; and the American Center for Music Theater. One award to him stated, "There is so much more to the man beyond the accolades for a career of effective work in healthcare. Perhaps the most enduring and endearing aspect of Jim's career is the impact he has made on colleagues and associates. His keen sense of wit and humor, his gentle hand of leadership, and his incisive wisdom and in-depth understanding of the issues at hand have inspired and instructed those who have worked with him and for him. Never too busy to take a moment to explain a rationale or point the way to greater effectiveness, Jim, a mentor to generations of healthcare attorneys and professionals, continues to provide the healthcare community with dynamic healthcare leadership on numerous issues through many community organizations including the National Health Foundation. When you know Jim, you know the history and future of the healthcare medical-legal system in California and the nation. And he is the one to know first."

<sup>195</sup> Chuck has been accepted for agroforestry extension and Paula for small enterprise development.

<sup>196</sup> In order to maximize the impact of this history, I'm sending it to the leaders of the principal congressional studies programs at the universities, including Norm Ornstein at AEI, John H. Aldrich at Duke, Sarah A. Binder at George Washington University, Kenneth Shepsle at Harvard, James Snyder at MIT, Larry Bartels at Princeton, David Brady at Stanford, Nelson Polsby at UC Berkeley, Bunche Hall at UCLA, Gary Cox at UCSD, Steven Smith at Washington University, David Mayhew at Yale, Morris P. Fiorina at Stanford, David Rohde at Michigan State University, Keith Krehbiel at Stanford, Larry Evans at William & Marry College, and Wendy Schiller at Brown. I am hopeful they'll find my history useful in their curriculums.

## Index

Abortion	86, 127, 130, 187
Abourezk, James (D-SD)	ii, 6, 8, 13, 17, 27-29, 35, 44, 52, 58, 63-64, 64, 67, 71, 73, 75, 77-79, 81-84, 86-88, 90, 93, 95, 99, 115, 169, 176, 181, 183, 188, 193
Administration Committee, House	24
Administrative Practice Subcommittee	i, 1, 73, 93, 176
Administrative Procedure Act (APA)	36, 43, 88, 91, 92, 116
Airline Noise Bill	i, 28, 48, 50, 72, 73, 75, 82, 124, 151, 179, 182, 190, 191, 194
Alaska Pipeline	i, 14, 38, 39, 87, 89, 121
pipeline	i, 14, 38, 39, 87, 89
Allen, James (D-AL)	ii, 3, 40, 41, 50-55, 57, 59, 61-67, 69-73, 78, 81, 84
Anthrax Incident	121, 149, 150, 152, 167
Antitrust Improvements Act	i, 8, 10, 28, 40, 41, 47, 50-55, 60, 61, 63, 65, 68, 70, 72, 75, 94
Anti-Semitism	35
Architect of the Capitol	20, 46
Armey, Dick	141
Artim, Bruce	153, 155, 194
Attorney General	12-14, 21, 23
Baker, Howard (R-TN)	2, 26, 27, 72, 180, 196
Banking Committee, House	173
Barshefsky, Charlene	98, 173, 191
Baum, Michael	174, 184
Bayh, Birch (D-IN)	10, 86, 95
Bechtel	87
Bentsen, Lloyd (D-TX)	58, 60
Bickwit, Len	39
Biotechnology Industry Organization (BIO)	i, 6, 96, 101-2, 106-7, 109-10, 112-14, 123-24, 133-136, 141-143, 147-49, 151-52, 155, 157, 178, 180-183, 191
Bioterrorism	2, 87, 91, 96, 108, 113-14, 149-50, 152-57, 162, 164-65, 168, 178, 184, 197
Bipartisanship	26, 27, 32
Bliley, Tom	142
Bond, Christopher “Kit” (R-MO)	105, 136-139, 142, 182
Bonvillian, Bill	80, 114, 149, 172, 174, 193, 197
Bradish, Nancy	135-137

Brain, Chuck	102, 111
Brand, Stan	24
Brand, Paul	174, 184
Breaux, John (D-LA)	181, 189
Brock, William (R-TN)	58, 98
Brooks, Jack	187
Brown, Dee	84
Bumpers, Dale (D-AR)	ii, 6, 36, 91, 93, 99-101, 114, 123, 148-149, 177, 179, 180, 182, 183, 188, 191
Burdick, Quentin (D-ND)	55-57
Bush, George H.W.	159
Bush, George W	43, 94-95, 126, 147, 153-54, 156, 159, 162, 169
Business Roundtable	51
Byrd, Robert C. (D-WV)	ii, 26, 40, 41, 52-54, 59-67, 69-71, 73, 78, 100, 115, 161, 189
Campaign finance	24, 26, 185, 186, 189
Cannon, Howard (D-NV)	79
CARE Act	168-170
Caro, Robert	66
Carter, Jimmy	i, 6, 8, 15, 31, 35, 43, 44, 70, 73, 74, 88-95, 98, 99, 119, 134, 169, 173, 181, 183, 191, 193
Center for Law and Social Policy	6, 14, 37, 39
Central Intelligence Agency (CIA)	3, 12, 175, 176
Chafee, John (R-RI)	189
Checks and balances	15, 16, 29
Cheney, Dick	61
China	ii, 2, 26, 98, 104, 149-50, 163-167, 184, 192-93, 198
Civil Aeronautics Board (CAB)	73
Civil Rights	5, 6, 8, 9, 35, 61, 65, 176, 188
Clark, Richard	153
Clerk of the House	24
Clinton, William J.	6, 8, 12, 14, 29, 32, 93, 98-101, 111, 123, 127, 147, 148, 153, 156, 159, 185
Cloning	3, 124-126, 128-131, 133-138, 142, 143, 167
Cloture	40, 50, 52-55, 57-62, 64-70, 78, 139-141
COINTELPRO	ii, 25, 175, 177, 191
Commerce Committee, Senate	39, 75-79, 81, 82, 95, 98, 115, 135, 140, 141
Congressional Accountability Act	110, 176, 188
Congressional Budget Act	100, 116, 158-65, 181, 183, 192
Congressional Budget Office (CBO)	161

Congressional Management Foundation	28, 180
Congressional Research Service (CRS)	47, 48, 176
Contempt of Congress	20, 21, 24, 188
Cornyn, John (R-TX)	145
Corr, Bill	112
Court packing plan	22, 23
Culver, John (D-IA)	9, 88, 90, 93, 181
Cuneo, Gil	87, 154
C-SPAN	17, 85, 104
Danforth, John (R-MO)	94, 189
Daschle, Tom (D-SD)	69, 121, 149, 150, 189
Davidson, Jim	93, 94, 99, 169, 181, 194
Davidson, Michael	26, 31, 37
Defense Department	87, 159
Defense Science Board	150
DeLoatche, Patty	154, 155, 194
Democratic Caucus, House	6, 36, 97, 99-100
Democratic Conference, Senate	52
Democratic Leadership Council (DLC)	99
Deng Xiaoping	166
Deregulation	10, 28, 73-75, 77-80, 82, 90, 92, 119, 174
Dingell, John	95, 96
Dirksen Senate Office Building	149
Domestic Policy Council	6
Eagleton, Thomas (D-MO)	83
Eastland, James (D-MS)	9, 10, 70
Egypt	84, 118, 120, 193
Ehlers, Vern	134, 135
Ellsberg, Daniel	83, 87, 88
Embryonic stem cell research	3, 120, 123-128, 131-133, 143, 144, 178
Energy Research and Development Agency (ERDA)	87
Enron	178
Environmental Protection Agency (EPA)	88, 91, 119
Enzi, Mike (R-WY)	154, 156, 178, 189
Ervin, Sam (D-NC)	10, 15, 28, 29, 93
Ethics in Government Act	i, 1, 8, 11, 14, 31, 93, 95, 135, 152
Exxon Valdez incident	38, 39
Fairness doctrine	42
Federal Bureau of Investigation (FBI)	9, 175, 176, 187
Federal Trade Commission (FTC)	i, 6, 34, 42, 60, 98-99, 191

<i>Federalist Papers</i> .....	61, 65
Feinstein, Dianne (D-CA) .....	145
Filibusters .....	28, 40, 50, 52-55, 59-64, 66, 67, 77, 118
Finance Committee, Senate .....	75, 76, 96, 116
Fleming, Myron .....	115
Food and Drug Administration (FDA) .....	7, 91, 108, 149-153
Ford, Gerald .....	15, 31, 43, 51, 71, 87, 93
Frist, Bill (T-TN) .....	138, 141, 143, 147, 153, 154, 165, 189
From, Al .....	99
Ganske, Greg .....	ii, 109, 191
General Accounting Office (GAO) .....	176, 191
Glenn, John (D-OH) .....	39, 58
Golden Fleece Award .....	17
Goldwater, Barry (R-AZ) .....	33, 148
Gore, Albert Jr. (D-TN) .....	24, 41, 95, 99-101, 148, 185
Government Operations Committee, Senate .....	8, 10, 15, 20
Graham, Lindsay (R-SC) .....	15, 161, 165, 189
Gramm-Rudman-Hollings .....	165
Great Society .....	2, 33
Greenwood, James C. ....	181
Gregg, Judd (R-NH) .....	154, 156, 165, 189
Hagel, Chuck (R-NB) .....	189
Hagigh, Sara .....	173, 184
Hamilton, James .....	15
Harman, Jane .....	85
Harris, Herky .....	90
Hart, Phil (D-MI) .....	3, i, ii, 10, 28, 39-41, 47, 48, 50, 52, 55, 58-59, 61-63, 70-72, 81, 88, 89, 94, 100, 115, 116, 118, 123, 124, 136, 149, 189
Hart Senate Office Building .....	40, 63, 149
Hatch, Orrin (R-UT) .....	105-6, 153-54, 156-57, 189
Hayden, Carl (D-AZ) .....	28, 45
Helms, Jesse (R-NC) .....	58-61, 84, 175
Health, Education, Labor, and Pensions Committee (HELP) .....	153
Hill, Anita .....	187-88
Hirschhoff, Paula .....	i, iv, 2, 37, 120-21, 171, 180-81, 193-98
Hoagland, Peter .....	5
Homeland security .....	7, 8, 154, 157, 159, 166
Huska, Roman (R-NB) .....	9, 63
Hughes, Kent .....	100

Humphrey, Hubert (D-MN)	5, 9, 83, 185
Individual Development Accounts (IDAs)	168-171, 191, 192
<i>Illinois Brick v Illinois</i> (1977)	72
Immigration Building	45, 46, 48
Indian Affairs Committee, Senate	83, 84
Industrial Development Bank	173
Internal Revenue Service (IRS)	177
International Trade Commission (ITC)	179
Interns	2, 3, 5, 33-35, 79, 98, 196
Investment Tax Credit	179
Ireland, Andy	89
Irizarry, Steve	154
Israel	6, 8, 84
Javits, Jacob (R-NY)	13, 15, 79, 189
John Birch Society	3
Johnson, Lyndon B. (D-TX)	2, 5, 19, 33, 34, 41, 65, 114, 173, 185
Joint Economic Committee	1, i, 6, 97, 99, 100, 181, 182
Jordan, Hamilton	94
Judiciary Committee, Senate	i,1, 6, 8-10, 14, 17, 52, 73, 84, 88, 153, 156, 158, 176, 181, 187
Judiciary Committee, House	13, 88, 158
Jurisdiction, committee	8-10, 14, 19, 88, 134, 154
Justice Department	ii, 12-14, 16-20, 22, 24, 25, 27, 31, 87, 91, 175, 176
Kassebaum-Kennedy bill	110
Kemp, Jack	158
Kennedy, Edward (D-MA)	9-10, 39, 41, 52, 58, 71, 73, 74, 78, 81, 83, 92, 94, 95, 110, 115, 145, 155, 161, 189
Kennedy, John F. (D-MA)	4-5, 34
Kennedy, Robert F. (D-NY)	5
Kerry, John F. (D-MA)	100, 130, 185
Kindness, Tom	90, 195
Kolker, Peter	182
Koreagate	12, 13
Kurland, Philip	17, 29
LaFalce, John	173
Larson, Don	115
Lawton, Steve	96, 155
Lazarus, Si	6, 88-94, 114, 193
Legal Counsel, Senate	1, 3, 1, 2, 6-8, 11, 15-27, 29-32, 37, 47,

	89-91, 106, 123, 124, 135, 175, 176, 191, 195
Lehman, Bruce	103
Lewinsky, Monica	148
Lewis, Charles	152
Lieberman, Joseph (D-CT)	1, 3, i, ii, 6, 36, 39, 45, 80, 108, 114, 115, 135, 148-150, 153, 154, 156, 157, 159, 160, 162, 164-168, 170-175, 178, 181, 183, 188, 189, 193, 197
Lipscomb, Glen	ii, 3, 35, 79
Lobbyists	6, 7, 14, 36, 90, 98, 101, 111, 123, 124, 142, 159, 184
Long, Gillis	ii, 6, 36, 97-99, 181, 183, 188
Lott, Trent (R-MS)	136-140, 182
Lowenstein, Al	5
Mack, Connie (R-FL)	139, 145, 189
Mansfield, Mike (D-MT)	52, 59-62, 64-66, 69-71, 73, 78, 115, 189, 190
Margolis, Irene	6, 17, 45, 193
McCain, John (R-AZ)	161, 189
McCarthy, Eugene (D-MN)	5, 9, 17, 20
McClellan, John (D-AR)	32
McConnell, Mitch (R-KY)	165
McCormick, John	34
McGee, Gale (D-WY)	54
McGovern, George (D-SD)	88
McGuire, Katherine	178, 194
McIntyre, Thomas (D-NH)	57, 67, 90
McLean, Pat	96
Medicare	2, 70, 149, 151, 152, 158, 159, 161, 163, 165, 171
Metzenbaum, Howard (D-OH)	28, 67, 84, 112
Michigan Law School	i, 5, 37
Mikulski, Barbara (D-MD)	189
Miller, Jim	39, 95, 96
Mineral Leasing Act	38, 39
Mitchell, John	12
Moore, Frank	89-91, 142, 182, 195
Morella, Connie	134, 135
Morgan, Robert (D-NC)	58
Mossinghoff, Jerry	107
Moynihan, Daniel Patrick (D-NY)	26, 83
Musick, Peeler, and Garrett	6, 97
Myers, Nancy	194, 197
Nader, Ralph	76, 78, 95, 152
National Debt	ii, 149, 157, 159-162, 164, 165, 167, 168, 177, 184
National Environmental Policy Act (NEPA)	38, 39, 89
National Institute of Health (NIH)	ii, 106, 108, 112, 113, 147, 151, 153

National Public Radio (NPR)	135
Natural Gas Deregulation	28, 67, 97
Nelson, Gaylord (D-WI)	8, 95, 198
Nepal	i, 2, 5, 36, 37, 183, 193, 195, 196
Nickles, Don (R-OK)	181
<i>Nike vs. Kasky</i>	41
Nixon, Richard (D-CA)	11, 12, 15, 19, 28, 31, 42, 43, 83, 93, 148
Obey, David	99
Occupational Safety and Health Administration (OSHA)	43, 91, 119
Office of Personnel Management (OPM)	172
Office of Management and the Budget (OMB)	44, 43, 90, 92, 94, 95, 165
Orphan Drug Tax Credit	ii, 110, 191
O'Neill, Tip	11-13, 24, 45
O'Neill Building	45
Packwood, Robert (D-OR)	21, 188
Parliamentarian, Senate	ii, 24, 50, 58, 68, 69, 80, 81, 116, 117
Pastore, John (D-RI)	57, 64
Patent Reform Act	i, 2, 105, 106, 108, 110, 115, 123, 124, 153, 191
Peace Corps	3, i-3, 5, 7, 26, 33, 35-37, 120-122, 153, 155, 157, 159, 171, 172, 183, 192, 194-196
Pentagon Papers	87, 88
Percy, Charles (R-IL)	13, 189
Permanent Subcommittee	iii, 32
Perry, Charles (R-IL)	143
Pharmaceutical Research and Manufacturers Association (PhRMA)	107-8, 151
Political Action Committees (PAC)	102, 113
Post-cloture Filibuster	40, 50, 54, 55, 59, 60, 64, 66, 67
Potter, Phil	98
Press	13, 147, 152
Project BioShield	ii, 153, 154
Proxmire, William (D-WI)	8, 17, 18, 190
Quayle, Dan (R-IN)	68-69
Rafferty, Jim	155, 178, 194
Raines, Lisa	101, 123
Rapoport, Frank	154, 155, 194
Reagan, Nancy	143-44
Reagan, Ronald	6, 43, 90, 92, 94-97, 99, 101, 104, 119, 159, 165, 173, 175, 181, 188
Reagan, Ronald, Jr.	143-44
Reconciliation, budget	100, 148
Reconstruction Finance Corporation (RFC)	173
Regulatory policy	i, 6, 8, 19, 36, 39, 43, 44, 43, 44, 73, 74, 88-96, 98, 99, 119, 130, 142, 169, 173, 191

Regulatory flexibility	i, 8, 88-93, 96, 142, 169, 191
Research and Development Tax Credit	110
Ribicoff, Abe (D-CT)	8, 13, 189
Right to Life Movement	126-128, 130-136, 138, 139, 146, 147, 193
Rivers, Lynn	135
Rockefeller	8
Rodino, Peter	3, i, 13, 28, 40, 47, 48, 50, 51, 55, 59, 81, 89, 116, 118, 123, 124, 136
<i>Roe v. Wade</i>	86, 127, 187
Rohrabacher, Dana	104-106, 108
Roosevelt, Franklin D.	9, 22, 23
Rosenberg, Mort	176
Ross, Steve	24
Rousellot, John	79
Rules Committee, House	6, 36, 97
Rules Committee, Senate	32
Rusk, Dean	34
Russell, Richard (R-GA)	41, 45, 65, 70, 115, 187
Santorum, Rick (R-PA)	168-171
SARS (Severe Acute Respiratory Syndrome)	150, 155-158
Schaefer, Dave	8, 11, 13, 15, 194
Schlafly, Plyllis	105, 106
Schmickel, Dave	106-108, 153, 155, 194
Schultze, Charles	173
Schumer, Charles (D-NY)	151
Scott, Hugh (R-PA)	51
Scott, William (R-VA)	57-62, 70
Senate Library	2, 48
Sensenbrenner, James	134
Separation of Powers, Subcommittee on	1-2, 6, 8, 15-19, 24, 28-31, 36, 44, 45, 178, 187, 194
September 11, 2001 (9/11)	101, 123, 153, 156, 186
Shalala, Donna	112
Shapiro, Ira	8, 11, 13, 95, 135, 180, 194
Silbert	87, 88
Sirica	87
Small Business Committee	1, i, 6, 100, 123, 149, 182
Social Security	2, 23, 158, 159, 161, 163, 165, 170, 171, 180
Speaker of the House	13, 24, 34
speech-and-debate	17, 19, 23
Stanford University	i, iv, 1-5, 7, 33-35, 45-47, 97, 122, 123, 144, 172, 192, 195-198
Stanford in Government (SIG)	i, iv, 1-3, 7, 33-34, 122
Stanford in Washington	7, 122
Stem cell research	3, 89, 105, 120, 123-128, 131-135, 137, 138, 143-147, 154, 182, 191, 193

Stennis, John (D-MS) .....	70
Stevens, Ted (R-AL) .....	4
Subpoena power .....	i, 12, 15, 18-21, 24, 27, 32
Supreme Court .....	6, 10, 14, 20, 22-24, 29, 38, 39, 41, 42, 44, 72, 127, 187
Talcott, Burt .....	ii, 2, 35
Tarplin, Linda .....	102
Tax reform .....	100, 123, 179
Television .....	42, 52, 62, 67, 83-84, 106, 133, 182, 187, 190
Thomas, Clarence .....	187-88
Thompson, Tommy .....	151
Thurmond, Stom (D/R-SC) .....	9, 61, 139
Tiefer, Charles .....	24, 31, 32
Tozzi, Jim .....	43, 44, 95
Trade associations .....	94, 113, 142, 143, 192
Transportation Department .....	80, 159
Tuck, Dick .....	83, 190
Tunney, John (D-CA) .....	85
Unanimous consent agreements .....	53, 54, 57-60, 62, 64, 70, 75, 77, 78, 80, 82, 83
Unemployment .....	93, 95, 163, 170, 177, 181
Varmus, Harold .....	112
Ventimiglia, Vince .....	154
Vietnam War .....	4, 5, 33-35
Wald, Pat .....	10, 14, 15, 27, 38
<i>Wall Street Journal</i> .....	74
<i>Washington Post</i> .....	6, 43, 61, 87, 91, 181, 182, 188
Watergate Scandal .....	8-12, 14-16, 18, 19, 25, 26, 29, 31, 44, 83, 87, 177
Watts, Skip .....	174, 184
Ways and Means Committee .....	5, 111, 112, 170
Wegman, Dick .....	8, 11, 13, 15, 36, 44, 83, 93, 95, 141, 186, 190, 194
Weis, Andy .....	7
Wellford, Harrison .....	94, 181
Will, George .....	61
Wilmot, Ian .....	128-130, 132
Wirth, Tim (D-CO) .....	34
Women on the Congressional staff .....	85-86, 187-88
Young Commission .....	173
Zweben, Murray .....	ii, 40, 48, 50, 54, 68, 69, 71, 73