

## **IRAN-CONTRA**

### **Interview #4**

**Wednesday Afternoon, June 9, 2010**

**RITCHIE:** The Democrats had been the majority party in the Senate for 26 years before the 1980 election. They were used to being the majority party, and it seemed a really difficult transition that year, first for the Democrats to accept the fact that they were now in the minority, and second, for the Republicans to realize they were in the majority. It seemed to take both parties a little while to change their tactics.

**ARENBERG:** That's absolutely true. I think it took the Republicans a while to get a sense of how to effectively work these committees. The Democrats had a lot of trouble adjusting to minority status. There was a profound impact in 1980 on the committee staff. All those years of majority rule, quite frankly things had gotten a little bloated out there, I'll admit. Some of those committees had really huge staffs. Unlike subsequent shifts back and forth, where they found a way to make the change with attrition and not have a whole boatload of people lose their jobs, in 1980 it wasn't like that. There was a lot of blood on the floor, a lot of Democratic committee staffers suddenly out of jobs.

**RITCHIE:** That's how we did some of our earliest oral histories. There were a lot of staff who retired earlier than they had expected. I'm curious about your going over to Senator Mitchell. With Senator Tsongas, you had been with him from day one. By the time you got to Mitchell's office, he'd already been a senator for four years, so he had a staff that was already in place. How was it walking in to be the director of a staff that you hadn't worked with up until then?

**ARENBERG:** Well, it was an adjustment for them and was an adjustment for me. In that particular case, it was pretty smooth, with a couple of exceptions. I think there's always that kind of adjustment process when things change. It's a difficult thing in a Senate office when you find yourself in a position where you have to let someone go, because it's a political operation. Senators as politicians don't like to fire people. They would much rather find a solution short of that. So there were a few changes that got made, but by and large it was a pretty comfortable transition.

I had some strange operating rules. I've always conducted staff meetings as "standing meetings," I called them, where nobody sits. The idea behind that was always you go around the room real quickly. Particularly with the legislative staff, you want

everybody to know what everybody else is doing, so you want to have a meeting where everybody downloads what it is they're working on, what they're going to be working on, what's happening, and so forth, and you go around the room. But I never wanted to let those turn into dog-and-pony shows. When somebody goes on and on, then the next person feels like they can't look like they're doing less work, so it grows into this endless meeting. My way of dealing with that has always been to require that everybody stands. It goes a lot quicker. It's briefer. You go around the room. Everybody says what they have to say, and then we go. All the various staffs that I worked with always found that slightly comical. When I had lunch with the Levin staff yesterday, I asked them if they were still standing at staff meetings, and they weren't.

**RITCHIE:** It probably made their responses concise. How about the home state staff, did you have to manage them as well?

**ARENBERG:** Yes. There is a director in the state who was an extremely competent guy and had done the job—he'd been on the Muskie staff, Larry Benoit, he later was the Senate Sergeant at Arms—so it was a very effective, very professional staff Mitchell had at the time I got there. He had, I think it was, six or seven offices in the state at the time. That's not that uncommon anymore, but at the time I think it was beyond the upper limit. So covering those offices—I'd go up there and rent a car—driving around the state of Maine, covering all that territory, there were thousands of miles involved. There's a state office inflation that sets in because if you can get approval to do it, it's an easy thing to open up a new state office. People like it, you have a new operation in a new area. It's the hardest thing in the world to close an office. Unless the sergeant at arms cracks down, there is a tendency to add offices.

**RITCHIE:** These days the state staff have teleconferencing capabilities. A lot of Washington office staffs hold a Monday morning teleconference with their state office staffs.

**ARENBERG:** We did that in the Levin office. For the last few years we met with not just the Detroit office but with most of the offices around the state.

**RITCHIE:** It does seem like there's more of a trend toward having more staff back in the home state. With electronic mail and all else, you don't need to be here in Washington for everything.

**ARENBERG:** The younger staff finds it amusing when I regale them about office equipment, for some reason, but I tell them there was a time when we didn't have computers, and we didn't have Xerox machines, and we didn't have fax machines. And no long-distance phone calls. When I first came here there was the FTS line, which the executive branch had access to all day long, but in Washington we only had access to it after five o'clock. There was one FTS line in every Senate office. It was only after five o'clock that we had access to it, I guess because of the amount of traffic in Washington. But in the state offices, they had access to FTS all day. So the routine, I think probably in all Senate offices, but the routine that we had was that the state offices were all under instructions never to answer the phone on the first ring. You would call the state office, let it ring once and hang up. They would know that was the Washington office and would call us back on the FTS line. It's kind of a trivial matter, but when you think back that it's not all that many years ago—30 years ago—that the United States Senate was operating in a way where for most purposes, you didn't even have access to a long-distance phone call. When we first got the first faxes, it was back when I was in Tsongas' congressional offices in the House, because Wang Laboratories was in our district. They developed the first one. They were called telecopiers. It would go around and around and when it came out it smelled bad and was all curled up. You couldn't uncurl it. But we thought that was a miraculous thing: documents over the phone line, what a revolutionary idea! We take all that for granted now.

**RITCHIE:** Especially with some of the older senators, it was a real chore to get them to accept something as new as a fax machine.

**ARENBERG:** Yeah, exactly.

**RITCHIE:** Whereas I would think Tsongas, as one of the Atari congressmen, would have embraced it.

**ARENBERG:** Yeah, he was pretty good on new tech. Of course, even when the Senate went to computers, they couldn't talk to each other. Each office's computer was a separate world. There was a fair amount of resistance at first to interoffice linkages for fear of political security breaches and such. If you wanted to see an amendment which was offered on the floor, you had to send someone over to pick up a copy in the cloakroom. Then later they had an interactive fax system where you could call in a code and it would come out on your fax. And, finally, after years of staff complaining, we had a system where they were scanned and available on the computer. It's amazing how far

we've come.

**RITCHIE:** You had moved not only to a new senator but to a new state. How did you acquaint yourself to Maine during this period?

**ARENBERG:** I grew up in New England, so I had some familiarity with Maine. I went back to the state probably more frequently than I have in any of these other jobs. These other jobs had been more Washington-centered, but when I was Mitchell's chief of staff I spent more time up there. I spent a lot of time meeting a ton of people. It was interesting to me because having had my early experience with a larger state like Massachusetts, where the relationship with the senator is a little less personal and intimate—there's a lot more people and most people in Massachusetts, even in all the years that he was in office, probably never met Ted Kennedy and shook hands with him. Even though I'm sure he met millions of people. And if they had one interaction with him over the course of all those years that was probably a lot, unless they were really active in some way or another. In larger states, I'm sure that's obviously even more the case—certainly it was in Michigan. Levin had met millions, but Michigan has a population of about ten million.

It's very different in a small state like Maine. Politics is very personal. A guy like Mitchell, if you walked the streets of Maine with him, he knew two out of three people by name. It was a miraculous thing. Sometimes he knew more about their family tree than they knew. I had experiences like that. Somebody would come up and he'd ask about their great-aunt Mabel. They'd say, "Do I have a great-aunt Mabel?" He'd say, "Isn't your family from Millinocket?" And lo and behold he knew the family tree better than the person he was talking to. As a result, I found that as the chief of staff to the senator, when I went to the state, it was a bigger deal than I expected. When I went to visit the statehouse just to meet people, they took me in to meet the governor, and then took me on the floor of the state senate. When I worked for Tsongas, if I walked out on the floor of the Massachusetts state senate, these guys would be saying out of the corner of their mouths, "What's this guy doing here? Where'd he come from? Who does he think he is?" In Maine, that was a very different thing. All of that individual contact was expected.

Running an office for a state like that, you take something like mail extremely seriously. Working for Levin or working for Tsongas, in any Senate office you try to be responsive in responding to mail. It's an important thing. You try to be prompt and very substantive. But in Maine, the feedback was instantaneous. If you didn't respond to a

letter, or you're late in responding to a letter, or the response was off the point, anything like that, the senator was likely to hear about it that weekend. If he didn't run into the person who got it, which he probably wouldn't but they might know somebody that was going to be at something he was going to be at, and the word would get to him. He would come back and say, "Well, what happened here?" Much more instant feedback. In larger states the relationship between the constituency and the senator tends to be more electronic: they see him on the news. It's more of a mass media relationship. It's just the math, but it makes a big difference.

**RITCHIE:** As a legislative director you were dealing with legislative issues, but as a chief of staff you're dealing with everybody, including the constituent-mail side of the office, which in many offices is about half the people who work there. Did that—

**ARENBERG:** Well, I supervised that as a legislative director as well.

**RITCHIE:** Because of the issues?

**ARENBERG:** Yeah. Maybe not the physical operation of getting the mail out. But of course, as the balance is changing in the Senate, it's less and less a physical process and more and more an electronic process. But it is a big part of the operation. Senators in large states get an enormous amount of mail.

**RITCHIE:** Is there any trick to keeping that process flowing? Do you have to keep after it all the time?

**ARENBERG:** Yeah, tracking this is a critical thing. Now that we've got computers and scanners, we're able to do that quite easily. That was a real challenge back in years past, where so much of it was a physical operation. There was just a stack of letters sitting on a legislative correspondent's desk. You just had to be diligent that they weren't hidden in somebody's drawer. That reminds me when I say that, it's something I hadn't thought about for a long time. We got the chance, when I was working for Mitchell, to move into Muskie's old office in the Russell Building. Mitchell really liked the idea, and we grabbed it. I remember that Senator Phil Gramm wanted that office for some reason—not because it had been Muskie's, but because it was on the first floor and near the doors to the street. He called me directly repeatedly pleading for the office. I had to say, well, Senator Mitchell served on Senator Muskie's staff and it's an important thing to him personally. In the process of moving in, or painting, or something like that, they

took one of the airflow grates off—in the Russell Building they're at the juncture of the floor and the wall. They unscrewed it, and took it off, and they reached in there and there was a stack of letters to Senator Muskie from constituents that were somehow behind the wall! That's kind of emblematic of what you don't want to happen to constituent mail.

But these days it's scanned and it's tracked. You know when it comes in and when it goes out. If there's ever any question about it you can call it up on the computer screen and you can see the incoming letter and the outgoing letter. It's all much better ordered. But it's customer service. It's like running a restaurant, it's only as good as the manager. When you go into a restaurant and the tables aren't that clean and the service is kind of slow, the responsibility goes to the manager in that restaurant. The mail operation is a lot like that. It's got to be a very high priority to keep it flowing and to get it out in a timely fashion. The Levin office was extremely good at that. We kept track of the turnaround time, and things were generally out the door within 14 days, from the time something came in the door, often quicker than that.

**RITCHIE:** One of the drawbacks of electronic mail is that people want instant responses.

**ARENBERG:** Yeah, that's right. When we first started getting email, the first challenge was sorting out which email was coming from Maine, or Michigan, or Massachusetts. Now that's web-based so they have to come in and fill out an address and the details of the request, so you know by the address that the incoming mail is from the state. For the most part, Senate offices respond only to incoming constituent mail from their own states. Otherwise they'd really be inundated, particularly by email where it's just the click of a mouse and you're writing all 100 senators.

**RITCHIE:** Lately there have been phone-ins, when groups decide to inundate the Senate with phone messages, or target a particular senator. Did you ever encounter that?

**ARENBERG:** Oh, yeah. We've seen it happen. It's similar in many ways to the incoming communications. There's always been a kind of pecking order of other incoming constituency comment. A thought-out personal letter that's handwritten, it can even be typed, but is thoughtful and obviously individual, is probably the highest order. If you read that, you know that this is somebody, this is their point of view, they've expressed it clearly, and it's more important for the senator to know that than if this is one of thousands of postcards that were preprinted and may even require a signature of a

constituent—some of them don't even have that—and get sent in. That's not to say that a senator will ignore 20,000 postcards, that's still a fact that 20,000 people bothered to mail that postcard, but in some ways it's a lot less impressive. Certainly 20,000 individual letters would make you sit up and pay close attention. Sometimes the letters are individual looking, but the wording is identical indicating it was copied or printed from a newsletter or downloaded from a website or something. There's a whole kind of signing of petitions—somebody stops you outside of a supermarket and says, "Will you sign this petition to senator so and so?" Asking him to oppose whatever it might be. Well, that's a whole different order. You know how those things are, and the person may or may not have put any thought into what they're signing.

**RITCHIE:** I'm always impressed when I'm sitting in a senator's waiting room. The young staff at the front desk are taking calls and it's obvious that the callers are ranting and yet they're always so polite in their responses.

**ARENBERG:** That's an entry-level job and yet it's a very difficult job. It takes some skill to be diplomatic like that. And it's getting increasingly difficult. Going back to my old theme, but it goes with the polarized political culture, everything about political discourse is getting a lot more nasty and a lot meaner, and it's reflected in those phone calls. Those poor young kids at the desk are the first line of defense.

**RITCHIE:** And their last line is "I'll make sure the senator gets your opinions."

**ARENBERG:** Yes, and in a fashion he does. Obviously, he doesn't get an individual report on every single phone call, every single letter, but generally speaking they want to know what the feedback is. They spent a lot of their own time and effort trying to assess what's going on with their constituency, and this is one indicator. Without taking it too literally—you understand the technology and that there are these call-through switchboards now, so they could direct a call to you, and it doesn't mean the same as when somebody took the time and paid the charges for a long-distance phone call to call their senator, that really meant something. There was a time when you didn't make long-distance calls lightly. So it's like that. You find a way to report to the senator in a fashion. Certainly if things really out of the usual start to happen, there's an unexpected point of view being reflected, you try to let him know that. But it has to be filtered so that you're not manipulated by all of this easy technology. We used to call it "Astroturf lobbying" back when Astroturf was the newest and most synthetic thing around.

**RITCHIE:** So is the chief of staff's job in a senator's office essentially that of making the ship sail smoothly?

**ARENBERG:** Yeah, in most Senate offices that's the way it is. It's overseeing all the administrative things. I guess depending on the chief of staff, but there's usually been a political component to it. Some chiefs of staff are more involved in legislative issues than others are, and usually there's a pretty close collaboration between the legislative director and the chief of staff. Whichever side of that relationship I've been on, there's always been a very close collaboration. But those kinds of mundane administrative burdens tend to be a big part of the job. It was one of the reasons I was willing to go from being a chief of staff back to doing things that were more legislatively focused, because you spend a lot of time listening to why so-and-so wanted to move from the Bangor to the Lewiston office, or wanted to get to the Portland office, or couldn't they join the Washington staff, all those things. In most instances, there's almost an umbilical cord between the chief of staff and the senator. It's a very close relationship. And depending on the senator, sometimes there's a lot of personal care and feeding that goes into all of that, to making sure that everything is operating in the way that the senator prefers. With different personalities, different senators are a little more insistent about some of those details.

**RITCHIE:** I've heard the chief of staff compared to the alter ego of the senator.

**ARENBERG:** Yes, I think there's a lot to that. Again, going back to this question about how the hierarchy is structured, certainly in the more hierarchical offices that's even more true. Where senators are really accustomed to dealing through their chief of staff on almost everything, and on those situations, where almost all the paper flow goes through the chief of staff, everything going up to the senator, everything coming down from the senator, it's much more like being the CEO of a corporation. In the more collegial style on the other end of the spectrum it's a little less so. Somebody's still got to run the operation, and that's the chief of staff.

**RITCHIE:** One of the senators now, Ted Kaufman, went from being a chief of staff to being a senator.

**ARENBERG:** Yes, I knew Ted well back then. He started in the Senate as a senator on the same day I retired. We didn't have any overlap.



**RITCHIE:** He probably ran that office during Senator [Joseph] Biden's long absences when he was campaigning for president and vice president. He was obviously not there doing the day-to-day things that senators do, so the role of chief of staff takes on even more importance. The only difference now is that he can vote.

**ARENBERG:** That's right. [laughs]

**RITCHIE:** I wondered about when Senator Mitchell became head of the Democratic Senatorial Campaign Committee in 1985, did that distract him a lot from the Senate, take him away from much Senate business?

**ARENBERG:** I wouldn't say it distracted him. He certainly spent a lot of time on it. A lot of it was just going full bore, and adding additional time. But there's no question that there are trade-offs. It was a sizeable job at the time, and as you'll remember, it was a difficult election. Even the earliest stages, the recruitment of candidates, he spent time on that, he worked very hard on that to get the right candidates and encouraged them to run. Ultimately, when he did run for majority leader, there was a natural cadre of people that greatly respected his skills that he had worked with, that he helped to encourage to run for the Senate. Having been in that position played a big role in his becoming majority leader. There was also the factor that he was widely seen in the caucus as having shown great leadership qualities in doing that. Even right after that election, there was the feeling that he needed to be in the leadership, but there wasn't a leadership spot open for him. Senator Byrd ingeniously dusted off the old Senate standing order that provided for former vice presidents that come back to the Senate to be deputy president pro tem of the Senate. I believe it had been written for Hubert Humphrey as something of a sweetener when he ran for majority leader and wasn't successful. I don't know for sure whether he had any staff in that role but it gave him a vehicle, an office, and so forth. Byrd amended it to apply to George Mitchell for one Congress, and made him deputy president pro tem.

He got a couple of staff spots under that, so he appointed me to be the chief of staff to the deputy president pro tem. I don't know if it's true, but I may be the only one in history! The funny thing about that is when it happened, my assumption, and I think the senator's thinking very early on was, once you get below the couple of established leadership posts in the Senate, leadership in the Senate is what you make of it. Even whips are like that. Each new whip refashions the job and it means something else. You do it a little differently. So I went into that job thinking he's now got an office in the Senate. The leadership ranks at that time, there weren't as many—it's been expanded over the years

now—so there weren't things like designated assistant floor leaders. I thought, well, Mitchell will now spend more time on the floor and we'll carve out a role for him to be helpful to Byrd and turn this into something substantive. Otherwise it's largely ceremonial and he occasionally signs a bill because the president pro tem isn't available, well let's get the deputy president pro tem. But that was about it.

Then what happened was the majority leadership race got launched. The last thing in the world you wanted to be doing then was carving out a new role in the Senate. You'd be stepping on somebody's toes. Who are you pushing aside? And what are you doing? It was stand down on that one. Fortunately, I was also his liaison to the Iran-Contra Committee at that time, so there was plenty of work going on, but his role as deputy president pro tem was largely ceremonial. But it did mean that I was aware of something that most people aren't aware of, so after Paul Wellstone's death, when Mondale stepped in as the nominee in Minnesota. I called his campaign staff and said, "You probably don't know this, but if you win this election, Mondale steps right into the Senate leadership. You should know that. It's a campaign issue. He'll go right into the leadership."

**RITCHIE:** I remember when they created that post for Hubert Humphrey in 1976. Everybody liked him but they voted for Byrd for majority leader. So Mitchell is the only senator other than Humphrey to hold that position?

**ARENBERG:** Right.

**RITCHIE:** Unlike the Republican Party, which divides up its leadership into a separate conference chairman, a separate policy committee chairman, and a separate floor leader, the Democrats have a history of uniting those posts. The floor leader held all of those posts. Mitchell was the first to create other leadership positions.

**ARENBERG:** He did, he started that process. Tom Daschle served as a right arm for him in his leadership role, ultimately leading to his own victory in a leadership race, and becoming majority leader. But I think that's right. That was really part of what was changing. I alluded to it before. Part of it was trying to make the Senate a little more predictable, a little more family-friendly, fewer unnecessary late sessions, trying to impose a certain amount of regularity. Majority leaders since have had varying degrees of success at that. I think by and large it is a little bit more predictable than it was back in those days. The other thing was the power sharing. Mitchell, when he came in, was a very consultative majority leader. Before he made decisions, before he took leadership actions,

he consulted many more members of the caucus than I think had previously been the case. That trend continued more broadly with Daschle—both of those trends, further expanding leadership roles to creating additional positions, but also in terms of almost a more formalized process of consultation. What's come along with all that is growing staff resources in those leadership positions as well.

**RITCHIE:** The Republicans had been in the minority for years, so by having separate leaders they provided more staff for each of the leaders. The Democrats had been in the majority and their leader didn't want competition. But once the party had the experience of being in the minority, spreading the authority was more acceptable.

**ARENBERG:** Well, it changed a lot. I remember when Byrd was the leader, he held the chair of the Policy Committee, and the Policy Committee staff was his staff. Those were Byrd people and they were viewed that way. As this got spread around, I think Mitchell was still formally the chair of the Policy Committee, but Daschle was the vice chair, and in addition to that at the staff level there was really kind of a culture change. They worked for Mitchell, and they worked for Daschle, and they knew who signed their checks, but they were viewed much more as Democratic Policy Committee staff. They were much more accessible to other Democratic staffers around the Senate. They were doing more tasks that were broader than just servicing the chairman. That grew and ultimately it required the majority leader to have his own staff, so not only did you have Policy Committee people in various issue areas, but you now had the majority leader's staff in those areas. It goes along with the polarization and the homogenization of these caucuses, and giving more power to the leadership. It takes staff resources to be able to exercise that power. It's difficult even to know what's going on in the committees unless you have people who are representing you there.

**RITCHIE:** Speaking of committees, I wanted to ask you about the Iran-Contra committees. That came after you had moved into the deputy president pro tempore's office, and this raises a chicken-and-egg question: was that a way to free up your time so you could focus on Iran-Contra?

**ARENBERG:** Yeah, I think it was roughly simultaneous. I'm pretty sure it was, because my actual title changed from being his chief of staff to being chief of staff to the deputy president pro tem. But the Iran-Contra committee was a very interesting structure. It was created as a select committee. They decided that every senator who was a member of that committee would have a liaison or a designee to the committee. It was in kind of a

never-never land between a committee staff and a member's staff covering a hearing. It was formalized. As his liaison I was expected to step in for him at meetings when he couldn't be there, and to work closely with him throughout the investigation and the hearings. But let me back up just a minute.

When that story broke, I was Mitchell's chief of staff. Thinking about the Watergate model, I thought: this is obviously going to require a big select committee because there are too many committees of jurisdiction that want to get involved here, and this is really going to blow up into a national issue. I remember, Mitchell was up in Maine and I called him and I said, "You're a natural for this. You're a former federal judge. Why don't you think about giving the majority leader a call and suggesting that he appoint you to chair this committee." He thought about it some, and then he came to the conclusion that suggesting to the majority leader that he appoint him as the chair was a little too presumptuous. It was more like a staff suggestion, I guess. But he decided to call Byrd and tell him that he was interested in and would be willing to serve on the committee if appointed. Of course, Byrd did appoint him but he appointed Danny Inouye as the chairman of the committee. Inouye then asked Mitchell to chair the search operation to find the chief counsel. So Mitchell did that, and ultimately settled on Arthur Liman who was a very well known Wall Street lawyer at the time. It's interesting that, looking back at that, the Senate committee was operating in a very bipartisan fashion. Warren Rudman of New Hampshire was the ranking Republican. In fact, to show how bipartisan it was, Inouye insisted on his taking the title of vice chairman as opposed to ranking member. The committee therefore operated with a chairman and a vice-chairman. This was intended to convey greater bipartisanship than the usual structure with a chairman and a ranking member. And Rudman did play a very significant role in running the committee alongside Danny Inouye. The committee really was steered in a very collaborative fashion by both of them. Many times, in Inouye's absence, Rudman was at the helm.

The staff was put together. The committee counsels were hired in an unusual fashion in that each member of the committee was given the opportunity to hire one of the counsels. It was actually a very talented group of lawyers. But in some ways it creates kind of a hodgepodge that's kind of hard to control because you have this kind of staff all of whom are answering to different bosses. Then to complicate matters further, the House Select Committee and the Senate Select Committee decided that, in order to avoid duplication, that they would hold their hearings jointly. They were independent committees, but they would hold their hearings jointly, and they would write a joint report. This was to cut down on competition between the committees to get the sexiest

witnesses first and to avoid a competition for media attention.

Ultimately that joint report clearly reflects the differences between the House and the Senate, because the majority report was negotiated with an eye towards getting Republican senators on the committee to sign it. It is signed by all of the Democrats on the committee, House and Senate, and signed by three of the five Republican senators on the committee; a majority of the Republican senators on the committee. All of the House Republicans signed the minority report, along with two of the senators.

That minority report is fascinating to read because it was written by Dick Cheney and his staff, who was the ranking Republican on the House committee. In their case, he was the ranking minority member. It reads like a treatise for the Bush/Cheney supremacy of the presidency and foreign policy philosophy that really came to be so prominently displayed by the Bush administration and sort of famously, with Cheney's influence. Really the same staff people were involved that ran his vice presidential office were on that committee. That minority report is kind of obscure, but if you go back and read it, it's very interesting that way. Their defense of the Iran Contra circumstance was basically that. It was Congress didn't have any business writing these laws and it was presidential prerogative and he has the constitutional power to do all of this and we shouldn't be investigating this. That was basically it. But the point I'm making is that the instinct of the senators on the select committee was to work with their Republican colleagues. We negotiated—I was in those sessions—we negotiated every sentence in that majority report. What verb would be used and all of that. And with the Republicans at the table, trying to see how many of the five of them we could get to sign the report. The effort was successful. In the end, three of the five Republican senators— Warren Rudman, Bill Cohen and Paul Trible of Virginia all signed the majority report. On the House side, all the Democrats signed the majority report and none of the Republicans—led by Cheney—did.

**RITCHIE:** I always thought one of the problems with that committee was that it got so unwieldy and that when they held the hearings, there were so many people at the dias, they had to build an extra dias to fit them all.

**ARENBERG:** Exactly, right. Yeah, I still see there are pieces of that giant platform downstairs in the Hart garage that I notice laying around sometimes. I recognize it. Yeah, that's very true. I later worked on that book with Senators Mitchell and Cohen

that maybe I'll talk about a bit.<sup>9</sup> They make that acknowledgment in the book that it really got unwieldy, and particularly when you get to the Ollie North hearing and you had this courageous medal-draped Marine sitting at the table as a solitary figure confronted by two levels of . . . It looked like a cast of thousands up there firing questions at him. It's not a mystery why many of the viewers rallied behind the witness as opposed to the committee. He looked heroic. They looked like bullies.

I remember that hearing because when the North hearing broke the first morning for lunch, I came back from lunch and I walked into the room and there was the Senate photographer taking a picture of the Senate sergeant at arms with Ollie North. I thought to myself, we're in trouble. [Laughs] This isn't playing exactly the way that we thought. But that was a famous hearing. And another one of the kind of unique structures that they hit on on that committee was they decided the way they were going to question witnesses was that they would start off with the counsels doing the first round of questioning. And then for each witness there would be what they actually called, "designated hitters," who would be—that there was one senator on each side and one congressman on each side that would be designated as the "designated hitters," which would be that they would be the principal questioners of that witness. Then after that, they would go to the usual rounds and five-minute questions or something like that like you do in a committee. Of course, this led to kind of endless sessions which didn't help this impression you were talking about before, either.

But Mitchell was one of the designated hitters for North. And he made what became a very famous—it really was a speech—to Ollie North in which he basically said, "In America, it's not a show of lack of patriotism to question your government." You'll recall that it was a very dramatic moment. Because of everything that had come up to then, Mitchell was really sort of Horatio at the bridge. It was really kind of the turning point of saying, "Now, hey, wait a minute. You're not exactly the hero in this situation."

**RITCHIE:** There was a line in it that "God gets called upon by all sides, but doesn't take sides."

**ARENBERG:** You're right. It was one of his greatest lines. In that speech, he famously said, "Although he's regularly asked to do so, God does not take sides in

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<sup>9</sup>William S. Cohen and George J. Mitchell, *Men of Zeal: A Candid Inside Story of the Iran-Contra Hearings* (New York: Viking, 1988)

American politics” That’s right. There’s a clip of that, actually which I play for my students at Brown. His archives are at Bowdoin and on their website there’s a clip of that moment with Ollie North. He used it in his reelection campaign. It was the one spot. I think he got 82 percent of the vote when he ran for reelection. But he used that clip. I always said I had the most famous face in Maine without a name because of that clip. There he was making that statement and it’s my head just over his shoulder. Of course, nobody knew who the hell that was, but it ran so many times in Maine that everybody had seen that face before.

It’s interesting, just as an aside, I’m thinking about that election. In that reelection campaign, that was just before he became majority leader—yeah, it was right after that, days after, I think, when he was elected majority leader. But in his reelection campaign, I think it was 82 percent of the vote. He beat a guy named Jaspar Wyman—great Maine name. He won every precinct in the state of Maine with one exception, a place up in what they call Down East, a place called Talmadge Plantation is my memory. It’s way up there in Washington County. There’s something like 20 or 30 voters in Talmadge Plantation. He lost it by some margin: 14 to 6 or something of that fashion. So here’s George Mitchell. He gets reelected. A couple of days later, he gets elected majority leader of the United States Senate. And where is he the next day? Holding a town meeting in Talmadge Plantation, because he wanted to know what it was that he’d done wrong. I think he couldn’t find anybody that had voted against him, but that’s in the nature of things.  
[Laughs]

But it spoke volumes to me that that was his concern. I can remember instances where he would read a—and again, this speaks to a small state like Maine, but it also speaks to that characteristic about George Mitchell—was I can remember instances where he sat in his office and he was reading one of the local Maine newspapers and there would be a letter to the editor criticizing him for something. He’d pick up the phone and call the person who had written the letter and say, “This is George Mitchell. I wanted to talk to you about this letter because I want to explain to you that—” I think he felt that if he only had the opportunity to talk to every single person in Maine, there’s no reason why they wouldn’t all vote for him. In those circumstances, I would try to say to him, “That poor guy! That’s pretty scary! You write a letter to the editor and the next thing you know, there’s a United States senator on your phone!” But in Maine it wasn’t all that scary. They all knew him as George anyway. And it would be a pretty amazing thing going through like the L.L. Bean warehouse with George Mitchell, and just everybody knew him. He knew everybody. He knew them all by name. Amazing.

**RITCHIE:** Well, you spent quite a bit of time on the Iran-Contra hearings.

**ARENBERG:** Yes.

**RITCHIE:** How did they strike you in terms of what the Senate can do in an investigation? Did they indicate the limitations or the possibilities or what was your general reaction?

**ARENBERG:** When these circumstances come up, there is always this tension between the Congress interfering with the process of justice and prosecution and the whole judicial process, and the public's right to know. Often the requirement that the Congress—it has its oversight responsibilities, sometimes there may be a legislative solution required or simply its investigative responsibility to inform the public. But I think what's happened, and Iran-Contra really made it even more difficult, because as you know, ultimately Ollie North was convicted and then that conviction was overturned on appeal largely because the circuit court said that the public testimony on national television had prejudiced his rights. They said that the independent counsel Walsh had to prove, witness by witness and line by line, that nothing in Ollie North's public testimony could have been used at his trial. This was in a situation in which the independent counsel, the counsel of the committee, people like Mitchell and Rudman in particular, were very cognizant of that danger. I mean, everything was done with an eye towards addressing that danger, both inside and outside of the independent counsel's office. He basically sequestered his investigative staff so that they didn't watch the hearings. Didn't read about them. None of that sort of stuff. Nonetheless, without reference to any example of prejudicial material which was used at the trial, the U.S. Court of Appeals threw out the verdict.

The decision was made by the Iran-Contra Committee to give Ollie North immunity in order to get his testimony. He made it clear that otherwise he would invoke his 5<sup>th</sup> Amendment rights. All of this grows out of this tension between these two legitimate processes. Ultimately you come to the point where Congress more and more now begins to recognize that it is a trade-off, that it's almost impossible to have your cake and eat it too. You have to decide, do we want to investigate this as a public policy matter and recognize that it's probably going to allow criminal behavior off the hook? Or are we going to wait until the judicial process runs its course and then do our congressional process after that? It's a very difficult problem and I don't think there's a simple answer to that. You have to look at the circumstances, I guess.



But certainly in that case, I think people who were involved with the Iran-Contra Committee are rightly proud of that committee report. I think it stands the test of time pretty well. It's also incomplete in a number of areas and that's partially because of the decisions that had to be made with an eye towards the independent counsel, if they hadn't given immunity to Ollie North, and maybe threatened him with contempt and gone through that whole process and so forth, it would have taken a lot more time. I mean, one of the mistakes that was made in the resolution, and Mitchell and Cohen say this in the book, was in creating a time limit in the original resolution so that there was this time pressure on the committee all the way through. Subsequent to that, in subsequent investigations, the Senate's been much more circumspect about that in the resolutions, not to trap themselves in that way.

So I think the Iran Contra experience really demonstrates that. When I say that it was incomplete in some areas, I mean I think because the committee had time constraints, they focused on particular things. They focused on the president. They focused on Ollie North's role, on [John] Poindexter's role. They didn't pay much attention to the vice president, for example. That later became an issue in both of the next two presidential elections where Bush's role in all of that, which is largely ignored in the committee report—but there was ample material. There was a lot to look at there, but it didn't get done, and there were other matters that the committee never really fully pursued.

**RITCHIE:** Bush said he was out of the loop on that.

**ARENBERG:** Exactly right. And it was very clear that he wasn't out of the loop on the Iran side. There was never a complete investigation done on the other end of that—the Contra end. That was all about did he know about the missiles being sold to Iran. But the whole question about what did he know about the shifting of funds to the Contras and the activities that were going on to support the Contras in contradiction to the Boland Amendment was never fully explored. All of the witnesses weren't called. With the time constraints, it wasn't something that the committee was that focused on doing. He was the vice president, after all.

**RITCHIE:** Even with the president, wasn't there some ambivalence? I mean, there were some people who were concerned that they didn't want to impeach another president so soon and that maybe that wasn't necessarily the end result that they should be looking for?

**ARENBERG:** Well, I think there was some of that. There was not the partisan fervor that you would expect in that kind of situation today. There just wasn't. For one thing, the committee made the decision they didn't even subpoena documents from the White House. Documents were produced by the White House in response to a letter of request from the committee. All of the relationship between that committee and the White House was kind of a cooperative, respectful, sometimes somewhat skeptical. But had Poindexter testified that yes, he did say this to the president or whatever, or if there was a smoking gun or something, I don't think the committee would have shied away from that and turned a blind eye to it. But by no means was there a lot of desire to chase down the president on this. I think some subsequent investigations and I think of what it would have looked like if we were going through that kind of exercise today is something very different. We weren't quite at that point where the excessive partisan warfare had begun, we were just barely in the earlier throws of the recent polarization of the Senate, in particular.

**RITCHIE:** From your personal standpoint as you went through all this, did this appear to be a rogue operation or a detached president or a president who was perhaps more involved than the administration was willing to admit?

**ARENBERG:** Well if it's possible, all of those things. I think it clearly was a rogue operation, in many ways. I don't think the president was sitting in the Oval Office issuing orders about this. If there were tapes—I wouldn't expect Nixon-like tapes. My own suspicion remains that he was told in some form or fashion, and given ample evidence about this kind of behavior with respect to Reagan in other areas, he may very well have genuinely not recalled that he had been told this simple fact. Part of that is based on, look, Admiral Poindexter took the bullet, but to me it's almost inconceivable that an admiral with the kind of record that John Poindexter had, all of his history, everything that was demonstrable about his career before, hadn't reported to his superior officer about a matter like that. I think he probably did. I think when the president didn't show a lot of interest in it and when he didn't immediately say, "Wait a minute! What's this all about? I want some details. Get me a memo!" When nothing like that happened, in my mind's eye, you have a navy admiral checking off the box, okay, the boss was told. But he also knows how to fall on his sword. So I think nobody was going to prove it. I also think there was, of course, [CIA Director William J.] Casey had died, and I think there was a much more active role by Casey in all of this than fully came to light. He just wasn't around to put under oath and question and so forth.

But having said that, there is that decision to be made. I think in an instance like that, even knowing that it was going to let Ollie North and others off the hook in terms of prosecution, I don't think the Congress could have made the decision to defer the hearings. If you think back, the Reagan administration was kind of dead in the water at that moment. It was like the Nixon. I heard [Pat] Buchanan on the radio this morning hypothesizing whether this oil leak in the Gulf is having the effect on the Obama administration that Watergate had on the Nixon administration, where they couldn't do anything else because it just was taking all the oxygen out of the room. Well, certainly, Iran-Contra was doing that to the Reagan administration. It was suddenly almost unable to function. And I think Congress had to do something about that. They had to clear the air. So I think when you go through the whole decision tree, maybe different branches would have been taken than were, but I think the hearings needed to take place.

**RITCHIE:** The Congress has a role of public exposure that court cases don't, even though they result in someone's conviction.

**ARENBERG:** Courts take too long, if nothing else. That's because of the rules of evidence and the way the defense is conducted—you don't have to testify in your own defense and various things like that. It is difficult for that process to perform the full informing function that is sometimes needed on these public matters. But even that aside, just the clock. Ollie North was convicted, but when was it? A year later? It's hard to imagine how that could have played out.

**RITCHIE:** Well, even Ollie North's lawyer pointed out that it wasn't a trial. He said he wasn't a potted plant.

**ARENBERG:** Yes. [Laughs] Brendan Sullivan famously said that—and got away with bullying the committee a bit.

**RITCHIE:** But lawyers are potted plants at congressional hearings. They're not supposed to speak. They're supposed to just advise their clients.

**ARENBERG:** He was given amazing latitude, as was North. Looking over my years with Mitchell, trying to think about what small little things did I ever do that I think played a big role in his career, probably more than anything else, that's the one moment that I would point to. North had testified. I think it was like a Thursday and Friday or something like that. There was a break for the weekend. When we came back on Monday

or after the weekend, however that break was, Mitchell was going to be up as the designated hitter. I remember, over that weekend, we met at his house and talked about how he was going to handle his questioning of North. Now, Mitchell, as a former judge and prosecutor, his instinct was to cross examine. He started making notes.

I think in all those years, the single most important contribution I made to Senator Mitchell was I said, "If you do this, Ollie North is going to filibuster. I mean, that's what he's been doing. You'll ask him the first question and he'll answer it for 45 minutes. And he'll make another speech about patriotism and so forth. You get to speak first. I suggest to you that what you need to do is for you to say to Ollie North what you need to say. To start off with. If there's any time after that, cross examine him." I didn't write the speech. George Mitchell wrote the speech. That came from his own pen. And it will be in any collection of great American moments. It will be right up there. It's always funny because on any collection of news clips that appears on TV, that covers the whole decade or even the century or anything like that, there's always that moment where Ollie North has his hand up like this. Then that tape, immediately next, flashes to George Mitchell with me right behind him. It's always a question of whether they cut the tape before it flashes to Mitchell or not. So of course, it always catches my attention. I always watch it, and say, "Am I going to make it this time?" [Laughs]

**RITCHIE:** When North was sworn in, he wore his uniform, which people pointed out, he hadn't worn to work when he was at the White House.

**ARENBERG:** Right.

**RITCHIE:** But there was clearly a lot of stage managing for that moment. There he was facing 30 members of Congress.

**ARENBERG:** This phalanx, right. Then you have that very difficult process. This is a problem that investigative hearings always run into and that is, it's not like courtroom questioning in that not only don't you have the rules of evidence, but you have one senator does their questioning and then you go to another senator and the whole subject shifts to something else. Very often in the hyper-partisan era, one party is involved in investigating and the other party is involved in trying to help the witness. And so you get a round of sort of tough questioning on some subject, and then you get a question about, "Well, just how much do you like apple pie?"

**RITCHIE:** What was your specific role in the committee?

**ARENBERG:** Well, as I say, I was Mitchell's liaison to the committee. So I worked with the counsel in preparing for the hearings. Of course, I worked with Senator Mitchell in preparing his questioning for witnesses. His preparation for hearings. But even much earlier on before we even got to the hearings, just kind of keeping him represented in the whole process of how the investigation was going and how the whole thing was being managed. It was an incredible operation. Suddenly you had this select committee being thrown into one of the most highly compartmentalized secret operations within the White House. And this was a real problem. We brought in there New York lawyers. Arthur Liman arrived. His assistant, Mark Belnick, who was one of his partners from his law firm, came as the deputy counsel. The committee was expected by the Congress to hit the ground running. Of course, the clearance process for all of this, even though it was being expedited, you know what that's like. It takes awhile, the FBI and all of that.

I remember this almost comical situation in which Mark Belnick had gone down to the State Department to draft a letter to the Israeli government, one of the first things they needed. You'll remember how the Iran-Contra thing worked, that the actual missiles that went to Iran were American missiles that had been sold to Israel. The deal was these older missiles would be sold to Iran and then the newer American missiles would then be shipped to Israel to replace them. So there was Israeli government involvement. This was the early part of the story. This is really the very early stages of this whole plan. They need the cooperation of the Israelis on how much information are they going to give us; documents and so forth. So Belnick goes down to the State Department to write this classified letter to the Israelis asking for their cooperation, specifying what we wanted. He comes back and I happened to be in his office several weeks later when the phone rings. It's the State Department and they say, "We have the response to your letter to the Israelis." And Mark says, "Oh, well that's very good. What does it say?" They say, "We can't tell you. You're not cleared to hear this response." [Laughs] He says, "How can I not be cleared? I wrote the letter!" They said, "I'm sorry, it hasn't been cleared." So he said, "Well, can you summarize in an unclassified fashion what the letter says?" And they say, "Yes. It says, 'No way.'" [Laughs] But so there really was an early challenge to getting off and running. Just having enough people around with sufficient levels of classification to even look at the things we were supposed to be investigating.

**RITCHIE:** So you had to get security clearance?

**ARENBERG:** Yes, these weren't my first clearances, but I had to go through—this was an iteration into higher levels of classification, thinner air than I'd ever been before.

**RITCHIE:** Classification levels that you can't be told about?

**ARENBERG:** Yeah. That's right. You can't even know about those.

**RITCHIE:** Well, as this evolved, your job was essentially to sit behind Senator Mitchell and to advise him as things happened. Were you collecting information about this? Were you just sort of trying to keep yourself informed about all the aspects of it?

**ARENBERG:** Oh, yeah. I really was working very closely with the committee staff. That was a very integrated operation in that way. Much more so than you would have in a normal standing committee, at least in part because these committee staffers were not Senate staffers, really, for the most part. For a lot of those elements of, how do we navigate through things around here, those of us who knew the ropes around the Senate were pretty crucial for that. But also because this was so complicated. It was so deeply imbedded in all this kind of classified gobbledygook that the senator really needed somebody to have his fingers on it for him and to be able to bring him information in a timely fashion. I think when he became leader, my role as a liaison to the Intelligence Committee grew directly out of this Iran-Contra experience. He learned from that that the reforms that came about and the Pike Committee and the Church Committee and the creation of the Intelligence Committees in the Congress, they had created all of these reporting requirements which had certain provisions in them. The law has provisions that say that the Intelligence Committee, if something is so sensitive that they can't report it to the full Intelligence Committee, they can report it to what they call, "the big eight," which is the majority leader, the minority leader, the chairman and ranking member of the Intelligence Committee on each side of the Congress.

Well, part of the story of Iran-Contra is that very bad decisions can get made by very small groups. Part of the beauty of our system is things get very widely vetted. There's a lot of eyes. Congress is great at that. There are a lot of things it doesn't do very well, but I think of it as a giant pinball machine and that ball bounces around and bangs into a whole lot of stuff before it gets down to the bottom. Part of the problem with these highly compartmentalized things, this kind of rogue operation, is only a few people know about it. They're making a few bad decisions. Nobody's overseeing it. And it goes wrong.

Mitchell used to say, "This is what happens in totalitarian governments. It's why they don't work so well." It's one of the reasons they don't work so well is that you have a very limited group of people making decisions and bad decisions compound themselves. Then they have to defend or hide the bad decisions.

But this process of reporting these highly classified things just to the leadership makes the leadership very vulnerable. Because how does it happen? Look, the CIA, let's say they track down Mitchell. He's in Maine somewhere. He's having a town meeting in Millinocket or something like that. He gets a phone call. They get him to a secure phone somewhere and he gets a report over the phone. "We're doing blah blah blah blah." You can't write it down. You can't do anything. Basically it's like a game of tag. Now you're it. And we've seen it. We've seen, in subsequent years, we've seen [Nancy] Pelosi and others criticized for not taking action. They knew this. It's an implied approval of it. The first thing the intelligence community—the administration—says, is "we told the Speaker" or "we informed the Senate majority leader." Here's the hot potato, do what you want. Even if he's here in Washington in his office. Let's say they come here and brief him. They show him some documents. He takes notes. Those notes go back to CIA with them. He can't keep them. He can ask for them to bring his notes back—but that takes a while and he still can't keep them. It cuts the leaders loose from all of their staff. None of their staff is involved in that. It's not that staff is so tremendously wise, but you know how the process works around here. Senators have a lot on their plate. They have specialized staff whose jobs it is to watch out for some of the pitfalls for them and have been up and down this road a few times. Staff has the time to study the matter in depth and to write detailed memos highlighting the issues, raising the questions, etc. They don't have the benefit of any of that. It's just, "Here, now you've got a secret. You're part of the team." On several occasions, I told Mitchell, "In certain instances, if they ask to report to you, you ought to decline it." I don't think he ever took that advice. Probably not such great advice, but the real point I was trying to make is that it was too tight a circle, and a congressional leader can be too easily compromised.

**RITCHIE:** Did you get involved in writing the report for the committee?

**ARENBERG:** Yes.

**RITCHIE:** Was it done collectively in the staff?

**ARENBERG:** It was. They were basically negotiating sessions. There were

several of the counsels involved and several of the liaisons, and Republican staffers were in there. As I say, we really haggled in some cases over every word, every sentence that went in there. The sentence says, "It was clear that blah blah blah," and they wanted to say, "It was apparent that blah blah blah?" [Laughs] It was all that sort of thing. But I think the report stands the test of time pretty well. I don't think it was watered down to the point—and it was a classic Senate negotiation. It's that search for consensus. Do you want to have a report that says exactly what you think? Pure, but partisan? Or do you want to have a report that says largely what you think, makes all of the major points, but is bipartisan and therefore more credible? That's how we approached it. It's some of that consensus building—I'm sorry I keep going back to the same theme, but I think it's part of the danger of what's happening in the Senate right now, is that there's less and less of that. With the way the Senate is currently operating, I think it would be much more difficult to have that kind of process and have it come out with a satisfactory report. Much more likely to get a partisan report.

**RITCHIE:** Were Representative Cheney and David Abshire and that group, were they involved in all of that?

**ARENBERG:** No.

**RITCHIE:** Or they were writing their own report?

**ARENBERG:** They were really rejecting the process from the outset. It was clear. They probably started writing the minority report before the hearings started. I'm not just being cynical about that, that's just where they were. "This isn't really a legitimate inquiry; Congress shouldn't even be asking about this," was basically the posture they took. So they knew they would write a minority report, and I'm sure they wanted all the Republican senators to sign it.

**RITCHIE:** President Reagan was very thankful for them in his diary. He made nice references to Dick Cheney as a result.

**ARENBERG:** Yes. Well, Dick Cheney was very protective in all of that.

**RITCHIE:** It's interesting that the whole thing revolved around a deliberate attempt to evade a law that Congress had written. Yet here was a member of Congress arguing that Congress shouldn't have written the law in the first place.



**ARENBERG:** Exactly. It's become a familiar argument. They base it around the *Curtiss-Wright* decision and they basically argue that in the realm of foreign policy, the president is supreme. If he chooses to act, then he's got the right to do that. If you look at the minority report that Cheney produced, it reads like a manifesto for the George W. Bush foreign policy which Cheney played such a great role in.

**RITCHIE:** And the Richard Nixon argument that if the president does it, it's not illegal.

**ARENBERG:** Yeah [Laughs]. Well, it does kind of boil down to that.

**RITCHIE:** When the hearings were over, Senator Mitchell and Senator Cohen wrote *Men of Zeal* and you were very much involved in that.

**ARENBERG:** Right.

**RITCHIE:** How did that all get started?

**ARENBERG:** I don't specifically recall the very beginning of it, but Senator Cohen approached Senator Mitchell with the idea and Mitchell thought it was a good idea and they set out to do it. The book was largely structured with each of the witnesses at each of the hearings as a chapter, and they divvied them up. They would go off, like when they would fly home for the weekend or something, and they would write longhand on a yellow legal sheet. They wrote the book. There was no ghostwriting here. They each wrote their own chapters.

Now, my principal role on this was they'd come back and they'd toss these pages on my desk, basically. Let me say that this was all weekends and nights and everything. Completely outside of my official role. But what I was confronted with in doing this was my task was—I mean, think about this—Bill Cohen is a many times published novelist and poet. He's written several books of poetry. He has a very florid style, very descriptive style, writes very beautifully. George Mitchell, as I've described before, is a former federal judge. He writes in short, declarative sentences. He likes very factual statements. It's very matter of fact down the line. Well, even when a book has two authors, from chapter to chapter, you can't go into a totally different voice. My task was to try to meld these things together so that they sounded like a single narrative. Now there are times when the book went outside of that where one or the other of them just had something to

say that the other one didn't want to do in a joint voice and we'd put their initials in the book and put that in italics. It would say, "GJM:" and then in italics what it was he wanted to say. But most of the way it was a single voice.

The most interesting part of that challenge came on the chapter headings because Bill Cohen loves the idea of ironic chapter headings, or kind of cute. From time to time, I would get a call in the middle of the night from him and he'd say, "I've got a great idea! How about, for the [Edwin] Meese chapter, let's call it, 'Three Blind Meese.'" [Laughs] The implication here was Senator Cohen wasn't going to go to Senator Mitchell with the suggestion, I don't think. He wanted me to go to Senator Mitchell. And I'm sure you can guess, from Senator Mitchell's point of view, the chapters ought to be called, "Chapter One, Chapter Two, and Chapter Three." But he bought into it and so the chapters all have very literate titles. The chapter about Ollie North is called, "Top Gun."

**RITCHIE:** They're an interesting pair, a Republican and a Democratic senator from the same state.

**ARENBERG:** That's right, that had both been on the committee. I think it's a very insightful book for that reason. The interesting thing is if you go back and read the chapter I mentioned about Bush being out of the loop, the book makes the case that he was in the loop. Very clearly. In fact, it's a case that would later really kind of come to light. I think it was when the—was it the [George] Schultz notes that came out during the 1992 Bush reelection? And then Clinton made an issue of that and it played a role in that campaign. I think it blew away what they call the character issues. All of these character issues were being raised about Bill Clinton, and this "in the loop/out of the loop" thing came along and it was kind of like, well, Bush has got his character problems, too. Let's move on. That was really kind of the role it played in that campaign. But the book, much earlier, laid all of that out. It was there.

When the book came out and they went on tour, of course that was the thing that all of the interviewers and everybody gravitated to because Bush was running for president when the book came out in 1988. Now they had both been willing to say that, but they were both less interested in making an issue out of it once the book came out. I mean the situation had really changed. When the book was being written, Bob Dole was running against Bush in the primaries. Cohen was a Bush supporter. The whole dynamic was a little different. When the book came out, now Bush was the nominee of his party. He wasn't really that interested in talking much about that chapter. Mitchell wasn't either,

because he didn't want to be perceived—and this is just my hypothesis—but I don't think he wanted to be perceived as being critical of the Iran-Contra committee because at that time he was in a contest with Danny Inouye for majority leader and he had never been critical of Inouye's leadership of the committee. But he felt as though there was a danger that it could be misperceived in that way. So both of them spent a whole lot of time throwing cold water on that chapter. "Oh, it's only a few pages, let's talk about," and they'd move onto something else. It was kind of amusing. But it is, in retrospect, clearly one of the most interesting chapters of the book, I think.

**RITCHIE:** It came out before, but shortly after that was the whole Jim Wright controversy over his book. Newt Gingrich was accusing him of breaking House ethics rules and everything else. Did you wind up getting any flak from that as a result?

**ARENBERG:** No, it was really never raised. But I think we were very sensitive of those issues. As you know, there's no straighter arrow in the United States Senate—he's not in the Senate anymore—than George Mitchell. So I was paid by them separately from my Senate activities and it was all weekends and nights, many nights, many weekends, the work that I was doing on it. A lot of what I did was also a lot of fact checking. It's full of footnotes. I did all of the footnotes and all of that.

One of the sidebars here is they weren't all that interested in what was going on in the footnotes. That's kind of neither here nor there. So I felt as though I had free reign to really explain things. But if you go look at that book and read the footnotes, they mention cloture and then there's a footnote and I explain the whole cloture rule. I just had the freedom to run. I think one of the world's longest footnotes ever is there. Meese, when he testified before the committee, much as Poindexter had done, much of the testimony was saying over and over again, "I can't recall," that's kind of a familiar thing. Meese, who of course, had been attorney general, there was a lot he couldn't recall. It kind of annoyed me a bit that he got off the hook so easily. So if you look at that chapter, it starts out, and I don't recall what the first words are, but it starts with something like, "It was a bright day in August," or something like that, "when Ed Meese sat before the committee." Then there's a footnote, and if you go down to that footnote, that footnote runs for pages. What it does is it starts off and it says, "This was not the first time that Ed Meese had been investigated by an independent counsel." It went through all of the past investigations and what they found. [Laughs] It was like a book within a book. I had a lot of fun with that. The footnote alone runs for about four pages. I loved doing that. As a result, *Men of Zeal* has some of the world's most extensive footnotes.

The other thing that I got to do was select the pictures. It's one of these deals where there's 15 or 20 pictures in the middle of the book. I had a lot of fun going through various archives and finding pictures. One that I really lobbied for and that I love is there is a tradition that the first salmon that's caught in the Penobscot River—you may know about this—but the first salmon that's caught in the Penobscot River every year is brought by the fisherman to Washington to the White House and is presented to the president by the fisherman and the two senators. This has been going on for many years—since 1912 or so. It's a little like the pardoning of the turkey at Thanksgiving. But in that particular year, the hearings had just begun. The first day of the hearings. The first witness I recall was General [Richard] Secord. It was the start of the Iran-Contra hearings, televised on national television gavel to gavel. The country is riveted on this. We go through the morning of testimony. We break for lunch, and Mitchell and Cohen have to go to the White House, where they didn't betray any recognition of the symbolism of presenting this fish to the president. [Laughs] So I got them to put this paragraph in the book at that point, in that chapter about Secord, that says something like, "The country was riveted to these hearings," and so forth, "little did they know that the two senators from Maine, during the luncheon break, had gone to the White House to present the president with a dead fish." [Laughs] Something like that. It was a little more artful than that. I'd have to look it up. But then when you get to the picture section, that picture is in there. There's a picture of Mitchell and Cohen, President Reagan, the fisherman, and the fish. [Laughs]

**RITCHIE:** I recall that the book was pretty well received when it came out.

**ARENBERG:** Yeah, I think it was.

**RITCHIE:** In some respects, that was a plus for Senator Mitchell in establishing his credentials in Washington as well. Right after that he made the run for majority leader. So now that he was no longer deputy president pro tempore, did you have in mind working on national security issues? Or was that his idea? How did that come about?

**ARENBERG:** Yeah, we talked about various potential things, but he did feel strongly, particularly, as I said before, this whole vulnerability, he felt it was very important that the Senate leadership know what was going on, particularly in covert operations. Also what was going on within the Intelligence Committee. So part of what I did was I had a very close relationship with George Tenet, as I mentioned, who was the staff director at the time, and a good working relationship with Chairman Boren. Senator Boren, interestingly, was Paul Tsongas' closest friend in the Senate. They seemed like an

odd pair. And Senator Boren was the only member of the Senate to endorse Paul when he ran for president. I had known Senator Boren previously and we had a good working relationship and that worked out pretty well.

**RITCHIE:** So you worked on the Democratic Policy Committee staff?

**ARENBERG:** I was the staff of the majority leader, although I worked closely with the Policy Committee staff. But I was on the majority leader's staff.

**RITCHIE:** Was your position, essentially, just to keep informed so that you could tell him, or did you work on issues that were coming up on the floor?

**ARENBERG:** Well, I did wind up working on a number of issues. For example, there were several things that I think were kind of interesting. One was that during the Ollie North trial, which was about a year or so after the Iran-Contra hearings, in 1989, several memos, seven as I remember it, came to light that had been in North's files that were entered into evidence in the trial that had to do with efforts by the White House to get the government of Honduras to provide aid to the Contras. And so there was a big front page story in the *Washington Post* about these and quotes from various members of the Iran-Contra committee saying, "We never saw these." So the question arises, why were these never produced to the Iran-Contra committee? Senator Mitchell, who's now the majority leader, asked me to draft a letter to the Intelligence Committee, to Senator Boren, requesting that the Intelligence Committee look into this question of what happened to these documents. Was the Reagan White House, in some way, diverting them or hiding them from the committee? Why were they never produced? I draft that letter. Senator Mitchell signs it. I take it over to Chairman Boren, and he reads it and he says, "Fine, we'll do this investigation, but you're going to do it." So he assigns me and the chief counsel of the Intelligence Committee at the time, Britt Snider. We set out on this task to find out, which involves going to the National Archives, reopening all the sealed National Security Council files—some of the NSC's most sensitive internal files—that had been taken by the FBI and gone through by the FBI during the original Iran-Contra investigation. We had to interview all of the archivists at the archives who had dealt with that. We interviewed all the FBI agents who had been involved, and basically carried on a follow-up investigation to find out what was the chain of custody of these documents. Where did they go? What happened? We interviewed the independent counsel staff. We ultimately wound up writing a report and testifying before the Intelligence Committee.

It was a fascinating exercise because we got to kind of look behind the curtain on some of the nuts and bolts of what had been going on in this investigation that I had been so much involved in. At the time, we knew that the documents arrived and they were stamped and they were documented and everything and they went into special vaults that had been built for the Iran-Contra committee, which was placed up on the top floor of this building [Hart Senate Office Building] which was originally intended to be a restaurant, I believe. Well, the Iran-Contra committee was housed up there and they build a special SCIF, as they call them, acronym for special compartmentalized information facility or something, and special vaults for the documents. What we ultimately learned—well, the bottom line of the investigation was that we couldn't really draw a firm conclusion as to what had happened. We suspected that they were not diverted, that it wasn't a conscious act to divert them, that they had fallen through the cracks in some way, but we could not be sure. But what we did learn was that the chain of custody of documents had gone from the White House where they were produced to the independent counsel and then the independent counsel was making copies and sending the documents on to the Iran-Contra committee. There may have been a document clerk or someone on the committee who was aware of what this process was, but I certainly don't believe that the powers that be, either on the committee or in the Congress, knew or would have accepted that this was appropriate, that Congress should be receiving these documents turned over from the president to the Congress coming through an independent counsel appointed under the independent counsel law, really outside of both the executive and legislative branch. But that was the case.

We also concluded that the White House staff should have been more involved in assuring that all documents required were in fact produced. Of course, there was this hearing and then this was released in a press conference to the press by Senators Boren and Cohen. The press conference was a funny moment because Senators Boren and Cohen started the press conference, but much of what the media was firing questions about was so deep into the weeds that they eventually gave up and called Britt and I to the podium to answer the questions. Bill Cohen said to me as we got up there, "Your moment in the sun."

**RITCHIE:** This was the point when Senator Mitchell was taking over as leader. Did you have any connections with his leadership functions in addition to being his advisor on national security issues?

**ARENBERG:** Well, yes. I think that's where I was going. You're very intuitive.

[Laughs] At the time that the Whitewater story broke, the independent counsel law had lapsed, but Clinton agreed to the appointment by Attorney General [Janet] Reno of a special counsel at the Justice Department to investigate the Whitewater matter. There had been a continuous call in the Congress, particularly from the Republicans, for a congressional investigation. We had this same dichotomy. Public need to know vs. possible criminal investigations. Now we were going to have this independent counsel look into it. Mitchell felt that the Republicans were looking to blow this into a big political circus and wanted to look into it appropriately, but he didn't want to fall victim to—if you'll recall, at the time, there were all kinds of accusations being leveled at Clinton—they wanted to pull "Travelgate" into it. That he was involved, in some way, with the death of Vince Foster. That there were tax violations involved. I can't even chronicle all of the charges, but they were being multiplied virtually every day and these were being added to the requests that they wanted to go into these things. It was a scattershot effort to discredit the president.

Well, the Senate finally, I think on a 98 to 0 vote, passed a resolution to investigate the Whitewater matter. The scope was to look into three questions. One was the Madison Guarantee, which was the bank that was involved, and the real estate deal and was it legitimate or not? The second was to address whether the death of Vince Foster, was there any involvement? Any strange circumstances about that? The third was the handling of Vince Foster's papers in the White House after his death. That was another area where there were a whole lot of charges flying around. This was basically the charge that had been given to the special counsel who had been appointed. His name, I think, was Robert Fiske. He was a highly respected—I don't remember if he was a U.S. attorney or a district attorney—but from New York. And Alphonse D'Amato, who was the lead Republican, knew him and approved of him. So it was kind of bipartisan. Part of it was an agreement between Mitchell and Bob Dole that the hearings which the Republicans sought would occur, but not immediately when they might interfere with the Fiske investigation. Everybody was happy and the resolution passed 98 to nothing.

Well, then when the creation of the committee comes to the floor, the resolution to create the committee, the resolution basically tracks with this earlier resolution calling for the investigation. Then begins a series of Republican amendments to add all of these additional matters to the scope, to broaden the scope for all of this. Mitchell feared that they wanted to create a political circus out of this investigation. The first one is offered, I think, by D'Amato. I suggested to Senator Mitchell that what we do is that we basically offer the resolution that passed 98 to nothing as a second-degree amendment, basically

saying this is the scope. We do that and it passes on a party-line vote: 56 to 43 or something like that. At the outset, we didn't know this was going to be a long series of amendments, but that's how it was. You know, then another Republican senator would have another one. I'm sitting there on the floor and Mitchell says to me, "Well, should we take a quorum call? What are we going to do? They're obviously going to bring a whole series of these." I said, "Well, what would prevent you from offering that same second-degree amendment to each one?" He said, "Well, can we do that?" And I said, "I don't see any reason why we can't do it." So if you go back and look at it, I think again here this is probably a historical first, but the Senate passed that same amendment seven times over two days. It's the only time I can recall that the same language has been passed by the Senate ten times in a row.

**RITCHIE:** Until the Republicans stopped offering amendments?

**ARENBERG:** Right, they finally gave up on that. I should mention, the other contribution I made in that instance was in thinking about how to avoid the circus atmosphere of a newly-created select committee? There were probably five committees of the Senate claiming jurisdiction over certain aspects of this investigation. It was the Finance Committee, and the Banking Committee, the Permanent Subcommittee on Investigations of Governmental Affairs—I think there were five of them in all—Judiciary Committee. I hit on this novel suggestion—I'm characterizing it as novel, I'll let you be the judge of that—but what I suggested to Senator Mitchell is that the Banking Committee, obviously, had the clearest jurisdiction. So we started with the Banking Committee. There was a formal official name given to the Banking Committee acting in this capacity—the Special Committee to Investigate Whitewater, or something like that. And I pointed out that there was one member on the Banking Committee who overlapped with each of these other committees on each side of the aisle. We could basically name the Banking Committee to investigate this matter under this resolution with each of these members designated as the liaison of their committee's interest in the jurisdiction over this matter in the investigation. There was only one hole in that, and that was there was no minority representative from the Judiciary Committee on the Banking Committee. So we named the chairman, Senator Hatch, as a member ex-officio to the Banking Committee to serve for purposes of this investigation. That's how we were able to do it. We provided additional funding and staff and so forth to the Banking Committee. But it was done fully through the standing Banking Committee. It avoided all of the pitfalls of creating this kind of select committee with all the circus paraphernalia that goes along with it.



**RITCHIE:** And then it continued when the Republicans took over, because wasn't Senator D'Amato the chairman?

**ARENBERG:** Yeah, I think that's right.

**RITCHIE:** That was a committee that called something like 300 witnesses—

**ARENBERG:** Yeah, it lasted more than a year—something like 60 hearings, My involvement—I'm sorry to interrupt. The reason why that then becomes a blank spot is that's right about the time I go to the Levin staff. So one of the very last things I did with Mitchell was this Whitewater resolution on the floor. I think that was in June, which was right when I started, July 4<sup>th</sup> of 1994.

**RITCHIE:** And they continued until, I think, '96. They had just hundreds of witnesses.

**ARENBERG:** Right.

**RITCHIE:** They filed two completely contradictory reports—each party had their own report—and came to, essentially, no conclusion. I think Bill Clinton, in his memoir, said that because he had lost money on Whitewater, he said the committee tried to prove that he was corrupt *and* stupid.

**ARENBERG:** Right.

**RITCHIE:** That was a committee that was constantly in search of something it never found.

**ARENBERG:** As was the special counsel investigation, which you'll recall the independent counsel law, midway, was renewed, at which point we thought and hoped that the three-member special court headed by Judge David Sentelle, a Jesse Helms favorite, that handled independent counsels would just renew, since Fiske was doing a very competent job. He was a special prosecutor, appointed by Attorney General Reno counsel, but independent of the Justice Department. That the court would, in its wisdom, decide to make him the independent counsel and just change his title. Of course, history shows they did not. Judge Sentelle, by the way, was also one of the judges on the D.C. Circuit Court that voted to overturn the Ollie North conviction. Of course, in this case,

what we got, ultimately, was an investigation into the president's sex life. But I think people forget the Whitewater aspect of that, where it all started, came to nothing. And certainly one thing Fiske did even before—he did issue a report on the Foster matter. Because that was open and shut. All that took was some fair-minded person to look at it and say this was a suicide and the White House didn't have any involvement, except maybe working him too hard. You will remember that the special court replaced Fiske with Kenneth Starr and we all recall that that led ultimately to the Clinton impeachment.

**RITCHIE:** I want to just go back a minute to when Senator Mitchell took over as leader in 1989 and Senator Byrd became chairman of the Appropriations Committee. What sticks in my mind most about that period was very early the Clean Air Act came up. It pitted Maine forests against West Virginia coal, and Senator Mitchell won that battle. I can't think of anything else that established him as a credible leader more than taking on his predecessor, on an issue like that. Do you have any observations about that?

**ARENBERG:** Not directly, except that I know that that is a particular vote that Senator Byrd remembers very clearly and has reminded other senators of that were on the wrong side of the vote from time to time. I remember being in Senator Byrd's office in the Capitol and that roll call vote was framed and hung on the wall insider his inner office. I took that as a reminder to all who passed, he doesn't forget. Yeah, I mean I do remember it. I think Mitchell, himself, saw it more in kind of substantive legislative terms than as a battle between him and Byrd. I mean, that was his nature. He was really focused on the substance of it, but I do remember that.

**RITCHIE:** Part of it was he had a sort of professorial demeanor and there were a lot of questions about whether he would be as tough as Senator Byrd and Senator Bob Dole had been.

**ARENBERG:** Yeah, right.

**RITCHIE:** And I think that whole fight suggested this was a very tough guy.

**ARENBERG:** This is a tough guy. This is a tough guy. And he's proved that in spades since then in many instances, including in Ireland, and now Jerusalem.

**RITCHIE:** How would you characterize him, having worked with him all that time? He presented himself in almost a benign way—

**ARENBERG:** Right.

**RITCHIE:** But obviously he was a fairly steely person.

**ARENBERG:** I think that's exactly right. He was extremely fair minded. I keep going back to it but he liked being a federal judge, that was a very significant part of his life. I think it fit his personal characteristics. He wore those robes from then on, with all that that implies: the authority, the soft spoken strength. You know, judges rarely have to shout [Laughs]. I remember from those Iran-Contra hearings, when he talked to North and when he took on a witness, there was no threatening tone, but there wasn't any doubt that you were dealing with a formidable figure here. That North speech does that, too. I think you're right about that confrontation with Byrd on that vote, but that confrontation with North was much the same sort of thing. It was: You're not dealing with a pushover here. You've got the Marine uniform on, but I'm pretty tough. But he's an extremely fair person, and brilliant. And he's got some unique skills. Certainly the accomplishment in Ireland is testimony to that, and he's back at it again in the Middle East. Who knows what happens with that?

I keep repeating this, too, but he had a very clear way of approaching issues. He has a way of framing things, of looking at the basics, of building arguments and asking questions one building block at a time. It sometimes makes him slower to act than the next guy might be. But when he does, he knows what he wants to do. He knows where he's going. Like they always say about lawyers, he doesn't ask a question unless he knows what the answer is. He approaches things in a very deliberate fashion. That was true of his leadership race. It was true of the way he behaved as leader. As leadership staff, we were always in the position where other Senate staff were always coming to us and saying, "What does the leader think about this? What's he going to do on that?" And we'd have to say, "Well, he hasn't made a decision about that yet. He hasn't decided." Of course, 95 percent of the time, they didn't believe us. They just felt we were holding something back from them. It was just them we weren't telling or whatever. But that was the way he operated—and very effectively. When you add to wisdom and balance to that mix, you have a great senator.

**RITCHIE:** One of his great sources of frustration as leader, however, was the increasing use of filibusters in the Senate. In particular, the increasing number of cloture motions that he was filing and the number that were failing. In fact, he got the Congressional Research Service to do their first serious report on cloture motions.

**ARENBERG:** Right, yes.

**RITCHIE:** So it's interesting that, given your interest now in filibusters, that Senator Mitchell really was frustrated and was trying to figure some way out of the box that he was in.

**ARENBERG:** Yeah, well it is frustrating. He had CRS do a study of the huge spike in filibusters—cloture votes, actually. And, of course, the largest increases have come since he left. And it has been abused. And it is being used, in many instances, solely for obstruction. I certainly don't defend that. In that sense, I share the frustration that he expressed. He hasn't said a great deal about filibusters, but he certainly recognizes the constructive role too. So I certainly don't think he's someone who thinks that the Senate should operate solely by majority vote.

**RITCHIE:** I don't know if you've heard his Leader's Lecture that he gave. [An address to senators in the Old Senate Chamber on June 16, 1999.]

**ARENBERG:** Yes.

**RITCHIE:** That's where he sort of came back and said he had changed his mind about filibusters to some degree. After his experience in Ireland, he said, it was the first time the two sides sat around the table, and they needed time to talk to each other.

**ARENBERG:** Right. He talks about that and references that his experience. In fact, I quote him from that speech in the book I'm writing. He called the right to extended debate in the Senate a "rare treasure" and called it the "price that must be paid," but added that the "privilege was worth the price."

But your point about the frustration is well taken. I wind up emphasizing one side of the equation because, in my view, there's so much misunderstanding about the filibuster and the super-majority requirement and cloture. Because I'm so concerned about the danger of completely washing it away, I tend to emphasize the positive effect and the instances where it's been very important to the Senate. But I think that's not to say that it isn't being abused and that's not a bad thing. I just don't think the solution is to do away with Rule XXII. I think the problems are much deeper than that.

That's why I keep going back to the partisan polarization and so forth. Both parties are at fault for very often turning away from the will to legislate. If you do that in a legislative body, I don't care what the rules are, you can design the rules so that you have one party government. One-party governments are not something to be admired. Even in a parliamentary system, if a policy goes bad, then a government can fall. When you have unified government under our system, if you have no minority rights in the Senate, who's going to force the accountability of the president? If there's no voice of the minority in the House of Representatives and there's no voice of the minority in the Senate, it's another whole element. When that circumstance is there, you know that the minority has a voice in the Senate. At the very least, they can get amendments up. They can get votes. They can demand an investigation and hold forth on the floor for a very long time until they get it. And all of those things.

I'm going off on another one of my tangents, but I think you're right. Mitchell was very frustrated. I think majority leaders are often frustrated. It's in the nature of it. It's a tool for the minority and so, almost by definition, it frustrates majority leaders. As you well know, as the Senate's historian, if you go back and read Senate history—I've been reading the 1917 debates when Rule XXII was adopted, and there's nothing new under the sun. It's those same arguments. Even back then, they're arguing over whether the Senate's a continuous body or not, and here we are nearly 200 years later and many of the same arguments pertain.

**RITCHIE:** The other complicating factor was that the minority party in the Senate then had a president in the White House. As majority leader, Senator Mitchell was bringing up programs that the president didn't want. Both houses of Congress were controlled by the Democrats. They were going to pass legislation that would probably force the president to veto it, which he might not want to do. So the minority party under Senator Dole adopted the tactic of: "All we need is 41. We just need to not to let them get to a vote on these issues."

**ARENBERG:** Right.

**RITCHIE:** It might, perhaps, have been different if, at that stage, Senator Mitchell was facing a president of his own party with an active agenda.

**ARENBERG:** Right, yeah.

**RITCHIE:** But I remember that we were getting requests from him about how many filibusters there were, and we couldn't quantify it, because we couldn't decide what was a filibuster and what wasn't.

**ARENBERG:** It's very difficult to sort out. It is. Particularly, the farther back you go—and you don't have to go very far before you get to points where senators were being very coy about what they were doing. It isn't that far back. Even in the years that I've been here, at one point it was very bad form to say—you can search the *Congressional Record* and you don't find senators who were saying, "Well, I'm now filibustering this." They didn't talk that way. "I've got a lot to say on this," I think the other thing that happens is the tendency, when people want to quantify this, to then start counting cloture votes, or cloture petitions or whatever, and conflate a filibuster with the filing of a cloture motion. As you well know, there are a lot of other reasons to file cloture motions. Majority leaders do it as a way of controlling the flow of legislation on the floor, to block non-germane amendments, various things. There is this kind of tit for tat thing that grows up. As a defensive measure, you've had an increase in majority leaders filling the amendment tree. Then you get this kind of back and forth where the minority is saying, "We just want to offer amendments." And the majority is saying, "No, you're filibustering the bill, and so we're blocking amendments. If you give us a unanimous consent agreement and we can control the number of amendments and get to a final vote on this, then we'll know there isn't a filibuster and we won't have to fill the tree." And they'll say, "Well, if you weren't filling the tree, let's just go forward and start working on the amendments. We'll get to the finish." When the majority complains that the minority is filibustering and the minority is claiming they won't even allow the motion to proceed because the majority leader intends to fill the tree, it is sometimes hard for outside observers whether constituents or pundits to know where the fault actually lies. I think sometimes the senators themselves don't know—each side feels aggrieved by the behavior of the other.

**RITCHIE:** We found the same thing, that people may threaten to filibuster, and that the threat of a filibuster is effective in itself.

**ARENBERG:** Right, right.

**RITCHIE:** But once they actually start filibustering, they never say that they're filibustering.

**ARENBERG:** That's right [Laughs].

**RITCHIE:** It's a pejorative that's thrown against them.

**ARENBERG:** Right.

**RITCHIE:** That's why we found it impossible to quantify.

**ARENBERG:** Yeah, and when you go back even further, they get even more coy about it. Sometimes it's very difficult to figure out just from reading the *Record* what's going on here? It's hard. Sometimes in the Senate, you can figure it out just from the fact that—often it's just inferred from the fact that all of the sudden, you just can't seem to get anything done. I think one of the majority leaders said, "It's like pushing a wet noodle."

**RITCHIE:** Right.

**ARENBERG:** It was probably Howard Baker [Laughs]. But often it is like that. Another reason why it's hard to quantify is amendments get filibustered all the time, in the sense that an amendment's brought up and basically the other party—and here it can be the majority, although usually the majority can just table it if they want to. But you just have an amendment out there and basically it just becomes clear you're not going to be able to get to a vote on this amendment. You're either going to take it down or we're not going to get anywhere. Or then you launch into negotiations and you negotiate a version of the amendment. Or some kind of time agreement. Or paired amendments or something.

I'm getting far afield from what we're talking about here, but something that's interested me was the creation of the 60-vote threshold by unanimous consent. Here I started asking questions of CRS, which I think led to a kind of first report on that. And I've talked to parliamentarians and I've talked to Marty [Paone] and others and tried to figure out where the first instance of that is. I haven't really been able to trace it all the way back. But it's a curious thing. And it's of suspect legitimacy in a way, because it doesn't even reference filibuster. It doesn't reference Rule XXII. It doesn't reference anything except senators agreeing that this amendment's not going to be able to pass unless 60 senators are willing to vote for it and so we'll stipulate that by unanimous consent. If it doesn't get 60 votes, it doesn't pass. For awhile that was kind of a rare thing. And for awhile majority leaders were kind of resisting it, saying, "If you want to filibuster, filibuster. But we're not going to create any cockamamy 60-vote." There are

floor debates back and forth like that. But now it's getting so on controversial bills, that's getting to be kind of accepted. If it's a controversial amendment and we're going to have vote on it, okay, it's a 60-vote threshold. They sort of agree to do it. I guess, hypothetically, they could say, "Well, let's make this one a 61-vote threshold. It's more controversial." [Laughs] I don't know why they're stuck on 60.

**RITCHIE:** Well, it's a number that they've used before, and they think if they've used it before, they can claim it as a precedent.

**ARENBERG:** Right.

**RITCHIE:** Precedent is sort of a security blanket. It's a way of saying, "We did it before, so we can do it again," or, "We didn't do it before, so we can't do it now." Whereas, in fact, they can essentially do anything they want by unanimous consent.

**ARENBERG:** Absolutely. Not only by unanimous consent, but they can do what they can do. In other words, if you've got the power to do it, you can do it. When you get to questions of what can the vice president do in his rulings up there? He can do what he can do. So when you get to the question of precedent, in my mind, that's more in the realm of marshaling arguments. That's persuasion. That's, okay, if the vice president can do this then we've got to get 51 senators to support him, we may have a few that are kind of soft around the edges here. If we can find a precedent that's going to help to persuade them, they're going to feel more comfortable with it. If somebody's running around saying the precedent goes the opposite way, it still doesn't mean that it can't be done. It just means that you might have a little more trouble getting the majority to agree to let it happen.

**RITCHIE:** There was an instance during the health care debate in which a senator wanted to have his amendment, which was 700 pages, to be read, and finally realized that that was just going to take forever and so he called off the reading. It was a Democratic senator's amendment, and the Republicans said, "No, you can't call it off." The parliamentarian actually found a precedent from 1952 where they had done it.

**ARENBERG:** Where it had been called off.

**RITCHIE:** Then there was a great hue and cry that it was an obsolete precedent. But the fact of the matter is if it ever happened—



**ARENBERG:** A precedent is a precedent.

**RITCHIE:** —then that's a precedent. And that's the way the Senate operates. They have thousands of these precedents.

**ARENBERG:** And on this question of the Senate as a continuous body, there is a whole question of whether or not there's a precedent. There was a precedent created, but the Senate rolled it back, went back from it. So then you could then have a debate about is a precedent that's been rolled back a precedent, can you undo it? Once created, can you erase it? I don't know. I think the rollback becomes the precedent.

**RITCHIE:** Until it's superceded by another precedent.

**ARENBERG:** Right. One senator said to me, if it was rolled back, well I won't use the word precedent—I'll just say "it's been used before."

**RITCHIE:** Well, one person we haven't really talked about is Mitchell's counterpart, Bob Dole, as Republican leader. What was their relationship like when they were in the leadership positions?

**ARENBERG:** I think they got along pretty well personally. I don't know how he felt in a very deep fashion, but certainly, the level of interaction between them was very good. They communicated well. They were frequently back and forth in each others' offices and talking on the phone. When the Senate is working, when it's working well and it's working properly, because of its rules, it requires that. Throughout much of the history when there have been leaders, for the period when there have been formal leaders, there has been a pretty good level of interaction between them. In the recent, more polarized Senate, it's sometimes badly strained. But even given that, it's not like in the House where, Gephardt and Gingrich were said to have not even talked to each other—there was actually a hearing in which Gephardt testified that they talked four times in two years or something like that. I know I don't have the numbers right, but it was pretty alarming in terms of the lack of communication that there needs to be between the majority and the minority in the House and what's happened in the polarization of that body. Even when things get pretty rough in the Senate, the leaders manage, in some fashion or another, to talk to each other. Because if there isn't a basic level of comity, even on the bottom floor, it's very difficult to make the wheels turn at all in this body.

**RITCHIE:** I remember [Senate Parliamentarian] Bob Dove saying at one point that whenever he was looking for Bob Dole, he would often find him in the Democratic cloakroom.

**ARENBERG:** Oh yeah.

**RITCHIE:** He would be in there writing the compromise amendment with a group of senators all around him.

**ARENBERG:** Yeah, that is Bob Dole. But it's also a classic Senate picture. It really is. All throughout Senate history—you should be telling me this, not me telling you that—but it's really true. It's been true throughout most of my experience. I may have said this to you already, but with all three senators that I worked for, when you brought them an amendment, when you brought them a piece of legislation, a suggestion that we do something, the first question they're going to ask is, "Who's our Republican cosponsor?" I doubt you get that in the House a whole lot.

**RITCHIE:** The Senate really can't operate if there isn't that kind of cross-party fertilization. Whenever you don't have it is when things get paralyzed.

**ARENBERG:** Right.

**RITCHIE:** Would you say that it was cordial relations between the two?

**ARENBERG:** Yeah, I think so. Obviously, there were those rough moments, but there was a pretty open line of communication. I think they had an understanding with each other, that they were pretty straight with each other. One of the big things in the Senate is no surprises. You always have your incidents, something is done. But I think he worked pretty well with Bob Dole. And I think they've had a pretty good relationship outside of the Senate.

**RITCHIE:** There are people up here who think that the big mistake the Clinton administration made was not getting Bob Dole on board for the healthcare debate. That in fact, he was prepared to compromise in some way with them, but they missed that opportunity in the process, that somehow it didn't gel at that moment.

**ARENBERG:** Yeah.

**RITCHIE:** Although you were in foreign policy issues, I don't know if you had any observations about how things got started at the beginning of the Clinton administration when they came in in terms of the Senate's leadership.

**ARENBERG:** I'm not sure what I'd say about that. I think certainly what you say about trying to open a door to the Republican leadership on the health debate, it resonates with me, but I really don't know the details. I'm not sure how much willingness there really was there to deal. We're already, by the beginning of the Clinton administration, into the kind of pattern of demonizing the other party's presidents. That was happening with Clinton early. As you know, the Clinton bill was written at the White House. Obama tried to learn the lesson and left it to Congress to write his health reform bill—and he was criticized for that.

**RITCHIE:** It's always hard to read back into something along the way. But it seemed like the Senate minority party was less of an obstruction at that stage than the House.

**ARENBERG:** Yeah, in general, I think that's very clear. I think the House Republicans were making pretty clear their frustration with Dole for that matter. But it's not unusual for House members of both parties to be very frustrated with not only Senate leadership, but other senators, the whole body.

**RITCHIE:** Once the Democrats won the White House, they had control of the White House and the Senate and the House. But in the beginning of '94 Senator Mitchell decided that he was not going to run for reelection.

**ARENBERG:** Right.

**RITCHIE:** Did that surprise you at that moment when he was in charge of everything, that he would step aside?

**ARENBERG:** Yeah, it surprised me a lot. I really didn't see it coming. That day he called the staff together in the LBJ room, I believe. As majority leader, when you say, "the staff," it's a sizable number of people, all the people that worked for him. He came in and he announced that he was leaving the Senate. I can remember everybody walking over there speculating. This was an unusual event for the majority leader to call everybody together like that. What was he going to announce? As I remember, it didn't even cross

my mind that he might be retiring from the Senate. So it was a surprise to me. And it launched me into another job search [Laughs].

**RITCHIE:** At the same time, he apparently turned down a Supreme Court nomination. From what I've read, at least, President Clinton had pretty well offered him a seat on the Supreme Court.

**ARENBERG:** Yes.

**RITCHIE:** The way you've described him, it sounds like he had such a perfect judicial temperament. Do you have any sense of why he didn't accept?

**ARENBERG:** By the time that happens I'm no longer working for him, so I'm really totally speculating about this. Again, I was really kind of surprised by his not accepting the nomination. To me, I'd always thought that his dream job—maybe a notch behind being baseball commissioner—would be to be on the Supreme Court. But I think he may, at that point, have begun to get into plans for after the Senate. I don't remember the exact sequence, but I think he was pretty newly remarried and I think probably ready to concentrate on his family and their support and all of that. I think maybe after all those years of service in the Senate and years as majority leader, wasn't quite ready to step on the Court. I wonder how he looks back on that in retrospect. Because he's gone on to do very great things. So I doubt he regrets it, but you're right. I remember being quite surprised by that at the time. I always thought he would make a great chief justice, because of the wisdom, the balance, the judicial temperament, and his political skills as well.

**RITCHIE:** A number of senators, when they leave, feel the need to get their families into better shape financially, because they've made so many sacrifices in public life.

**ARENBERG:** Right.

**RITCHIE:** Especially when they see some of their staff leaving and earning more money than they are.

**ARENBERG:** Yeah, right.

**RITCHIE:** But on the other hand, Senator Mitchell has devoted a lot of his attention to diplomatic efforts rather than to lobbying or anything like that.

**ARENBERG:** That's right. Although he did go through a period as chairman of the board at Disney, so he's—

**RITCHIE:** Oh right. He's done well.

**ARENBERG:** Yeah, he's done okay, I guess.

**RITCHIE:** When his portrait was unveiled, he brought his family. His son was, I think, seven years old and had never been in the Capitol, I think, at that point.

**ARENBERG:** Yeah, right.

**RITCHIE:** They asked if I would give him a little walk through. I did and Senator Mitchell came along. He was looking at things as if it was the first time he'd ever seen them. I thought, as majority leader he was probably too busy to stop and look at the artwork.

**ARENBERG:** Yeah, I'm sure that was all the way true. And you made me think when you mentioned that. It came up earlier that my ex-father-in-law was Ned Kenworthy who covered the Senate for the *Times*. Have you every seen that little guidebook that the *Times* published?

**RITCHIE:** On Washington, D.C.?

**ARENBERG:** It was on Washington, D.C. But there's a chapter on the Capitol which Ned wrote.<sup>10</sup> And if you've never seen it, I'd love to show it to you, because it's so interesting. He loved the architecture of the Capitol and all of the details. That book left me with an appreciation of many of the details of the Capitol, which I love, that I may never have noticed rushing by over the 34 years I was here. For example, he pointed out the carved tobacco leaves and ears of corn on some of the pillars on the Senate side from Latrobe's rebuilding after the British burned the Capitol. I think it was published probably

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<sup>10</sup> Alvin Shuster, ed., *The New York Times Guide to the Nation's Capital, Washington, D.C.* (New York, N.Y.: Bantam Books, 1967).

in the '60s. Amusingly, it talks about all of these things like advice on appropriate dress for the Senate gallery, don't wear shorts and all those things. There is excessive partisan polarization the Senate today, but I just don't believe the way to address it is by rewiring the rules. It's really about the senators themselves and their commitment to really grappling with the nation's serious problems.

**RITCHIE:** It's a bit more formal.

**ARENBERG:** Absolutely.

**RITCHIE:** Well we're at four o'clock and I was going to suggest this would be a good place to take a break and then tomorrow we could talk about Senator Levin.

**ARENBERG:** Okay. That's great.

**[End of the Fourth Interview]**

