

**LINDA GUSTITUS**  
**Interview #3: The Objectives of Good Oversight**  
**November 26, 2012**

**SCOTT:** We left off last time thinking that we would like to come back to the FTC reauthorization bill of 1979-1980.

**GUSTITUS:** Yes, because my history wasn't quite clear about the order of events. I want to go over that again. I want to weave it into this notion of what was going on at the time in terms of the way Congress was responding to what was deemed by many people as overregulation or intrusiveness by the agencies, by the executive branch agencies.

Just to go back to that then, when Senator Levin ran for office, oddly enough, he actually ran on legislative veto. Part of his campaign was to get control over the executive branch agencies, the "nameless bureaucrats" in these agencies, in particular HUD because HUD programs had done so much damage in Detroit. His objective was to have some mechanism where publicly elected officials could be held accountable for the programmatic decisions that were being made by the executive branch agencies. Congress couldn't just pass these laws and hand them off and say, "The bureaucrats, we have no control over them." His position was, "No, these are programs over which we should have control, and we need mechanisms that allow people to come to us and hold us accountable for the programs that we create." So he started on legislative veto. A gentleman, a congressman in the House, Elliot Levitas, was the number one champion of legislative veto. Senator Levin picked that up and he ran on a platform that he was going to fight for legislative veto when he came to Congress.

When he got here, one of the first pieces of legislation where that issue was drawn, where that became an issue, was on the FTC authorization bill. This was in 1979. The FTC had not been authorized for three of four years because of the conflict over what the FTC had done with respect to the funeral industry, the car dealerships, three or four industries where they had issued pretty strong regulations from the industry's perspective and so it was very controversial. Mike Pertschuk who was the head of the FTC, he was a very aggressive consumer advocate and they had issued regulations that were pretty tough from the industry's perspective. From a consumer's perspective, they probably weren't so tough.

The House ended up, I assume through Elliot Levitas' efforts, putting on a legislative veto on the FTC reauthorization bill. I believe it was a one-house legislative veto, meaning one house could issue a resolution of disapproval and that would stop the rule from taking effect. So then it came over to the Senate and it was hugely controversial whether the Senate would support legislative veto. Senator Levin really led the charge on that. The Senate was trying to deal to some extent with what the FTC had done. There were limitations that were put on with respect to certain rules. They couldn't do "x, y, and z" with respect to the funeral industry. They couldn't do "x, y, and z" with respect to used car dealerships, or something like that. But they hadn't endorsed legislative veto. Senator Levin pushed it and pushed it. It in fact passed. It was put on in the Senate. It was different from the House version, though, because it required a joint resolution of disapproval which means it required the full legislative process to veto a rule—both houses and the President. And that went to conference. It came out of conference as a two-house legislative veto, which meant that by concurrent resolution the two houses could overturn or stop an FTC rule.

In the meantime that mechanism had been put on other pieces of legislation. It had been put on an immigration law about deportation. I believe it was about whether or not the immigration department, or agency, could deport somebody automatically or whether Congress had the right to overturn the deportation by having the decision lay over in Congress and then one house or two houses could overturn it. That became the *Chadha* case, which was the big Supreme Court case. Chadha was going to be deported. He challenged his deportation with the INS and got a stay. Congress overturned that stay by passing a one-house resolution of disapproval, and that case was then argued all the way up to the Supreme Court. So he, Chadha, challenged the constitutionality of the legislative veto.

Everybody was looking for the constitutional challenge on legislative veto. So everybody was looking for the right case to have this brought to the Supreme Court. And so in that case, which I think was issued in 1982 or '83, the Supreme Court held that you couldn't have a one-house or a two-house legislative veto, because the Constitution requires that both houses and the president be involved in any legislative action. And preventing a rule or overturning a rule is a legislative action. So the result of the *Chadha* decision was to negate the FTC law that we had put in the authorization bill and other laws like that where there were legislative vetoes. And then, going forward, to requiring that any legislative veto be a joint resolution of disapproval, which means that Congress still could say the rule doesn't take effect for a certain number of days, 30, 60, 90, whatever you want. And somebody could introduce a resolution of disapproval, but it has to be approved by both houses of Congress and then signed by the president. Or if he vetoes it, then it has to have two-thirds approval, I mean, the override.

Some of those were passed with a layover provision to allow Congress to act. And then what was added as a strengthening element was an expedited procedure for the consideration of the joint resolution. So you couldn't delay it. You couldn't filibuster it. The joint resolution got priority over consideration of anything else so that within that 30 days, 60 days, whatever the layover period was, that window, Congress could act if it wanted to before the rule took effect. So that was the big—

**SCOTT:** Was Senator Levin pleased with that outcome eventually?

**GUSTITUS:** I think he was fine with that. Yes. I mean, he wanted one as strong as possible. I think as it played out, I think it all became pretty apparent that it wasn't a good idea to just have one house be able to stop a regulation. I think he would have been comfortable with a concurrent resolution, with two houses, because that was Congress saying, "No, no, that was so far afield from what we wanted." So I think the two-house resolution was probably about where he would have liked to have ended up. Even just having a layover helps because you could bring attention to the rule. How it ends up over time, Congress basically didn't pay attention after that. There weren't that many resolutions of disapproval. This would be something that a political scientist has to look at, or CRS could be asked to do, but I don't think we ever got involved in stopping that many regulations. It was a weapon that we wanted, but I don't think we exercised it very often.

It just faded out. It also faded out because a number of things were happening. Not only were we doing legislative veto, there was the proposal to require the reauthorization of all programs every 10 years. So that was the sunset legislation. And Senator Levin supported sunset legislation, as did a lot of Governmental Affairs Committee members, as we learned. It was hugely contentious because the supporters of all these programs had fought so hard to get these programs enacted that to think of having to reauthorize them every 10 years was just a huge undertaking for them, a huge uphill battle. They didn't want to have to go through that again, because every time you reauthorize, all the issues in that program can come to the floor and they can be fought over and weakened from the supporters' perspective. It was a very contentious issue, but Congress was so concerned about regulatory reform and the number of regulations. This was just after Ribicoff at the Governmental Affairs Committee had issued the seven volume study of the regulatory process. So you can see how much was happening on this issue of overregulation by the federal government at the time. We actually passed sunset legislation in Governmental Affairs, which is really quite shocking. Senator Levin was the only member of the committee present during the vote who voted against it, as it turned out. Although he supported the idea of sunset legislation, he had a number of

amendments to the bill that he thought were essential, and three of those weren't adopted—including sunseting the sunset bill itself and providing for exceptions under certain circumstances. But, if you look back on it, it seems surprising that we ever did that.

**SCOTT:** In what way? Because of the membership of that committee?

**GUSTITUS:** Because it's such an incredible idea. I mean, think if somebody came forward with that idea now. You would think they were an extremist. I mean, if Ron Paul or somebody came forward with this idea, you'd say, "Oh yeah, he probably thought of the idea." But Senator [James] Sasser [D-TN] and [John] Glenn and Levin? These people were supportive of the idea? It's pretty interesting what happens in certain times and all the emotions that come to bear and the context in which these issues emerge.

So there was that in 1979, I guess it was. When Reagan got elected, one of the very significant sea changes that he brought about was his executive order, which was to require that all agency rule-making, before it becomes final, go to OMB [Office of Management and Budget] for review. And he set up a whole office to review rules.

**SCOTT:** How did Congress feel about that?

**GUSTITUS:** Well, the defenders of those programs thought it was the devil incarnate. It was just the worst thing, because obviously it was, from their perspective, really politicizing the rule-making process and taking it out of the hands of the agencies and putting it into the lap of the president. They thought it was heresy. People who were supportive of regulatory reform thought it deserved a second look. They were somewhat supportive. Senator Levin would have fallen into that category.

At the same time, it was very uncomfortable to be able to support saying, yes, President Reagan can look at any rule that any agency issues. The standard by which those rules were being reviewed was a cost-benefit analysis. How you define cost-benefit analysis in terms of what can be included in the costs and what can be included in the benefits is really, really critical. This whole issue came up about the value of cost-benefit analysis. One concept was, yes, we should review rules for cost-benefit analysis, people like Senator Levin, but Congress should decide what the terms of the cost-benefit analysis should be. The president should not make that decision. Congress should make that decision. That's when we started the whole effort to pass regulatory reform legislation, which went on for years and years and years. All the big players in Washington came in to play on that one. The Business Roundtable, the NFIB [National

Federation of Independent Business], the National Realtors' Association, everybody on one side that really wanted tough regulatory reform, and all the consumer groups, food safety groups, everybody else on the other side saying this is a way to stop good regulation, it's just a ruse.

Enormous amounts of money were spent on lobbying on that and on political campaigns. Some people were accused of trying to extend the regulatory reform debate in order to keep getting political contributions because it was such a hot issue and people would pay to support candidates who were supportive of their position on regulatory reform. Senator Levin was in the middle. He really supported regulatory reform and he supported cost-benefit analysis. He was a person who was trying to work with both sides. But mostly he was supportive of regulatory reform. He was more on the side of the people who wanted a cost-benefit analysis system in place, and he felt that it should just be a rational one that didn't deny good regulations but that did take into consideration whether the regulation is a meaningful one or not.

We went around and around and around for years and years and years on regulatory reform. One piece of it was to put in a government-wide legislative veto provision, which would be a joint resolution. That was one of Senator Levin's contributions. Both the Judiciary Committee and the Governmental Affairs Committee had bills. Senator [Bob] Dole [R-KS] was involved heavily in regulatory reform, representing the business interests. Governmental Affairs had its bill with Senators [William] Roth and Glenn. But those were the times when we were all trying to figure out how to control and put limits on and common sense rationality to these programs.

Justice Breyer was a staff person for Senator Kennedy when they deregulated the airline industry. Out of that, Justice Breyer issued a book which became kind of the bible, at the time, of cost-benefit analysis and stupid regulations. He laid out a very strong case for how thoughtless some of the regulations were. So he was more in Senator Levin's camp on why risk and cost-benefit analysis are important in issuing regulations.

**SCOTT:** You mentioned in our last interview that Senator Levin had some challenges back home in terms of the fact that his position on some of these issues ran against labor, for example. I could see, also, that some consumer groups might be opposed to his position on these issues.

**GUSTITUS:** Yes.

**SCOTT:** And yet be allied with him on others. So how did that play out politically back in Michigan? Did you have a sense for that?

**GUSTITUS:** Well the most important thing for Senator Levin was the trust that people had in him. That he wasn't doing anything for his personal gain, except for, obviously, to continue to be a senator. I mean, you wanted to be able to make public policy, but not personal financial gain. He always played as honestly as possible with people. He was pretty direct and pretty comfortable with where he was, and so people became very comfortable with him. He had built up so much trust by his constituents that these groups that were mad at him, or unhappy, let's say, with his positions, didn't take him on too aggressively because they knew that not only they respected him as a person, but that his constituents respected him as a person. You couldn't paint him as evil [laughing] or not trying to operate in these peoples' self-interest. It didn't get very far. There were some tough meetings where the unions were really quite unhappy, but they liked him so much that they put up with it, basically. Also, he did support the union, the auto industry, on so many issues, because those were his people. The auto industry was so key to Michigan. On a lot of the issues that mattered economically he was very supportive. He was able to withstand the anger—it wasn't quite anger—the disapproval and the dissatisfaction with his positions on regulatory reform.

I remember so many lobbyists would come in and try to—Consumers Union or whatever it would be, Environmental Defense Fund—and they would be really urging us to modify this or support this amendment. In certain situations, I'd just have to say, "That's just not where Senator Levin is. You know that. He doesn't support that." They would basically walk away saying, "Well, we respect that it's truly what he believes." It's hard to fight that if that's what he really believes. It's one thing if a member's doing it because somebody is financially supporting him for that or her for that. You're suspicious about why they're supporting it. Is it to help a friend? But that's not how this was. Senator Levin really believed in this deeply and he had done it from the beginning. He had run on legislative veto. He had spoken to the ADA, the Americans for Democratic Action, on the need to rein in the agencies. He came in as a regulatory reformer.

**SCOTT:** He had been so consistent that people knew what they were getting when he came.

**GUSTITUS:** Yes, right, exactly.

**SCOTT:** Given this context that you've just laid out about Congress during the late '70s and early '80s wanting to deal with some of these programs in a new way and revisit some of these regulations, it seems like OGM [Oversight of Government Management] has the potential to be a really important subcommittee in terms of doing just that, looking at regulations, providing the oversight maybe that some members of

Congress, like Senator Levin, would say was lacking. Did you feel that sense of mission in your work on the subcommittee?

**GUSTITUS:** Yes, absolutely. It was why the subcommittee was created, because Levin came in and Ribicoff wanted him on the committee. Levin said, “I want a subcommittee that can do oversight.” That is what we did. We just looked at whatever program we wanted to look at to see if it was working the way it should work. We went from, I had mentioned earlier, debarment and suspension to the IRS that had a seizure policy that was irrational. We looked at that. We looked at the Social Security disability program when they weren’t paying people appropriately for their disabilities, and quickly enough. We looked at the whole defense contracting system.

The problem was that we had a very small staff. But what is amazing is how much you can accomplish if you have really good staff and you have the authority of the Senate, if you’re a chair and you can get documents and the information you need. But if we had had a larger staff, we could have accomplished so much more. But we only had six, seven, ten people, maybe. And a number of the people were legislative fellows, people who came from the agencies who worked with us for a year. They weren’t even really our own staff people. We had so few people I had to use whomever I could get.

**SCOTT:** Can you talk about the role of documents in the process of oversight and investigation? What is that role?

**GUSTITUS:** Documents are critical. Oversight is a lot of hard work. It is getting the facts. If a committee does oversight well, and not many do, but if it’s done well, the job of the committee staff doing oversight is to gather the facts for the members so that the members don’t disagree on the facts. Both Republicans and Democrats can say, “Okay, those are the facts.” Mostly facts are obtained through documents. Documents are critical. People can say things to you about how a program works, but when you see the document or the e-mail transmission, you really see what’s going on on the ground. Documents become just critical to oversight. I think I said this earlier, there are two ways you get information: you get it through people or through documents. People under oath—they don’t even need to be under oath, really—it’s against the law to lie to Congress whether you’re under oath or not. When you’re talking to people and interviewing people, they have to tell you the truth. But how they see what they did is a little bit different, perhaps, than what actually happened. The documents show you what actually was going on at the time any event was taking place.

Gathering the right documents, interviewing the right people, is critical to getting the facts. Then the members can disagree about the interpretations of the facts. Somebody

may say, “Okay, let’s look at the Head Start program. I think the facts show that there should have been 20 percent greater growth in the nutritional condition of the kids in Head Start.” And the other person can say, “I was amazed that there was the growth that there already was in the nutritional condition of the kids in Head Start.” So they can have different views on the facts, but the purpose of the oversight subcommittee, of the staff and the work, is to make sure that the committee gets the facts.

One thing that happens in a committee that doesn’t do it well, you can get documents—and I saw this in the Enron investigation, we had like five committees investigating Enron at the height of Enron, in both houses combined—is a chairman, in wanting press, can get documents and then hand them out to the public, to the press. So it will be Ken Lay’s memo to Jeff Skilling and it says something that looks very inappropriate, and that goes right out to the press because that’s how the chairman is operating. But that’s not good oversight. What oversight does is it brings the information to the committee, all of it, so that you can understand it completely in context. That memo just released to the press may give one impression, but it could be the wrong impression. Because there may be a whole series of events surrounding that memo that explain it in a very different way.

So the objective of good oversight is for the staff to get all the information that they can. And once they’re satisfied with it, if members think that there’s something there that’s a story to be told, then you do a hearing and the hearing is the storytelling. I tell people hearings are not trials. They’re not fair. Trials are due process. Each side gets a certain time. You get to cross-examine. You have a lawyer present. It’s set up to be as fair as possible. Hearings aren’t really like that. Hearings are in the control of the chair, for the most part. Committee rules do allow for the ranking minority member to ask for witnesses or to have some witnesses present. But basically the chair controls the hearing and any witnesses whom the ranking member might want could be the last panel or at some point which isn’t very noteworthy.

So the chair wants to tell the story and that’s how you decide your witnesses and the order of the witnesses, if you do good oversight. You’re going to take all of this information you’ve gathered and now, of all the people in the country, you should be the people who know the most about this issue and have the biggest picture. Then you present your witnesses in the order that tells the story. So usually that works out that if you have victims, people who’ve been hurt by something—I’ll use, I told you previously about sweepstakes—for sweepstakes we had like three or four seniors who had succumbed to these solicitations for sweepstakes. They tell you, “Well, I lost \$2,000 because I spent all this money. And I actually went to the place where they told me if I went there to Toledo to pick up my million dollars but it wasn’t—” They tell you those



stories. You've got people's attention, because everybody loves individual stories. Then you have usually a panel who are the validators who say okay, these are the anecdotes and they're real and they're not isolated incidents. In the sweepstakes hearings, for example, we had a panel of AARP, states attorneys general, the Postal Service, who say, "Look, there are tens of thousands of stories like this out there. We get a hundred thousand complaints at AARP. This is the most complained about element for senior citizens with respect to advertising," or something like that. So then you deliver the message that it's a serious, widespread problem.

Then you bring on the people who are causing this problem, whom you can subpoena, so the executives of the companies come in and testify. And that's where documents become critical, because they come in and testify and they say, "We're all about doing good." You know, "We're trying to provide entertainment and hope to these senior citizens. No, we don't really target them. No, we don't mislead them. It's all in fun. It's all just to be positive and to make their dismal little lives better, and to give them the opportunity to buy magazines and tchotchkes and all that sort of stuff." They give their best face. Then when it comes time to question them you bring out, "Well, you've said this and this and this, but let me just show you this memo that you wrote to your executive vice president with respect to the approach you were going to take on this solicitation. And it says, 'these people won't have a clue if we do x, y, and z,' or 'this is the only way we can get these people to buy these magazines even though we know this is a joke. How stupid can people be?'" Whatever the memo says. You confront them with that. That's where the magic happens, because that's where it's very hard, if you've done your homework, for them to wriggle out of the documentary evidence.

We had a hearing on gas prices. This was when gas prices were \$1.79 a gallon and we thought they were outrageous. So this was many years ago. But we had all the big CEOs of the oil companies in. It was all about how are gas prices set. They were all about how it's supply and demand. "We have nothing to do with rigging gas prices. That's not what we do. We're all for the consumer." We had these documents. One document was from Marathon Oil where one of the top executives said how great it was that the hurricane happened because it took down that refinery. And the reason they're happy it takes down the refinery is because it shortens the supply of gas and the gas prices go up. Another BP executive, a vice president, had written a memo the title of which was something like, "Thirteen ways to raise gas prices in the Midwest by three cents a gallon." Seriously. And then there were these little pathetic schemes. One was to not put the additive in the gas that makes it move through the pipeline faster or something. I mean, just unbelievable kinds of schemes. And so here are these executives and they're saying, "We're all about the consumer and we're all about getting gas to the pump." And then you say, "Well, excuse me, I've got this memo here from your vice president." So

then the BP executive says, “Well, that’s not our policy. That was just something he was proposing. We never implemented any of that.” And we say, “Well, was he demoted? What happened to him?” “Well no, he was never fired. He was never reprimanded.”

That’s where the documents are so important. What happens is the private industry can catch on to this and can inundate you with documents. So if we ask for documents on gas prices from Exxon, they can give us documents that include where the toilet paper is stored for the executive bathrooms or something. If you have a little staff, which is what we had, you’ve got to plow through all those documents. On that one we had like a million documents or something. You’ve got to have staff just kind of plow through them and then you set up a file of “hot docs,” which are the documents that actually are meaningful and have something to say about the issue. Then you use those to interview your witnesses to have them tell you what that document means, because they might have an explanation.

**SCOTT:** And these might be at the executive level that you’d be interviewing people before the hearings?

**GUSTITUS:** Yes, because you don’t want to be surprised by a document that you think means one thing and then they say, “No, that was completely ridiculous. That was actually an April Fool’s party joke.” You know, what if they said that? “Well, of course. That was what he wrote on April 1<sup>st</sup> and it was sent around to everyone. We all got it. We thought it was hysterical,” something like that. You really have to be sure. As I say, this is good oversight if you do it right. You know what your documents are. You’ve asked them about those documents. They come to the hearing knowing that they’ve got to explain them. But the documents still have tremendous power, because if they’re true, they’re almost inexplicable. I mean, it’s because you have caught them in something that they shouldn’t have been doing. Documents are so important, and so what happens is sometimes they don’t want to give you your documents.

**SCOTT:** So what happens? What do you do?

**GUSTITUS:** Congress fortunately has the power of subpoena. Because we’re a coequal branch of government, we have assumed the power to subpoena. That is critical because you can ask for documents and nine times out of ten agencies will give you their documents, unless you’ve got a big political challenge between the president and the member asking for the documents. That can happen. But otherwise, mostly agencies give you their documents. But private industry, if they know they’ve done something wrong, they’ll try to avoid giving you the documents. They’ll delay, or they’ll try to hide them or bury them in other documents. Often times you subpoena them. That’s an important

power, to be able to subpoena documents and subpoena witnesses. You have people who don't want to testify. They don't want to come. You need to subpoena them. You have the right to do that. They have the right to take the Fifth Amendment like you can in a trial. But we also have the right to give them immunity, which means we have the right to say to the Justice Department, "You can't prosecute this person based on the testimony that they've given to the Congress." They can prosecute them if they don't use that testimony. Most people don't realize that that's something we can do. And they confuse, then, that we are prosecutors versus doing oversight. We don't prosecute. We can never prosecute anybody. But we can, if we think it's necessary, give somebody immunity to make sure that we get their testimony when we need it.

**SCOTT:** Did you do that?

**GUSTITUS:** Yes, we did give immunity. In the campaign finance hearings that the Governmental Affairs Committee did, we gave immunity to the Buddhist monks who had been signed up as donors to the Democratic Party, but they weren't really donors. In order to get them to come, we gave them immunity. I wanted to give immunity to the treasurer of Enron because he was willing to testify and say everything that went on at Enron. It was going to be a fabulous hearing. But you don't give immunity without checking with the Justice Department to make sure that if you give immunity you're not blowing a criminal case. We still could have done it, but the Justice Department, it was Mike Chertoff at the time, said that it was way too early. They wanted to use him to get more information. They weren't sure where he was in the whole scheme, so they thought it would be very devastating to their criminal case. So we still could have gone forward, but you don't do that if—you weigh the risks and the benefits. It would have been great for us. We would have gotten a lot of kudos, but it wasn't appropriate from a public policy perspective, or from a good government perspective, I should say. So we didn't give him immunity. But Ollie North, you know, got immunity during the Iran Contra hearings.

**SCOTT:** How often would you have to get a subpoena for documents? Is this a pretty standard practice?

**GUSTITUS:** No. Most committees do not issue subpoenas. It's very rare. Members don't like to do that. You know, most members don't do oversight. Oversight is done by a very, very small group of people, and it's getting smaller and smaller. It's probably at its nadir right now in terms of the number of people doing oversight. When you go back to early Congresses, the Ninety-something Congresses or the Eighty-something Congresses, there was a lot of oversight going on. PSI was so active and they had a huge budget. They had a lot of staff. They did those big hearings on the Mafia and

on defense contracting. They would go day after day with these hearings. But people don't do that much oversight. As you know, during the two terms of George W. Bush, Congress was probably the lowest it had ever been in oversight in its history. It's maybe just now getting momentum, to some extent.

It's not intended, under the Constitution, to be political oversight. It's intended to be institutional oversight. When [William] Clinton was president, [Alfonse] D'Amato [R-NY] and others did oversight, so to speak, on Whitewater and they just were merciless. They got nowhere because there was no there there on Whitewater. They kept trying to do oversight on it. But it was politically motivated. During George W. Bush's period, Congress didn't do oversight because both houses were under Republican control and they didn't want to do oversight, which was also shirking their responsibility because, as an institution, we have a responsibility to do oversight. You just have to do oversight if you're going to hold up your end of the bargain, which is not just give money to the executive branch, but understand how it's being spent and if it's wisely being spent and how the executive branch is operating. You need to have people who do oversight. A lot of members don't want to do oversight because it's hard work. You do have to ask for documents and you do have to ask for people to come in and testify. If they don't want to, you have to subpoena them. It's not easy. For most committees, you have to have both parties support the subpoena to a large extent. The chairman can ask to issue the subpoena. The ranking member can say, "I object." Then you have to have a vote. If all the members of your party are in support of the subpoena, you can get it. But most members don't want to go down the subpoena route, except for PSI. And when we had OGM, we issued subpoenas.

PSI is unique in that just the chair can issue a subpoena. So in most all these other cases, the chair can issue it, but the ranking member can object and then you have to have a vote. But in PSI, the chair isn't answerable to anybody. He or she can just issue a subpoena when they want to, which is why Joseph McCarthy used PSI for his anti-communism investigation in the 1950s. He issued hundreds of subpoenas and he was unchecked. For the House Government Ops committee, I think about eight years ago, they gave sole subpoena authority to that chair, Dan Burton. He was the gentleman who shot the watermelon in the backyard to see how Vince Foster killed himself. Anyway, he issued a thousand subpoenas, or something, also.

**SCOTT:** I wonder, why do you think Congress isn't doing a lot of oversight? What's happening? What's the context? You would have witnessed some of that decline of oversight during your tenure here. Why do you think that's happening?

**GUSTITUS:** I think during the Bush era it was pretty clear. Bush gave a very strong message that “You don’t cross me.” Oversight ebbs and flows based on a number of factors. One is how popular is the president? If the president is hugely popular, it’s a challenge to do oversight. If it’s a president of your same party, it’s another little step you have to take because you’re challenging your president, your own party. If the president is a powerful president, whether he’s popular or not, but he delivers a message of retribution if you take him on, and the House is controlled by his own party, it makes you not want to do oversight. Bush was like that. My understanding is if a member of the House or the Senate said something challenging of Bush, [Karl] Rove or whomever would say, “Well, the president won’t be out there to help you fundraise for your next election.” So there was a very strong message of “You have to be a player on our side,” and that really discouraged oversight.

So if the president is popular, if the president is powerful and just assumes power, if the parties are the same, the two houses have the same party as the president—all of those can be a perfect storm, which is kind of what happened in a big chunk of the Bush administration’s eight years. You have a perfect storm of weak oversight by Congress. So that’s part of what happens. Then people get out of the habit. You go for eight years and you don’t do much oversight, you don’t have staffs who know oversight. People don’t do it as much.

**SCOTT:** Can you say something about the role of other agencies that help Congress do good oversight? Let’s say, like CRS or some of these others, I think you mentioned the inspectors general.

**GUSTITUS:** Yes, I think they’re overlooked in terms of the public’s appreciation of the work they do. When you have a hearing, it’s Congress that’s doing all of this good work. But in so many cases, it’s based on, or we’re using, the really good work of the agencies that support us. GAO is one of them. We created GAO to do investigative work and auditing work for us. We didn’t have all the tools we needed and we wanted an agency that could go into programs, work with the agencies, get all the documents, and tell us what’s going on. It’s a very, very important organization. A good chair of a committee will use GAO well to help them oversee the programs that they’re responsible for, to get studies going, to do audits of certain programs or agencies within their departments.

That’s an important organization that Congress, smartly, created. GAO also has its own authority to look into programs that they think are troubled. They have to be responsive to Congress, that’s their number one responsibility, but on their own, if they have staff and money, they can say, “We really have to look at the B-2 bomber program,

because we've heard just too many things about the cost overruns." They can initiate their own report. They don't do much of it, but they can do that. Using their good work is really important, because they have experts. They have auditors. They have program experts. They have lawyers. They even have a little group of gumshoe investigators, people who will go out and do interesting things like try to get through an airline security gate carrying a gun—or carrying something—to show that the security isn't what it should be or something like that. They'll even do undercover kind of things. It's a small group. I actually haven't seen much of its work product lately, but about ten years ago they were a good little group over there.

Then you have the inspectors general. Congress did a really good thing in 1978 or '79, I think it was, we created the inspectors general, which again was this issue of oversight. It was all about sort of that late '70s, early '80s time. We created these independent offices within the agency, each department. That inspector general, what makes them independent is they report directly to Congress. They don't go through their secretary or their agency. They have a responsibility to investigate whatever they want within the department and then they report to us on what they discover or uncover.

**SCOTT:** On a regular basis?

**GUSTITUS:** Yes. Then they have another responsibility, which is they have to do a special letter if they see something that is really serious. There's a special letter that they can send, in addition to a report. It's like a red flag of an issue that they've uncovered that they think is really, really important. They're constantly doing work. The good thing about putting them in the agencies is they develop relationships and an understanding of the agency from the inside. Congress could never achieve that. That's really important. Having that direct connection to us, where they don't have to go through approval to get the results of their reports, is really critical. That's how Congress can get good information. Those inspectors general are really important, and any committee chair worth his or her salt is always going to be reading and be on top of, through their staff, whatever the IGs are finding out about the agencies and the programs that they run. They should be.

Lastly, we have the Library of Congress' Congressional Research Service, which used to be about 800 people—I don't know, maybe it's 500 people now or something—who are experts in lots of different things. The ability to pick up the phone and call somebody who knows so much about this issue or aspect of the real world is so important to wise legislation and to oversight as well. When we did the gas price hearings, I knew nothing about the price of oil or how oil was shipped or developed or transformed into gas. I knew nothing about it. I had to start from scratch, and I called CRS and I had like

two or three people who all they do is follow the oil industry and the gas industry. They came over and they gave me this wonderful briefing and understanding of how it all works. I could refer to them. That's pretty critical.

Oversight is challenging, especially from the Governmental Affairs perspective, when you do it across the government, because you're not an expert on any of these programs. You're jumping into a new issue each time. It's kind of like being a litigator. You get a case and you just have to be absorbed by it. Then you drop it and the next thing that comes up, you've got to get absorbed by that. That's how this works. You have to get up to speed very, very quickly on something you might not know much about. Those resources help you tremendously.

**SCOTT:** What are you looking for when you hire staff for oversight?

**GUSTITUS:** Curiosity, tenaciousness, and intelligence. I would say all three. You want somebody who just has to get to the bottom of it. It just would drive me crazy if I didn't figure out why this was, or the discrepancy between these two memos. You just have to have somebody who is just so curious that they have to get to the bottom of it. Then they have to be tenacious. They can't be somebody where the person has some kind of light explanation about something and they go, "Oh, okay," and you know, be sweet and go, "Oh, okay...yeah, yeah, yeah." No, they have to say, "Wait a second. That's not true. Tell me more. What's really behind this?" So there's a tenacity that I would look for. Intelligence is really important, to be really bright. I hired great staff. Elise Bean is the best of the best. She's currently the staff director of PSI. Nobody is better than Elise Bean. Bob Roach is our top investigator, absolutely top investigator par excellence. They're just both phenomenal staff.

We took on Enron and the other committees were basically looking at Enron itself. We looked at what the role of these banks were. Merrill Lynch and JP Morgan and the banks that bought into these fake financial transactions that Enron set up. Really, really complicated stuff. You'd need more than an MBA to figure these out. Just ridiculous transactions. What we were trying to show was how, from Enron's sales perspective, it looks like, yes, they took a loss, or they made a gain, but when you look at it from the real perspective, it was all fake. They did this to build up their financial statement. They were really taking losses and they made it look like they were taking gains. You could diagram some of these and they would look like some incredibly complicated constellation or something. They would just like go all over the place. Bob Roach took them all on.

**SCOTT:** And this is when you're at PSI? Is that right?

**GUSTITUS:** We were in PSI, yes. He just figured it out. He was methodical. When we interviewed a lot of these people, their lawyers would come in and they would say, “Okay, we’ve got two hours. We flew in from New York. We’re with Citigroup. We’re here for two hours and that’s it.” Bob Roach would say, “No, we’re sitting here until I get through all these documents. So let’s just relax.”

You have to be very self-confident, very strong, because when you’re dealing with Senate oversight, you, as Senate oversight, the people you’re taking on are some of the most powerful, prestigious people and lawyers that we have. They come in with a lot of bluster. They sweep into a room with all this aura about them and you have to not be affected by it. You have to try to stay on task and just make sure you get what you want out of it.

**SCOTT:** Were you one of those people who weren’t affected by it, or did you have to learn that over time?

**GUSTITUS:** I think you have to learn it over time. Bob Roach didn’t seem to have to learn it over time. He’s always been like that. But I think it took me some time to learn it. I tend to be more respectful and nice. I want to be polite. But really that’s not a good thing to be, necessarily, when you’re doing oversight. You want to be more tough, I think. You can’t be affected by the auras of top people. For example, we interviewed John Reed, who was the head of Citigroup, Citibank. We brought him in, I did the interview. We brought him into our offices. That’s the other really fun thing is when you make them come to your office [laughing]. John Reed, his office was some huge, twenty thousand square foot, probably, top of the Citigroup building or something like that. And the PSI offices are in the basement of the Russell building.

**SCOTT:** Are they?

**GUSTITUS:** Oh, they’re burrows. You know, the windows are up here.

**SCOTT:** [Laughs] Not quite as impressive.

**GUSTITUS:** I didn’t even put out coffee or water or anything. We just went into some other side room and just sat down, pulled up some chairs. It was just a completely different atmosphere for them to have to face instead of the world of Wall Street, the elite world of Wall Street.



**SCOTT:** What kind of backgrounds do you look for when you're hiring someone? Do they typically need to be attorneys?

**GUSTITUS:** Attorneys are very important, I think. I hired one person who was not an attorney, who was just an investigator. I don't mean "just" in a demeaning way. I mean he was not an attorney. Mostly in this kind of work, being an attorney is really helpful because there are so many junctures at which a legal issue presents itself. Say subpoenas. You know, you're an investigator but you want to issue a subpoena. Well, you've got to write the scope of the subpoena. It has to withstand a challenge. If somebody wants to bring their attorney, you've got to know, does he have a right to an attorney? What can an attorney do in a deposition? There are just so many legal aspects to it. You can have a potential to have a really good investigator who just does a lot of the interviews of people, without attorneys, just to get information. I have a bias on this to attorneys.

**SCOTT:** What's the role of reports in terms of the investigation and the hearings? You mentioned, in our last interview, that sometimes you might issue a report without a hearing, I think. Can you talk a little bit about why you do reports and what occasions they're important and maybe when they're not?

**GUSTITUS:** Reports are not done by a lot of oversight committees, because they're a lot of work. They're a huge amount of work. I think that's another thing that I'd love to have a student of Congress look at, whether there's been a big fall-off of oversight reports. That would be my sense, except for PSI, Elise Bean, who does reports all the time. When you do a hearing, you're going to get out your best information, but you're not going to get out all your information. A big issue like Enron's use of these fake financial transactions, at a hearing we can do one or two. The Nigerian barges, as I recall, is what we did with Enron. But there's so much more there that you've learned. First of all, we subpoenaed all those documents and we'd gone through those documents. We know what's in those documents. We've interviewed people and you know more about what they've said than just what you can bring out at the hearing. That's one thing. A report allows you to make public, in an understandable way—not just loose documents in a file, giving people access to those—but in a way that you, with all your knowledge, can put in order and explain. That's really important in a report.

It also allows you to give information, put it in a way that people down the road can use it. Maybe today they can't, but it's there as an historical record. Five years from now somebody may say, "It was really Enron that was involved in this. We should learn more about what they did with respect to this particular financial transaction. And weren't there hearings over there by PSI? Well, yes, there were. Well, what happened?"

Did they issue a report? Yes, there's a whole report and there's a section on that that you can look at." So you know, it's good for future work that you can't even see who could benefit from that work.

It gives people a chance to process the issue. You know, you have the hearing record, but the report allows you to say so much more and give people so much more of a sense of what was really going on. I think they're really important. The other thing they do is they give you an opportunity to have more press, because you can have both a hearing and the report. So you can do your hearing. You can even do a report before the hearing, which is one press hit. You do the hearing, which is a press hit. And then you can do your report after the hearing, which is another press hit. You can make that issue more and more visible, hence more understandable to a lot of people. You can expand on the size and the scope of the issue and make it a more important issue.

**SCOTT:** What's the role of public opinion in the oversight process?

**GUSTITUS:** People always ask me on oversight, they say, "Well, who oversees Congress?" The public oversees Congress. The role of public opinion is very important and your constituents are always really important. When you do anything in Congress, you're always thinking about how does this play out? How will people perceive this? What will the public reaction be? And everybody's always told, in Congress, assume that everything you do here can appear on the front page of the *Washington Post* tomorrow, what you say, what you do. Many people ignore that and some to their peril, but it's real. When you're doing oversight, you're always anticipating, will this be received well? How will this be received? Will this be received as too political? Will it be received as an honest effort? You know, you're always kind of checking it out. Now sometimes you say, okay, it's going to be perceived politically, but I don't care. It's worth doing it so we'll just have to take the hit from the public that it's a political thing when it's not. But that's who's judging you. That's kind of what's keeping you in check at all times, is how is this going to appear to the public? How is this going to appear if this were in the newspaper?

**SCOTT:** Did you have someone on your staff, or did you use someone on the larger Governmental Affairs committee to work as a press liaison?

**GUSTITUS:** No, the press person we used was Senator Levin's press person. It was slightly unsatisfactory. It would have been much better if we'd had money. I would have had my own press person, because that relationship is so important and it's great if you have a press person who has intimate knowledge of what you're doing and understands the report and develops relationships with the press. What happened was myself and my key staff, we were kind of our own press people. We nurtured the

relationships with the press. We did a lot of the drafts of the press releases and held the press briefings. We did a lot of press briefings.

**SCOTT:** And that's to educate them, simply, about what you're about to do, or maybe something you've done?

**GUSTITUS:** Yes. If you're doing a hearing on a complicated financial transaction between Merrill Lynch and Enron, it's very hard to get that in the first two hours of the hearing. Our job is to try to make it so people can get it, but it's much better if you have a press briefing beforehand, which would be the night before the hearing. We'd say, "Okay, we just want to walk you through this because this is really complicated. This is how this worked, and this is what will be said at the hearing. This is what we think he'll testify to," that kind of thing. You give them a background.

**SCOTT:** What's more important, print or television coverage?

**GUSTITUS:** Everybody always wants to be on television. We vie for C-SPAN. We want to be on C-SPAN. If you can get NBC there or ABC, of course. But that's rare. That's hard. You can get little squibbets. You know what that news is like. It's like a minute or two, if you're lucky. C-SPAN is something that we all felt really good about. As a matter of fact, we didn't do many hearings when C-SPAN wasn't there. That's because it's oversight. We're doing work on something that matters. We rarely did just a casual hearing. The hearings that we did were the product of a lot of work and a lot of effort, and a lot of judgment as to whether it was meaningful or not. So by the time we were ready for a hearing, it was kind of a big show. It was something that was important. It was more the exception that we weren't covered on C-SPAN than that we were.

**SCOTT:** When you first came to the Senate, of course, in '79, C-SPAN was not there and didn't arrive until 1986. Do you have a sense for—

**GUSTITUS:** Was it 1986?

**SCOTT:** Nineteen-eighty-six. Do you have a sense for how C-SPAN coverage changed the institution? I mean, you spoke a little bit about it just there in terms of the hearings, but do you have a sense for how it change the floor proceedings, for example, or things like that? Do you have an opinion about it in general?

**GUSTITUS:** I was very against television coverage of the floor. Not of hearings so much because we had the Watergate hearings. Those were televised. I don't know, hearings just seem like a different animal to me than the floor. But the floor, I was

concerned about people just going down and wanting to be able to have 30 seconds for their own back home TV station and saying things that they otherwise didn't need to say or were inappropriate or misguided the debate. It wasn't really something that anybody needed to pay attention to, but it was just a way for that person to get on their local evening news.

To some extent, I think that's happened. I think that's real. I think members go down and say things that they want to just promote back home, and to see themselves on C-SPAN, because they're not active in some other way. I guess, in retrospect, everybody seems to have adjusted. I suppose more goes on in the cloakroom now than went on before. A lot of the conversations might be taking place back in the cloakroom than they did before. It's something that was inevitable. It's just something we had to live with. It's certainly better than the squawk box. I mean, having staff have the squawk box was not a very satisfactory experience, and we did need to follow what was going on on the floor.

**SCOTT:** So did C-SPAN change your ability to do that? I'm sure it was much easier.

**GUSTITUS:** Yes. But I think C-SPAN has been fabulous with respect to hearings and committee work, because that's where so much of the work is done. It's more real than the floor. You don't go to a hearing—they do give prepared speeches—but once you get past those, you're into the Q&A and things really happen. It's more real. You learn more, I think. It's more spontaneous. The witnesses have to answer these questions. I think it's great that we have the hearings on C-SPAN. I'm 100 percent supportive of that.

**SCOTT:** What was your relationship with Governmental Affairs as staff director for one of the subcommittees? Did you work on investigations at the Governmental Affairs level ever?

**GUSTITUS:** The only one we worked on was on campaign finance reform. That was when Thompson was the chair and Senator Glenn was the ranking member, and that was this big, big investigation that we did. And so much of our work, almost all of our work at that time, was done just being involved in that campaign finance investigation.

**SCOTT:** What prompted the investigation?

**GUSTITUS:** Well, Bill Clinton was pretty much offering stays in the Lincoln bedroom at the White House to big campaign contributors and it had the smell of a quid pro quo. "If you contribute, we'll put you up in the Lincoln bedroom." There was a lot of

that going on, on both sides. But that was pretty visible. I think Tony Coelho, do you remember him? He was a congressman from the House. He was a Democratic congressman. He was very involved in campaign contributions. At some point, Tony Coelho, he came up with some novel ideas about how to raise money [laughs]. It became a free-for-all. Everybody just started to—in the '96 campaign in particular—just raising crazy money by offering access to members, on both sides, really. But the Democrats were pretty visible because Clinton was in the White House. [Albert] Gore [Jr.] was making calls from the White House to people to raise money. It was not a pretty picture. It really wasn't. The Republicans saw an opening to embarrass Clinton and the Democrats, really.

This was also just the rise of huge money. It wasn't even just who was asking. It was just so much money. Members knew they were starting to ask for huge sums of money. So much of the members' jobs were asking for money. Everybody was asking for huge sums of money. We were asking for soft money. There's hard money and soft money. Hard money was direct contributions to your campaign. But it was all this soft money for these fake election commercials where it was supposed to be issue ads, but they were really about candidates. There were huge, huge amounts of money. So anyway, was [Trent] Lott [R-MS] the majority leader at the time?

**SCOTT:** I believe he was.

**GUSTITUS:** I think Lott and the Republican leadership decided that it would really hurt the Democrats if they came up with a hearing on campaign finance of 1996. So they said it was the "campaign finance investigation of the 1996 campaign." It was supposed to be bipartisan. Did we go over this?

**SCOTT:** We talked about it the first time we met.

**GUSTITUS:** Glenn was the ranking member. Glenn was all in, because he was disgusted by the money. We all thought it was going to be this great bipartisan investigation. It ended up Thompson, the first hundred subpoenas he issued without consulting anybody, were all to Democrats. It turned into a very partisan investigation. A lot of money was spent on the investigation. They had a lot of staff. They had a special staff for the investigation and a special staff director just for the investigation, and a lot of travel money to bring people in and to fly around the world to investigate foreign money as well. The Democrats had obtained campaign contributions from foreign-born citizens, which is not appropriate. The Republicans had examples in their attic also of odd foreign-based contributions.

It was intense. We were just constantly digging, digging, digging. They were digging into all the Democratic incidents and we were actually genuinely interested in the Democratic incidents as well, but we also wanted to expose the fact that it was the Republican side as well. We kept bringing up the Republican examples. Because of the way the committee rules are, we had the right to have the witnesses that we asked for. We were able to expose Republican improprieties as well. But there were a lot of really embarrassing and bad examples of inappropriate fundraising.

**SCOTT:** On both sides?

**GUSTITUS:** On both sides. It was really egregious. Back, I think in the early '80s, I remember, Senator Lloyd Bentsen [D-TX] had established something called a "breakfast club." I think, for \$10,000, it came out that for \$10,000 you could have breakfast with Senator Bentsen. That was what he did. He had this breakfast club. When it came out, everybody was appalled. It was horrible. You can't do that. That's not right. He stopped it, as I recall. Well, by 1996, that was a "nothing perk." Of course you'd have a breakfast club and \$10,000! I mean, how else would you operate? That's how far we had come in about 10, 15 years of actually having some shock over something like a breakfast club to, oh my God, you could sell anything for anybody, and everybody was buying access like crazy. It was awful.

So what happened as a result of it was the Republicans issued a huge report on all of the findings on the Democrats and we couldn't sign that. We couldn't go along with the fact that they'd left out all of the Republican examples. We wrote a huge minority report on the Republican examples. That's unfortunate, because it really should have been a bipartisan effort. But it also broke apart because the Republicans never wanted to do serious campaign finance reform. They don't believe in it—and Mitch McConnell [R-KY] is clear that they think it's unconstitutional to limit money in politics. We wanted to limit money in politics. So we were really going down two tracks anyway. The recommendations probably would never have been the same because that's not where they were. It was a very brutal investigation on both sides. It was not a happy situation.

**SCOTT:** And your subcommittee staff was involved in some of the investigation at the Governmental Affairs level? How did that work?

**GUSTITUS:** Yes. Carl Levin was really Glenn's right hand member on this and he is a lawyer. Senator Glenn is not a lawyer. They really valued having Senator Levin on the job. Glenn hired his own special staff for the campaign investigation. In Congress, whoever hires you, that's where your loyalty is. It's not really all that comfortable for Senator Levin to use Senator Glenn's staff, as much as he may have respected his staff.

It's not your own staff. You just don't have that confidence that you need, or that ability to just call on them at will and give them direction. He used me and Elise Bean. Yes, a lot. We both got heavily involved in that. Then we would be part of their strategy session. It was the Democrats, but especially even with just Glenn and Levin, we would be called in to work with Glenn in deciding how to respond to certain situations.

**SCOTT:** Political situations?

**GUSTITUS:** Yes, what to do.

**SCOTT:** Is that the first time that you had seen that level of disagreement or partisanship with the writing or issuing of a report?

**GUSTITUS:** Yes, in Governmental Affairs, yes, because we didn't have that many situations where there was a lot of antipathy between the two sides in Governmental Affairs. Again, I was there in the good years. A lot of the good years where we were still thinking government mattered and that government was okay [laughing], both Republicans and Democrats. You know, it's evolved. It took the Reagan Revolution a little bit of time to actually sink in that they were actually against government. Then you really have a hard time negotiating because if one side believes that government has a really good, meaningful purpose, and the other side doesn't, then you don't even want government. You're so far apart. For the early years, everybody thought that government was valuable, and so we were all just trying to figure out how to make government more effective. Do you know what I mean?

Then something ran off the track and do you remember Grover Norquist said, "Well, we should just flush government down the toilet"? And that kind of resonated with the way a lot of the attitudes were on the Republican side. That's really hard to negotiate with.

**SCOTT:** What was the role of leadership in the process of oversight? Did the leaders, to your knowledge, ever try to rein in an investigation or change the course of an investigation?

**GUSTITUS:** Not much. I think on the campaign finance investigation, that's probably the one that had the most leadership involvement. It did, in fact. I know it did. It certainly was initiated, my understanding is, on the Republican side, from the leadership. Thompson was told—they were going to maybe create a new committee for it, a special committee, but they said, no, Governmental Affairs, we'll give you more money, you do it. Fred Thompson will do it. On the Democratic side, Senator [Tom] Daschle [D-SD]

assigned a staff person to the investigation. He was in on the meetings with us, Glen Ivy, because it was viewed as contentious and dangerous and needed watching. That's the first time that's ever happened on an investigation in which I was involved. It was also because it was unique. It was a Governmental Affairs Committee investigation, but it really, because we hired special staff for it, it had its own special status.

**SCOTT:** Right. It's like a special committee in some sense.

**GUSTITUS:** Yes, it was like a special committee in a committee. Daschle's person was in on almost everything.

**SCOTT:** There have been times, in the history of the institution, when the Senate has decided that it needs a special committee to investigate a particular issue, like Watergate or like the Truman committee, which then grew into PSI—

**GUSTITUS:** Or Iran-Contra.

**SCOTT:** Or Iran-Contra. But that seems to be happening less frequently, let's say, in the past 30 years or so. Do you have a sense for why that might be? Is it because Congress has the capacity now, with its various committees and subcommittees, to investigate these issues, and it doesn't, therefore, need a special committee? Do you have a sense for that?

**GUSTITUS:** No, I don't think it's because the capacity has increased, because I think it's about the same. Why has that happened? I was going to say it seems like it's too much work, in a way. To have a special committee, you have to start from scratch with staff. You've got to get staff directors. It's an add-on to members' jobs. They don't give up their committees. They have to go and add another committee. They're fundraising all the time now. Life's changed. They're doing so much fundraising. I don't know. My take on it would be it just seems like too much work to do a special committee. They were talking about doing it for Benghazi, which it doesn't seem like it's worth that to me. It's not at that level. But I think it just seems like a lot of work, and it's a lot of money. You've got to hire all new staff.

We did do it for big things, and probably if some huge thing comes along, we might do it again. When you think about what it was done for, 9/11, Iran-Contra. People have forgotten how serious Iran-Contra was. That was the president violating the congressional law. That report really scolds the president. [Warren] Rudman [R-NH] was on that. It was [Daniel] Inouye [D-HI] and Rudman. If you read that report, it's stronger



than people probably remember. Of course, Watergate. It takes a really big issue to have a special committee.

**SCOTT:** Was there ever any discussion about Enron having a special—

**GUSTITUS:** No, because Enron didn't involve the government. You know, these other ones, 9/11, what did we know? When did we know it? Why didn't we protect America? Iran-Contra, the president is violating a very specific requirement that you don't mess around with the Contras. Watergate, the president is involved in a crime. Enron was a company, so that's very different. The nation isn't at risk. The political system wasn't at risk for that. It is interesting, though, to point out how do we organize for oversight? You know, there's no master plan here in Congress, or the Senate alone, to decide who does what. When it comes to oversight, if you have jurisdiction, you could have, as we did with Enron, four or five committees all investigating the same thing.

**SCOTT:** Is that useful? How do you feel about that?

**GUSTITUS:** I think it's almost impossible to organize Congress. I think in that example it was way over the top. We didn't need that, and a lot of those committees didn't contribute to our understanding of Enron. But it's almost unavoidable. It is unavoidable, practically, because of the way we operate. Committees have jurisdiction. You'd have to have a leader who just stands up and, by custom and practice, says, "No, we're giving this to this committee and this is where it's going to be." You can have that. That can happen. But it has to be important enough for it to rise to that level. In Enron, Enron had to drop its documents—they mostly did their documents by CDs—at four or five spots. They'd get a subpoena and they'd say, "Well, we'll give it all to you then." The next subpoena, "Well, we'll give you all the same documents." They were dropping documents off all over the place and making their people available for interviews. No, it's not the most efficient way, but unless the leadership steps in and just by the power of the leader says, within their own body, "We're only going to do it in this one committee," then anybody can do it. In Enron's case, it was both the House and the Senate were doing it. I know of no history where the Senate would defer to the House doing a hearing, or the House would defer to the Senate doing a hearing. Do you?

**SCOTT:** No [laughs].

**GUSTITUS:** No. We're our separate bodies with our separate responsibilities.

**SCOTT:** A compromise, maybe a joint committee, but they rarely do that.

**GUSTITUS:** Exactly.

**SCOTT:** I think that's a good place to stop.

**[End of Third Interview]**