

LINDA GUSTITUS
Interview #4: Personalities and Power
December 10, 2012

SCOTT: Welcome back, thank you for being here.

GUSTITUS: Thank you.

SCOTT: Maybe today we could start with a question about technology. We like to ask staff how the technology changes that they experienced during the course of their tenure here changed their work here. I wondered if you had any comments about that.

GUSTITUS: Phenomenal. It's just a phenomenal change. When we started we had IBM Selectric typewriters. We thought self-correcting was about the greatest thing in the whole world, where you had that little tape inside the typewriter that automatically corrected your typing. We had mag card machines for reports.

SCOTT: Can you describe that? What is a mag card machine?

GUSTITUS: A mag card machine was similar to a computer. We used them only for large written products. You had your secretary—secretaries had to do a lot of this work—who typed the report into the machine. The machine punched what was typed onto cards and then the cards were run through a machine to make a copy and the cards were delivered or the mag card machine was connected somehow to GPO so they could print the report from that. That's how we did our reports. It was very labor intensive, but you could make corrections. Secretaries were really important because they did most of the typing. Members used Dictaphones then, to speak into a Dictaphone and do letters and then they would be taken off of the machine by the secretary and typed up. I suppose some of that still happens, but it was typewriters and these mag card machines that we lived by. I recall the mag card machines because our chief clerk had to type up these reports using the mag card machine.

A couple of other things. One, all constituent letters had to have three copies, a pink, a blue, and a yellow. Those were carbon copies.

SCOTT: And where did they go?

GUSTITUS: Those would go in different files. One would go back to the state to show that we had written this letter. That's like a physical mailing back to the state of a

copy of the letter that we wrote to the constituent. One would be filed by alphabet and the other would be filed by issue. Every time you did a letter you literally would have to make this little package. It's funny to describe it because it sounds so antique, doesn't it?

SCOTT: [Laughs] It wasn't that long ago.

GUSTITUS: It wasn't that long ago. You take this little package of the letterhead, a piece of carbon paper, blue paper, piece of carbon paper, pink paper, piece of carbon paper, and yellow paper. Package it up, put it in your typewriter, scroll it up, and then you type your letter. When you made a mistake, before the self-correcting Selectric, you had to put that little piece of white tape in and go backwards and then hit the key again to try to white it out. With the self-correcting Selectric, it had a little button where there was a special white tape built into the typewriter that you could go back and it would white it out for you. But your carbons never had that, so if you were a really bad typist your carbons had these spots where literally a single letter of the alphabet could be hit three times on top of each other. The carbons could be very messy. Then you had white out, which was this little bottle of white paint. If you made a mess on something and the letter was all ready to go you would just white it out and type over it. It was really challenging.

To share, to edit things, you had to edit them from a hard copy. To edit a report, you would physically take it around to the staff. You would circulate it, and people would write their edits on it. The final copy would go to our secretary who would put it into the mag card machine and make the final copy of it. That's how I remember it was done.

With the computer, it just changed everything. First of all, productivity just soared. Everybody had to become a typist, basically. So everybody types. The chief clerk only had to, after the final document was sent to her, put it on a letterhead and print it out. We could share copies of things. We could edit each other's work without having to print it out.

SCOTT: Do you recall when you began to use the first computers on the subcommittee?

GUSTITUS: That's a good question. It wasn't in the early '80s. I think even [when we moved to the Hart Building] we were using mag cards. It was probably mid- to late-'80s, maybe?

SCOTT: I suppose when you received your first computer you only had one?

GUSTITUS: No, I think we all had computers. But the software was challenging. You know how you had to do searches? There was the whole concept of doing a search through THOMAS.¹ We used THOMAS but it was the first THOMAS version, and doing searches was so hard because you had to format it in such a way that you had to put things in parentheses so you could chain words together so that when it searched you made sure that these two words—like “legislative veto” were connected so you wouldn’t get all the “legislative” hits and the “veto” hits. You couldn’t just put in “legislative veto.” It would be legislative veto and FTC plus—we had a little sheet that told us, if you are going to do a search this is how you have to do it. If you didn’t use “and” and used a comma instead, or if you left out the parenthesis, it didn’t do the search right. You had to work at developing a skill to do a good search at the beginning of THOMAS.

Now it’s just so phenomenal. You go to THOMAS, you type in a couple of words and it gives you all of these options. Google is beyond comprehension. We didn’t have either of those. We used the libraries a lot. Obviously we didn’t have WestLaw and Nexis and so you literally walked up to the Senate Library in the Capitol, which had one of the best locations in the Capitol with this beautiful circular window overlooking the mall, and you’d go up there and get your case, whatever you needed. Or you’d go to the Senate legal counsel’s office for cases. It was very physical. You had to go get things that you wanted to see or read. They weren’t readily available online. That took time.

SCOTT: You relied heavily on the support of the research librarians, I imagine, to find things.

GUSTITUS: Yes, that’s a good point. We would call up a research librarian and say, “We need x, y, and z,” and then they would go into the stacks or whatever it was and make copies of it for you or get you the books. That was very helpful.

Then, of course, there was that squawk box.

SCOTT: Right, we talked earlier about going from the squawk box to the television.

GUSTITUS: We didn’t know who was speaking unless—well we did because we learned the voices.

¹ The Library of Congress THOMAS site was the source for federal legislative information: <http://thomas.loc.gov/home/thomas.php>. THOMAS has been replaced by Congress.gov: <https://www.congress.gov/>.

SCOTT: What about the televising of hearings and the Senate floor activity. Did that change your job in any way or change the way that you went about your business on a daily basis?

GUSTITUS: Not really. For me that did not change that much. I didn't see any major change in the subcommittee or in Senator Levin's office in terms of using the floor in a different way. Every once in a while there would be a time when we would want to take a statement to the floor so we could notify the news back in Michigan to take a piece of that for their nightly news. But it was not that often. I don't think that changed too much for us. Also for us, when we were doing hearings, the networks could come in anyway, to our hearings, so that was TV, so they were still available. What happened with C-SPAN, I think we talked about that before, was a dramatic change with their gavel to gavel coverage of hearings. The concept of a feed happened when you didn't have to have a gazillion cameras in the hearing room and there was one feed camera, which helped a lot. I don't think they still do this, but you'd walk into a hearing room and there'd be 10 TV cameras, which were big on the stands, and they took up half of where the staff sat. So we'd be climbing over and under and around and through all these TV cameras. I think that's changed because they have this feed capability.

SCOTT: You mentioned in a previous interview that you thought that the Iran-Contra investigation hasn't been given its due. I wonder if you want to say something about that.

GUSTITUS: We were talking about commissions and how Congress creates special committees and whether they are successful or not and what's a really good route for that. I was also, after I retired, appointed to the Wartime Contracting Commission. Your question gave me some time to think about my attitude towards these commissions and these committees. I have a mixed reaction. I mostly think it works best if Congress does the work because these are members who know the political milieu. Inevitably on some joint committee, or special committee, there are members who have been around here a long time. They understand agencies, they understand how you get information from agencies. They have experienced staff people for the most part which is hard to get. So you don't have some new person who is heading up a commission who has never done that before. I think the experience is a really important element in conducting these major investigations. I think if you look back, Watergate was hugely successful, obviously. I think the 9/11 Commission that Congress used itself was quite successful. This Iran-Contra committee was terrific.

It's interesting because the Iran-Contra report, a lot of people aren't really aware of what great work was done by this committee. Most people remember Iran-Contra for

Ollie North and the comment by his attorney, "I'm not a potted plant," and the fact that he got immunity to testify. It was chaired by Daniel Inouye and Warren Rudman, they were co-chairs and Rudman was a Republican and Inouye the Democrat. Very much like Watergate, the two parties came together and just decided to get the facts and let the chips fall where they may. That's what happened in Watergate and that's what happened in the Iran-Contra investigation. I brought the report with me because I wanted to share how strong it was. Now this was when Ronald Reagan was president. Everybody knows how popular Ronald Reagan was, particularly after he left office. During office people praised him, and he's considered one of the great presidents. [I don't personally share that opinion, by the way, I should add.] The Iran-Contra affair was a crisis almost at the level of Watergate in his administration. They called Ronald Reagan the "Teflon president." It's in part because of his lovely personality that he escaped, I think, the black mark of history that he deserved from Iran-Contra. But the record of the Iran-Contra committee report tells you what he did, which is basically he and his staff lied to Congress, lied to the American people, and broke the law. It's basically as clear as that on a very important foreign policy matter. To read from the executive summary, at one point here it talks about that President Reagan had this news conference involving Israeli sales of weapons.

The president was asked [reading from copy of report]: "Mr. President, are you telling us tonight that the only shipment of weapons with which we were involved were one or two that followed your January finding?" And the president replied, "That's right. I'm saying nothing but the missiles were sold." The report says, "In fact, however, the Israeli sales including the Hawk shipment were implemented with knowledge and the approval of the president and his top advisors and the president himself." That's clearly stating that he lied. It's only one example but at the end, in the very end of the executive summary it says:

The ultimate responsibility for the events in the Iran-Contra affair must rest with the president. If the president did not know what his national security advisors were doing, he should have. It is his responsibility to communicate unambiguously to his subordinates that they must keep him advised of important actions they take for the administration. The Constitution requires the president to take care that the laws be faithfully executed. This charge encompasses a responsibility to leave the members of his administration in no doubt that the rule of law governs. Members of the NSC staff appeared to believe that their actions were consistent with the president's desires. It was the president's policy, not an isolated decision by North or Poindexter, to sell arms secretly to Iran and maintain the Contras body and soul the Boland Amendment notwithstanding. To the NSC staff implementation of these policies became the overriding concern.

That's really strong language. I'll read just one more:

The president himself told the public that the U.S. government had no connection to the Hausenfuse airplane. He told the public that early reports of arms sales for hostages had no foundation. He told the public that the United States had not traded arms for hostages. He told the public that the United States had not condoned the arms sales by Israel to Iran when in fact he had approved them and signed a finding later destroyed by Poindexter recording his approval. All of these statements by the president were wrong.

And it ends by saying,

Fifty years ago the Supreme Court Justice Louis Brandeis observed our government is the potent, the omnipresent teacher. For good or for ill it teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker it breeds contempt for law. It invites every man to become a law unto himself. It invites anarchy. The Iran-Contra affair resulted from a failure to heed this message.

That is about as powerful as you can get. This was a bipartisan investigation by Congress and that was the statement they made in their executive summary about Ronald Reagan, the president, a very popular president. But what he did was he lied to the American people and he basically engaged in a crime. He violated the law. Now there was no criminal penalty for violating the Boland Amendment, but there is always a penalty for lying to Congress, it's a crime to lie to Congress.

When Congress does it right, it can do it very powerfully. It has done it right. Everybody is so down on Congress right now because it's such a mess. But there's a very powerful history of really fabulous work in Congress and it occurs when both parties take two reasonable people, as leaders, and put them on a committee and they can come up with the facts. Which is what this did, the Iran-Contra committee basically came up with the truth, which is what good—we talked about this earlier—which is the responsibility of good oversight. In this case, they both agreed with the conclusions, the results of the facts, the interpretation of the facts – that what the president did was wrong and that it violated law, and that it offended the values of our Constitution and our government.

SCOTT: Do you think that good oversight needs to have a legislative component to it? In this case, for example, were there legislative achievements that we can point to that resulted from the hearings?

GUSTITUS: No, this wasn't an investigation for legislative achievements. Out of Watergate, of course, came campaign finance reform and a number of very important laws. I don't think much came out of Iran-Contra, it was more exposure. That is a responsibility of Congress, by the way, to enlighten the American people as to what is going on. It wasn't outside of its responsibility in doing so without a legislative achievement. The legislative link there is whether the Boland Amendment was followed or not. Mostly it was compelling that the American people learned the facts about what President Reagan and his advisors had done. It was really almost at the level of Watergate in cover-up, destroying records, violating the law.

SCOTT: Do you remember having conversations with other staff at the time during the hearings about what was going on? For example, we had staff who were here during Watergate talk about how the institution felt during the Watergate hearings and investigation. There was a lot of tension and people were riveted by what was going on. I wonder if you have a sense for that with Iran-Contra?

GUSTITUS: Yes, I think people were clearly watching the hearings. When North came and testified it was a moment that a lot of people remember in terms of congressional testimony, although what people take away from that is that North won that debate because he was so arrogant and without remorse or guilt. He was basically, "Whatever we did, we were on the right side of things. We did break a law, and who cares." I think people were engaged in it. I think it's this attitude towards President Reagan, which is, "He's such a good guy. He's probably doing it for the right reason." Whereas with Nixon, nobody liked Nixon personally. He was a really unlikable person. Reagan had this reservoir of goodwill, and I also think that people did not want to see another president resign. Truly, he could have been impeached for what he did. The Republicans didn't hesitate with Bill Clinton but I think when Reagan was there, what was this? I think it was '87?

SCOTT: It was '87 because Democrats had just gained the majority again [in the Senate].

GUSTITUS: People didn't want to have to go through it again, I think. The Republicans were sure willing to with President Clinton—of course, he was not convicted. But with Iran-Contra, I think Congress didn't want to take down another president.

SCOTT: I'm glad you added that.

GUSTITUS: To compare it to the current issue, this doesn't have the same weight as Iran-Contra and Watergate, but Congress has been faced with the enormous expense going on in two wars in Afghanistan and Iraq. A huge percentage of our money being spent in those two wars is going to private contractors. This is really the first time that Congress faced the reality of a war that was basically contracted out, but for the soldiers themselves, the war fighters, as they call them. So much of what was being done in Iraq and Afghanistan was being done by private contractors. We used to have soldiers who peeled potatoes, remember those are the famous pictures: "You've got to go peel the spuds. You've got toilet duty." All that changed, that's not what we do. Now the war fighter is all about just killing the enemy and we're going to provide him or her with services for everything else. I'm sure the contractors had a lot to do with convincing the Pentagon to go that route. We ended up contracting out all the food service, all the cleaning, all the building, all the construction. We used to have Seabees, who did a lot of construction in World War II. We had enlisted people who built things. That's not what we do, this is all contracted out.

We also contracted out our security to the point that we were protecting our bases not with our own soldiers but with private security guards. We use a private contractor to protect the perimeter of the camp in Afghanistan or Iraq where our soldiers are housed. The whole concept here is that the only thing we want the soldiers to do is go kill the enemy, that's it. The rest is all going to be private contractors. Well, to do that everybody sees dollar signs, of course, who is remotely involved in this kind of work. And it's all over there. So you don't have a lot of the contracting infrastructure that is here. A lot of federal employees, now civilian employees have to go over there because they have to monitor these contracts, or award these contracts. It created the perfect opportunity for people to rip off the government, massively, and at huge expense. Congress had the smarts to see that things were not going well. KBR, if you remember, there were some big stories about massive fraud going on and big problems going on, and with Blackwater, which was the private security contractor whose employees were engaged in killing Iraqis in several cases unjustifiably, in my opinion.

Congress decided they had to deal with it, they had to get a handle on this contracting. Now in my mind what they should have done is have the Armed Services Committee or the Governmental Affairs Committee create a special committee or be given more money for one of their subcommittees or the full committee and be told, "Dig into it. Get to the bottom of it and let's see what laws we have to change and what procedures we have to change to stop the waste." Instead Senator [Claire] McCaskill [D-MO], who is a wonderful senator, and Jim Webb [D-VA], totally well-intentioned about trying to get to the bottom of this, decided to go with what they said was something like the Truman Committee from World War II—which was a very successful effort to

address defense contracting fraud. [A big difference, however, was the fact that the Truman Committee was a Senate special committee created by the Senate and consisting exclusively of senators to look into defense contracting fraud.]

SCOTT: It was a special committee.

GUSTITUS: Truman's committee was a special committee that was the forerunner of the now Permanent Subcommittee on Investigation, by the way. But at the urging of Senators McCaskill and Webb, Congress decided to create a freestanding Commission on Wartime Contracting, essentially housed in the executive branch. They selected a blue ribbon panel of outside people and appointed them. It was one of those things where the House Speaker could appoint three, and the Senate leader could appoint three, and I think the president probably was able to appoint a couple. I got appointed because I had done oversight, I was retired, and Senator Levin knew of my work. It was supposed to be a two-year commission. It took a long time to get started because the Republicans couldn't find a co-chair. They had trouble figuring out who their co-chair was going to be. One of the people who wanted to be co-chair was actually in charge of contracting for the army, somebody who was appointed to the commission. It was a significant conflict of interest. We got through that and he resigned and eventually Chris Shays came on as the Republican appointed co-chair. He had just lost his election in Connecticut. The former deputy of the DCAA was named as the Democratic co-chair.

SCOTT: What's the DCAA?

GUSTITUS: I'm sorry, the Defense Contract Audit Agency. We ended up having to, to do this commission, set up a whole office, get a whole new staff, get computers, get everything. The expense in starting something like that is significant. Hiring staff to do that work, it ended up we hired a fair number of retired people. You're paying really good salaries, because it's a short, two-year thing. But it was probably the worst staffed organization that I've seen in terms of accomplishment and leadership. We had some good people, junior staffers, who did some good work. But they were really limited by the direction and the focus at the top.

We had a couple of hearings, we had a couple of good hearings. To me the issues were obvious, it didn't take a lot of digging to come up with what was wrong with the system. DOD didn't do a good job of writing requirements in contracts. They wrote bad contracts. They shot from the hip. They didn't do the kind of quality work that a contracting officer is supposed to do, which you would do back here. You had an incentive to hire locals. Those countries didn't have many good companies that could do the work. So you're kind of running a small business program over there at the same time

you are trying to win a war and save money. There were so many pieces to it that just don't work.

Basically the message to me was that we should have never engaged in nation-building in the first place. There were so many examples of the kind of crazy things we did like build an enormous water purification system in Iraq that they didn't even want and couldn't staff. It was so sophisticated nobody in the country could be hired to run it because they didn't have the skill sets. It was only half staffed at some point. I'm not giving you all the details but I'm giving you the gist of this. In the meantime they already had an inspector general for Afghanistan and an inspector general for Iraq. Well they had an inspector general for Iraq, first of all. And then a couple of years later they got an inspector general for Afghanistan. And the inspector general for Iraq was doing a fabulous job uncovering details. He had staff over there and he could use military people. He was in great shape.

To me the commission was just a waste of time and money and not necessary. I think the Senate or the House could have done a really good job themselves and come up very clearly with what the recommendations are. Plus, contracting is probably the least political kind of issue. It's not like the fiscal cliff, where you've got these incredibly strong opposing ideological views of how to solve a problem. This is contracting. The issue is how do we do it better. On the scale of political contentiousness, this is way at the bottom. That's another reason why I think the Senate could have done it. It ended up that the commission—I voted against this—but they voted to add another year to their life. I just didn't support it. I just didn't think that that was—

SCOTT: Because you felt the work had been—

GUSTITUS: I thought it was unnecessary. We could have easily done it in two years. They set up big operations in Afghanistan and Iraq. I thought that was also unnecessary. It was more like we were bothering people in a war zone, instead of just getting in and out and doing what we needed to do.

People have said in the past to me, "These commissions, you're kidding. It will just be a report that sits on a shelf. They are just a waste." I didn't really believe that, which is why I signed on to this. I thought, we'll try to make this one work. But in the last analysis—and I think their final recommendations are fine—I think the work could have been done easily by a Senate or House committee and with much less fuss and much less cost. Iran-Contra was actually very political because the issue was the president, yet it was done by Congress itself.

SCOTT: What kind of challenges did you face on the commission that you may not have faced if you had been on a committee here?

GUSTITUS: That's a good question. That was really the heart of the problem. When you are in Congress, there is no bureaucracy, basically, especially if you have the confidence of your member. For me, I would consult Senator Levin's AA [administrative assistant], but if we disagreed or it was important to me, I could go to Senator Levin directly on anything. When we wanted to move on something, when we wanted to interview somebody, I didn't have to ask anybody. If I wanted to get to the bottom of an issue, I could go do it. I talked about this earlier—that on oversight, you want a staff person who is so curious they want to get to bottom of an issue. "Let's do it now." You don't put it on your to-do list and say, "Okay, on Friday." No, if you are so curious, you are going to call that person and get a hold of them. When you are in Congress, people basically, for the most part, pay attention and respond to your calls. With the commission, I was just dumbfounded at how bureaucratic it became. It was largely run by people who had been in the executive branch for years.

SCOTT: Very bureaucratic?

GUSTITUS: Very bureaucratic. I was shocked that there were these protocols that had to be established and there was this hesitancy. "Should you really call the State Department at this point?" "I don't know, let's move through this. Let's do this." It was so surprising to me because my attitude was what I brought from Congress, a legislative body. There, when we want the information, we want it now. This is what you do. But that's not how that commission operated. It was more like, the staff would say, "We've asked the State Department and no, they haven't gotten back to us yet. They said they've got to send it up." That's just not what would be acceptable for me working for a Senate committee. I think you nailed the biggest problem I had was the attitude of the leadership. If the staff people had been told, "Go ahead, get the job done," maybe they would have done it. But there was this cautious imprimatur of leadership that you have to go through channels. You have to take it step by step.

SCOTT: Access to documents was an issue?

GUSTITUS: Yes, we used to wait and wait. Yes, that was the biggest frustration. I had just never seen anything like that where you are doing oversight. It's an investigation, and you don't treat yourself as if you are the biggest kid on the block and that you have a right to this information. The commission was largely congressionally appointed. It was created to get this information. I used to tell the staff, if they are asking an agency, "You tell them that getting us this information is the most important thing that

they can do right now. We've got a congressional mandate to find out what is going on." But it didn't work very well.

SCOTT: Did you travel to Iraq and Afghanistan?

GUSTITUS: I did not. Other people did. I don't like to travel much anyway. But I didn't like the idea that we came into a war zone and asked questions about things that we really could have found out back here. It seemed like a big distraction—taking people's time and energy. You know how those visits are, especially in the military, they overreact. They'll give you nameplates and they have special parking spaces for you. They give you special food. I just don't like that. I didn't want that.

SCOTT: Did you hire your own staff as a member of the commission? Did you get to select staff?

GUSTITUS: No, I got to recommend staff. And several of the people I recommended were hired, but the co-chairs hired the executive director and then the executive director hired staff with the co-chairs.

SCOTT: You didn't vote to continue the commission for that extra year. Did you stay with the commission through its entirety?

GUSTITUS: No, I did leave. I decided that it was not where I wanted to spend my time.

SCOTT: Where was the commission physically located?

GUSTITUS: The commission used offices provided by the Department of Defense in Arlington, in Rosslyn, in one of their buildings. Some other entity had been there before us. DOD rented space in this building, and we got an available office.

SCOTT: Did the investigation proceed as a congressional investigation might? Did you have the same kind of meetings? How did you work on a daily basis on this commission?

GUSTITUS: The commissioners had a choice of either working full time there or being paid for meetings or hearings or visits, the extent to which they did participate. The staff was full-time. I was encouraged to try to be present full time. I did try that for a while with an office there and try to oversee the work and be involved in it. Honestly, it

was just too frustrating. I couldn't, I didn't have the authority apparently. I couldn't get my hands around the work, it just didn't happen.

SCOTT: What did Senator Levin think? Did you ever have conversations with him about the decision to do the commission?

GUSTITUS: I don't think he supports commissions that much, period. I don't think he was surprised when I told him that I didn't think it was the most successful commission.

The base closing commission [Defense Base Closure and Realignment Commission, BRAC], I think people would say, was fairly successful. That was more because of the requirement that they put into that legislation that whatever that base closing commission came out with, Congress basically had to accept it. There were all these hoops in order to avoid it. But it was pretty strong medicine. They set themselves up, Congress did, to put themselves in a corner on the base closing commission.

SCOTT: They would have to act on the recommendations.

GUSTITUS: Yes, and I think they picked staff that were pretty familiar with how that whole system operated. I don't know enough about it, but that's my impression.

SCOTT: In 2001 you became the staff director for PSI. I wanted to talk to you about your decision to move to PSI. How did that come about?

GUSTITUS: The way subcommittees work on Governmental Affairs is by seniority. You get to pick your committee, your subcommittee, by how senior you are. Senator Levin was senior enough to be chair of the Governmental Affairs Committee. But he was also senior enough to be chair of the Armed Services Committee. He chose to be chair of the Armed Services Committee, but then he got to choose the subcommittee on Governmental Affairs that he could chair. The best subcommittee for him and for anybody on that committee if they know what they are doing is the Permanent Subcommittee on Investigations. That's how we got it. When Senator Roth was chair of the full committee he chose also to be chair of the PSI subcommittee and that goes back to what I was talking about, personalities and power.

SCOTT: Senator Levin didn't make that choice.

GUSTITUS: Senator Lieberman was after Senator Levin [in seniority on Governmental Affairs, and he became the chair when Senator Levin chose to chair

Armed Services.] But if Senator Lieberman had chosen to take over PSI as well as to chair the full Governmental Affairs Committee, he ran the risk that Senator Levin would say, “I’m going to take over Governmental Affairs, then.” It’s all very complicated when you get into these chairmanships. Senator Levin had wanted to chair PSI for years because it’s such a powerful subcommittee. It was a no-brainer to choose to chair it.

SCOTT: You wanted to do that? Did he ask you to move?

GUSTITUS: I was always going to be his staff director of whatever subcommittee he had. I had moved, we started at OGM, then we went to that Federal Services, Nuclear Proliferation subcommittee, he got that at some point. I guess we went back to OGM and then we had PSI.

SCOTT: That 107th Congress is a strange Congress because you had that delayed, or prolonged organizing resolution period. You were going to have this even split in the Senate that was going to be broken by the vote of the vice president, who was Al Gore for that two-week period and then when the new administration came in, Dick Cheney was the deciding vote.

GUSTITUS: Right, so we were chair for a while and then we weren’t chair.

SCOTT: Right. Then in June when Senator [James] Jeffords [D-VT] makes the switch, the Democrats gain the majority again. Do you want to say anything about that period? I know that the organizing resolution itself was different in that it provided equal office space and equal staff and equal money for these committees and the built-in trigger where if one of the parties gain a majority then that will cause a new reorganization, which actually hadn’t happened in other Congresses when there had been a 50/50 split. Do you remember anything about that organizing resolution and how it impacted PSI?

GUSTITUS: A staff director is always concerned about money. Money is staff. Money is opportunity. Money is power. That’s the ticket you need in order to be able to do really good work. Throughout that period you are always worried about, what is it doing to my staff? Can I get more staff, do I have to fire staff, what is going to happen to my staff, is there a way I can increase staff? As I recall, the 50/50 split was an increase for us, which was a good thing. After that, I don’t remember that we went back to the one-third, two-thirds divide in money that we usually had. I think after Senator Jeffords switched, we still let the Republicans have a fairly good chunk of money because in that subcommittee we were working with Susan Collins [R-ME]. I knew Susan Collins’ staff quite well. There were no ill-feelings there. They do really good work. They were a great staff. It wasn’t much of a contest. There was no bitterness there. We were all just having

to respond to what was going on outside of us. I think we tried to work it out the best we could. We tried to keep as many staff people on as were already there. If we could get new hires, we would, but given the money that was coming to us from the full committee—I remember it more as a positive thing in terms of the 50/50 split than what we had expected.

SCOTT: And PSI has this history of working so well with both sides.

GUSTITUS: Exactly.

SCOTT: Maybe that's why it didn't affect you as much.

GUSTITUS: I think that's definitely why. We have that very explicit requirement in the rules that the ranking member gets to do their own investigation. There is that concept that you are somewhat equal—at least the minority has specific rights and opportunities.

SCOTT: What did you have planned for PSI? As a new staff director what kinds of things were you thinking about doing and what kinds of things were you interested in looking into?

GUSTITUS: The first thing I did, which proved to be a good management tool, was we always had to deal with whatever was going on in Governmental Affairs, at the full committee. Our job was to staff everything going on in the full committee and any other subcommittee that Senator Levin was on. He was on one or two other subcommittees. Governmental Affairs was always doing something, was always fairly active, and Senator Levin liked those issues, so we always had to be using staff time for that. What I decided to do managerially was remove my top people, Elise Bean, Bob Roach, and a couple of other people who were the real oversight lawyers and investigators, and not have them do any work other than oversight and investigations so that they didn't have to do legislative work or other hearings. Before, you would divide it, you take federal employee issues, you take ethics, if this comes up. That's just not how we wanted to spend our time and energy. I really freed up the oversight staff so that nobody was supposed to touch them. Senator Levin couldn't touch them basically, to ask them to follow a hearing or anything. They needed all their time to do oversight.

I can't remember the order of events really clearly except that I think it was a *Wall Street Journal* article that came out. I've always been really angry at wealthy people not paying taxes fairly, a fair amount of taxes, their fair share. I've always been upset that people say, "It's horrible to pay taxes." To me government provides such important

services. Obviously, I don't want my tax dollars wasted either, which is why I enjoyed doing oversight of all these government programs. But when I go to a national park and I get greeted by a friendly and competent national park service person and get to see these magnificent sights, I'm so grateful that there is a national park; I'm so grateful that I get to drive these highways. For wealthy people to escape their responsibilities on taxes has always been something that drove me nuts. We did these hearings on CEO pay, I think we talked about those at some point. It was just ridiculous amounts of CEO pay.

At some point, the *Wall Street Journal* did an article on Raoul Salinas, who was the brother of the president of Mexico, who got \$150 million out of Mexico through Citibank's private banking operation. He was a client of Citibank and this \$150 million was not legitimately earned money. This was money that he got because if you wanted a contract with the government of Mexico, Raoul will help you get the contract but you must give him a good chunk of the action. There was also drug money. We never learned what all the bases were for the \$150 million but he had to get it out of Mexico in order to spend it. I saw that article and that just sent off so many alarm bells to me, that Citibank would have a whole unit to help people like Raoul Salinas get his money out of Mexico illicitly and then call it private banking?

My recollection is that that's how we started at PSI and got into private banking of U.S. banks. It was such a can of worms, it was disgusting. We just kept uncovering more and more awful people, whom these private banks—our major banks like Citibank and Riggs, which used to be a big bank here in Washington, D.C.—were helping all these people have accounts in the Cayman Islands, all of these anonymous accounts in the Cayman Islands, that's where they would hide their money. They would be the pass through. It was all secret. We had cases where a private banker would not even mention the name of the person whom he was a private banker for [because he didn't want to risk disclosing the foreign bank account,] and they put a number on it and he wasn't even allowed to have a sheet that associated the numbers with the names because nobody should know that this bank account in the Cayman Islands set up by Citibank was for whomever, people like Raul Salinas and [Chilean dictator Augusto] Pinochet. Riggs had Pinochet's account. That's how we started the hearings. We really got into these banks and this whole concept of private banking and money laundering. It's essentially money laundering. It's going on to this day. Elise Bean and Bob Roach have done unbelievably great work uncovering more and more and more. Horrible African dictators who were clients of Citibank, or J.P. Morgan Chase. They found that Riggs was the big bank for Pinochet. That's really in large part what brought Riggs bank down and Pinochet's conviction, was the disclosure by the PSI subcommittee of the role Riggs bank played in all of these foreign political figures who were ripping off their countries.

That's where we spent a lot of energy in PSI having hearings. Why we could investigate these banks was because we had subpoena power. That is what opened this up to us. We didn't have to ask anybody about a subpoena. Senator Levin could issue whatever subpoena he wanted to whom he wanted and they had to respond to the subpoena because we had jurisdiction and authority to do it. We subpoenaed all these banks, got all these records about their private clients, and that's really what opened that up.

SCOTT: Just as a contrast, on OGM, in order to get a subpoena for something you would have taken it to the chair of the Governmental Affairs?

GUSTITUS: Actually to the full committee, but of course we would do that by going to the chair first and asking for the chair's support. So, yes, we would have taken our request to the chair. Certainly we couldn't do it by ourselves. Actually, we first would have taken it to our ranking Republican on the subcommittee and get support for it. They could object. If they objected, we'd have to have a vote of the subcommittee. It's not attractive to have a partisan vote on a subpoena. If the subcommittee approved it, we would have had to take it to the full committee. Clearly that was the gift of PSI—you could issue subpoenas directly. I remember that feeling. It was just breathtaking and wonderful.

Of course it's a hugely important power so you have to exercise it carefully. I remind people that PSI is where Joe McCarthy operated out of, because he could do the same thing—issue subpoenas on his own authority. You can use subpoena power maliciously, but you can also use it for great good. That's how we were able to expose these banks. What happened then, when Enron broke, we had been into the banking world and were quite familiar with it. There was this whole issue with Enron about these massively fraudulent financial transactions, financial arrangements that they had engaged in. Everybody else was looking at Enron itself. We looked at the role of the banks in participating in the fraud that was going on at Enron, banks like Merrill Lynch and J.P. Morgan and what these banks did and how they bought into and facilitated the fake financial statements of Enron.

SCOTT: When you do something like that as a parallel investigation to another, Governmental Affairs was also looking into—

GUSTITUS: I don't think it was Governmental Affairs. I think it was Commerce, Commerce was doing Enron in the Senate. The House had three or four committees that were doing it as well.

SCOTT: Would you work closely? How much communication would there be between two committees that were looking into, let's say, similar issues?

GUSTITUS: Not much.

SCOTT: That's typical? Or in this case that was different?

GUSTITUS: Pretty typical.

SCOTT: Why is that?

GUSTITUS: People are very protective of their jurisdiction and when they get into something like that they are doing it in part because they want the big say. They want the attention. And in cases like that, Governmental Affairs, I think, within the Senate, I think it's safe to say the committees of real jurisdiction, substantive jurisdiction, feel that Governmental Affairs may interfere with their work. When Governmental Affairs looks into defense contracting, which they have complete authority and the right to do, the Armed Services Committee isn't so happy with that because that is their backyard. When we looked into Enron, that is also the jurisdiction of the Commerce Committee, you're looking into how a company talks about its stock—what was the information they fed to the SEC to support their stock prices. The Banking Committee and the Commerce Committee think, "What's Governmental Affairs? Do you have expertise? What are you doing with it?" That's part of it. But it's also, people are very protective of their jurisdiction and their authority within their jurisdiction.

SCOTT: Do you think that this concern for what another committee is looking into, does that rise to the level of distrust in some cases? Or is it primarily about jurisdiction?

GUSTITUS: I think it's mostly about jurisdiction, but it can rise to distrust depending on who the players are, who the senators are. Some senator can be more paranoid than another. Or, some senator can be less trustworthy than another. You can have concerns that if you had some very important information that you were to share with them, that they wouldn't handle it carefully and discretely, that they would rush to the press.

Talking about trust, we had a case when we did an investigation in OGM into Wedtech. This was a company that Ed Meese, when he was at the White House, was involved with. We called it Wedtech but the issue was whether Ed Meese was getting special treatment by this financial advisor whose name was Franklin Chin and whether

Franklin Chin, whom Meese invested his money with, was picking winners and losers to favor Meese. We proved that he didn't buy the stock officially for Meese until he knew whether it was going to go up, whether he knew it went up or down. He had a way he could do that. The reason for that was Wedtech was a company that won a contract and Meese had intervened to help get them this contract. This we saw as a payback where they gave Franklin Chin this authority to go help Meese invest his money and to give him financial benefit. We issued a report on what we found, which was not very positive about Ed Meese. We had built it up so we were going to have this big press release and this big press moment and it was going to be announced. Somebody on our subcommittee—and our guess at the time was that it was Senator [Ted] Stevens, but it was never proven, it came out in a way that it looked like it was, maybe it was an Alaskan newspaper, I can't remember. It stands in my mind that it was out of Senator Steven's shop that somebody had leaked it. The reason they had leaked it was because it took a lot of the wind out of our sails. It wasn't like we were announcing this big finding. It was like, "Oh, somebody already reported that." So there are times when there is a question of trust and you can be challenged by that.

SCOTT: It sounds like, based on your experience, that this is the outlier. That you didn't have many cases where you felt like somebody had worked on these oversight committees to undermine strategy.

GUSTITUS: [Laughs] One of my big failings as an oversight person was I was very trusting of people, which is weird because you would think that I would be the person who wasn't. But when it came to members of Congress I gave them the benefit of the doubt. That probably wasn't the smartest thing. I think I learned over time that I had to be more careful.

SCOTT: Senators could be the worst leakers, right?

GUSTITUS: Yes, exactly.

SCOTT: I wanted to talk with you about 9/11, where you were. Your personal experience of 9/11 and then also how the experience of 9/11 and how Congress responded to it may have affected your work on PSI. Where were you on 9/11?

GUSTITUS: I had just walked into my office. The PSI office is on the first floor of the Russell building but it's below grade. I had just walked in to my office and Elise and my whole staff were around the TV. It was around 8:30. They said "Oh my god, a plane just crashed into the World Trade Center. You've got to see this!" So I came to the desk and looked with them and it was unbelievable. I said, "Some pilot must have had a

heart attack, or was drunk, or some crazy thing.” We looked again and it was a big airliner. I had assumed it was a little charter. We were just aghast. And then, was it nine o’clock when the second plane hit the second tower? It was pretty close, I think. But even before that, they said it wasn’t a little plane, they think it was an attack. I remember telling the staff, “The world has changed forever.” We all felt that, the world has changed forever. Shortly thereafter the plane hit the Pentagon.

I never really panicked. We started to hear reports that there was another plane and that it was going to hit the Capitol. It didn’t register to me as being imminently dangerous for me personally and for my staff. Nobody had told us to evacuate. The weirdest thing, you talk about an unprepared institution! We were in the basement-like offices of the Russell. People were saying, “What should we do, where should we go?” My husband called to say—and this was the first time that I heard about the other plane—that my son had heard there was a plane headed for the Capitol. My son was telling me to leave immediately, leave immediately. I said, “We haven’t heard anything about that. Don’t worry, I’m safe. I’m fine.” He called me back again, I remember, and they were really wanting me to get home.

I got called up to Senator Levin’s office to see what we should do about him. He’s the chair of the Armed Services Committee. I was not only the PSI staff director, I was also involved in Senator Levin’s top staff decisions. There were three or four of us who were involved in major decisions: his legislative director, his AA, me, and Senator Levin. I was also heavily involved in strategy about issues that he took on and his office in general. I was called up and we had to decide, what should he do? Nobody told him what to do. We said, “Wait a second, you’re chair of the Armed Services Committee. We should protect you.”

SCOTT: At this point he would be chair because the control had gone to the Democrats after the Jeffords switch.

GUSTITUS: Yes. We said, “You chair the Armed Services Committee, somebody should be here to tell you what to do and where to go.” Nobody did that as far as I know. We said, “Where should you go? We don’t think you should stay in this building.” The first thing was to figure out where to get him to. We decided he should go to his campaign office, which was about five blocks away. It would take him out of anything that might happen on the Capitol. He could make phone calls from there. We decided he had to go there. I went back downstairs to my office. We hadn’t really made a decision that everybody should go home, the personal staff either. People were saying, “Maybe we should go.” A security guard came through the hall eventually and said, “We’re thinking people should leave.”

SCOTT: There was no sense of urgency though?

GUSTITUS: Nobody told us where to go or what to do. It was really odd. They said, “We’ve decided we should evacuate the building.” I don’t even think they knocked on our door. I think we heard people moving in the hall outside and stuck our heads out. They said, “We think you should leave.” It was really not organized. There was no system where we could be on the TV where they could give us directions.

SCOTT: Or alert people over a sounds system like we have now with the annunciators.

GUSTITUS: Oh, you do? We didn’t have anything like that.

SCOTT: Right, you left before we had got those. We have this little pager type thing that announces something in the office, we take it with us, we all go outside, and then it will tell us. It works like a pager except it literally has a little speaker in it and it tells everybody “This is what is going on, this is what to do.”

GUSTITUS: No, we had nothing like that, whatsoever. It was hit or miss crazy. I told my staff, “Everybody should leave. Get outside, let’s go. Leave for the day. Go home.” We did, but not with any great urgency. I picked up my stuff and went outside. We went off into the park there. I said, “I think everybody should go home.” So we all decided to go home. I live in D.C. but just at the Maryland line, it’s about eight miles from here. I started to walk to Union Station to take the Metro, and there were people everywhere now. All the streets are packed with cars and there are all these people out on the streets and the sidewalks. I walked to Union Station and people were coming out of Union Station. Big crowds were coming out of Union Station saying that it had been closed. There was some issue about a threat, I believe. So I just started walking up Mass. Ave and there were lots of us walking. We were just walking en masse. I just kept walking and I walked all the way home. I didn’t know what else to do. It was a clear blue sky and I remember thinking, “Where are our fighter jets?” I didn’t see any jets. “Where are our people?” I walked all the way home.

SCOTT: Were you in contact with your family at the time? As you walked home?

GUSTITUS: There were no cell phones, at least I don’t think I had a cell phone.

Before I left I probably called my husband and said, “I’m leaving and I’m coming home.” But no, [laughs] we didn’t have cell phones then. I don’t know if I stopped halfway home and called or not.

SCOTT: Were your kids living at home at that time?

GUSTITUS: Our daughter was, and she was at school. The school closed, and Bob, my husband, went and picked her up. He was working from home.

SCOTT: Did you come to work the next day? What happened after that?

GUSTITUS: We came to work.

SCOTT: What did Senator Levin do the rest of that day?

GUSTITUS: He told me that he had just stayed in his office, in his campaign office, and made calls and stayed on top of it.

Was that a Tuesday?

SCOTT: It was a Tuesday.

GUSTITUS: I think we all went back to work. The subway system wasn’t damaged. There was that horrible thing that happened at the Pentagon. But I think we all felt that we wanted to be back at work. We were back at work. We had gone through that horrible anthrax event.

SCOTT: After, in October. It was just after, that was almost exactly one month after.

GUSTITUS: Okay, I don’t even remember the order of that. It was after? Okay.

SCOTT: Just after, very close. Did that impact you? How did that impact you?

GUSTITUS: Yes, that impacted us like everything else. What happened was security became so much stronger. You used to be able to park on the street here and you used to be able to walk close to everything. It all just changed, dramatically. They have done a very good job of trying to keep the Capitol accessible. Really, I think they are really working hard at this balance between security and accessibility. Before, you could take anybody into the Capitol, your friends, and visitors and family. Now there are all of

these stages and that part has clamped down. But it was probably too loose before anyway. You could just go through the Capitol and wander around. That was the big change, all the security that then was established. We were all given gas masks. Don't you have gas masks in your office? We went through some training and drills where you go outside. I've never understood. We go outside and we stand there. I never knew what we do when we get outside. Now you say you have a little pager to tell you where to go.

But the anthrax scare was pretty personal because I knew so many people who had been affected by it. So many people had to take that antibiotic. It was really, really, strong. One of our staff people had to take it and he got very sick. It was painful. It was inside the building. It was such a strong virus or whatever anthrax is that if you were anywhere near that area you had—it wasn't just the people who opened the envelope, it was this whole building or area. A lot of people had to take that antibiotic. It changed our whole mail system. It really changed things because before, mail was just a regular thing. After the anthrax incident mail was delayed by about two weeks. That's what I remember for the last year. People mailed something and it took two weeks to get to us.

SCOTT: We have to caution people who want to mail something to us. I was getting something from the National Archives related to one our investigations, some footage, and I had to tell them to mail it to my home address because if it is irradiated, it will be useless.

GUSTITUS: That's what I did. We mailed a lot of packages and things to our home because it got through so much faster, or to our campaign office sometimes. The anthrax episode made a big difference.

SCOTT: I know, for example, because our office was in Hart, that we were relocated to the basement of Russell and shared space with the library for a time. Did you share your space in the Russell basement with anybody during that immediate post-anthrax period?

GUSTITUS: I'm not sure; I don't remember that.

SCOTT: Did PSI turn to the issues related to 9/11?

GUSTITUS: Not PSI, no. But the full committee, as you know, did. It created the Department of Homeland Security. That was after my time.

SCOTT: I know that you left in January of 2003. Can you tell us about your decision to retire then? What brought that about?

GUSTITUS: Yes, I had been working in the Senate for 24 years. During that time I had been doing oversight during that whole time, virtually. It's kind of a high wire act. It's very tense because you are making claims that you need to back up and you can't be wrong because basically, in this city, if you are wrong once, you lose a lot of credibility. It takes you a long time to reestablish your credibility. You have this pressure, this tension, to just not make mistakes. You've got to be sure you have the story right, the facts right, and you haven't overlooked something. And the member, Senator Levin, in this case, is reliant on you to have gotten all the information. When they are up there asking the questions, you're feeding them a lot of information and the direction to go in. It's a huge responsibility. You just have to be sure that—they are trusting you to be right.

I found it to be exciting, wonderful, I loved it, I'm so glad I did it, but it was a tremendous amount of pressure. And you are on call, basically, all the time. I told you before, I worked lesser amounts of time at certain points, but I was still on call. So if anything happened I was always talking to Senator Levin. I remember when we were doing the campaign finance investigation, it was August. I was on vacation with my family on a house boat in Mississippi, on the Mississippi River. Literally, we docked along the bank and I was on a conference call with Senator Levin, Senator Glenn, and two or three staff people. That kind of thing. It was just always, it's true for a lot of people, but that was true for me. I was always on call. I had raised two kids, which is another hugely demanding responsibility, and I didn't even think about what was available to me monetary wise, that I could retire. About three or four years before I retired, somebody was talking about "you've got this great retirement program." I was CSRS—Civil Service Retirement System—defined benefit. It's a wonderful, wonderful program. I thought, "My god, I could retire at 55." I actually could afford to retire at 55. I had worked all my life. Even before the 24 years in the Senate I had been at the Justice Department and several other government agencies.

As a staff person, as close as I was to Senator Levin, and we really had a fabulous working relationship and deep friendship, you're still the staff person. You are still really at the beck and call of the member. They are the senator. The longer we went, the more revered Senator Levin was, he becomes more of an icon, he deserves respect. There is always a slight separation and a responsibility to service him and do what he wants and needs. There is always that feeling that I'm never totally my own person because I'm still a staff person. Air traffic controllers and firefighters have forced retirement at the age of 50 or 55, forced into retirement because of the tension of their jobs. I decided being the staff director of an oversight subcommittee for 24 years and raising two children entitled me to early retirement. And there was also that other piece that I had always been a staff

person, I really should go out and experience my own individual freedom. That's what drove me to decide to retire.

And Elise Bean, on my staff, who was as good as you can possibly be, it was appropriate for her to be able to move up. I know she wanted to. Knowing that she was there and it was right for her to take over and that I had somebody who could take over for me for Senator Levin, that also was a factor. I really felt good to be able to give her the opportunity that I had. That was also part of it. If somebody hadn't been there, I would have felt obligated to stay until we felt good about somebody. But with Elise, it was really more that I'd like to move over so she can come up.

SCOTT: I think I read that your last year here at the Senate you were technically Senator Levin's chief of staff. Is that right?

GUSTITUS: Yes. What happened was that was the year that he was running for reelection and the administrative assistant, Chuck Wilbur, had told Senator Levin that after the election he was going to leave. He wouldn't be the AA anymore after Senator Levin got reelected. He was going to go run his campaign in Michigan, that was what he wanted to do, and Senator Levin wanted him to do it because he was really a Michigan based person. He had previously run his Michigan operation. When Senator Levin's AA had left about four years earlier, Chuck had come in to take over as chief of staff. But he really always wanted, I think, to go back to Michigan. His message was that he was leaving after the election to go back to Michigan. We had this odd situation where Senator Levin was up for reelection, although we assumed he was going to get reelected, but Chuck Wilbur, our AA, was in Michigan so he wasn't really here to help train somebody as an AA anyway. I was the most senior person on staff and I was ready to retire. We all thought that I should just hold that position open until Senator Levin gets reelected and then he can start anew. He can then look for an AA and figure it all out once he gets reelected and we'll all be able to put some time into it. I think it worked out really well that way. It was challenging for me because I stayed as staff director, for the most part, of the subcommittee, too. But I was housed up at the AA's desk so I also ran the personal staff for a year. That was fun. It was good.

SCOTT: Was it a big change? Were you thinking about things that you hadn't thought about for some time? You and I hadn't talked about your working at the highest level with other staff to staff the senator. I wasn't aware of that. Maybe it didn't change for you, in other words, being chief of staff.

GUSTITUS: In that respect, you're right. I was always involved in, or could be if I wanted to be, in anything that went on in Senator Levin's office, for the most part. I

didn't really involve myself with Michigan campaign type issues. I pretty much stayed out of the campaign work. I got involved when we had to put together his record and I got involved with strategy in the sense of when we decided whether ads were appropriate or not. There were some issues about some of the ads in terms of tone and what we should push. So I was involved in the campaign in that way, but not in terms of fundraising or the nitty-gritty of it. In terms of what mayor was going to support him, what mayor wasn't going to support him, that kind of stuff, I never got involved in that.

I got involved at the top level with visionary issues. For many years we would have a Friday meeting where the legislative director, myself, his staff director at the Armed Services committee, and our AA, and Carl, would meet and talk about the week and the issues, and what was going on. We had this group that was the core group, and I was always a part of that. Becoming chief of staff was not hard. It was kind of nice because I was personally really close to him, and as AA you are also physically close to him, so I got to see him in a different way in some things. It was good.

SCOTT: You knew at that point that you were going to retire, and everyone else knew that you'd be retiring.

GUSTITUS: Right, yes.

SCOTT: What do you think has been the biggest change in the Senate as an institution during your 24 years here?

GUSTITUS: Obviously, the lack of comity. Everybody knows that. It's apparent. It's really very serious. Technically, or practically speaking, the requirement to have 60 votes is huge. That was not the case in the early '80s. That's evolved, really through the '90s, was probably when it came to the fore. Maybe even later than that, maybe the late '90s.

What does the history say as to when it really started to happen?

SCOTT: Because we track the cloture votes we know that there are exponentially more cloture votes today than there were 10 years ago, 20 years ago.

GUSTITUS: I was going to say that it seemed like the '90s when it started to have a huge effect. But in the '80s, we didn't do that, there was a majority vote. The floor ran much more efficiently and according to what you teach in civics. Committees actually had hearings on legislation and then wrote reports and those reports lay over for three days and people got to read the reports and there were minority views and comments and

you would see why people offered amendments or not. When the bills were brought up on the floor, there were mostly relevant amendments. You weren't ambushed with abortion or anything, or a vote that even though it was relevant was nastily political. We actually were pretty much doing the business of the Senate as envisioned by the Constitution, I think in the ways civics teaches how a bill becomes a law. I don't think it works like that anymore. I think it's all up for grabs.

Before when you had a conference report, for example, you couldn't put anything in a conference report that wasn't in either the House or the Senate bill. There may have been some rare exceptions, but mostly it was an understanding. You can't and those were the rules as interpreted by the parliamentarian. You couldn't put something in a conference report that wasn't in the House bill or the Senate bill. The reason that is such an important rule is because conference reports are voted up or down in their totality. If you allowed somebody in a conference to put something into the conference report, neither House would have ever voted on it before. Neither house would have approved it. It would have been a whole new thing. You can say, "By voting for the conference report they are voting on that specific thing." But the conference report is this big [gestures] and the little item that was added is this big, so bad things can happen when you violate that rule.

I don't know if it was five or eight years ago, but they violated that rule, and the violation was allowed, because you can overturn the parliamentarian's view—position—by a majority vote of the members. So something happened where they accepted the conference report and it's such a dangerous thing. Then it allows a little cabal of people to get their way without either house supporting them. I think one of the things that they put in one of those conference reports was a \$50 billion item. It got taken out because people raised such a stink about it. A \$50 billion item. I can't remember what it was for and everybody was shocked that it happened. That's another example of this change and how we don't really follow the rules as they were intended. On amendments on the floor, it seems as if anything goes on any bill. It doesn't need to be relevant. We completely blew the budget act, the Graham-Rudman budget act. That used to have meaning. The budget process is a mess. We stopped appropriating the way we appropriate. You used to have an appropriations bill, you vote on each one individually. Now they are bundled. I think the omnibus element, which started happening maybe 15 years ago or more, is so dangerous. You've got people voting for thousand-page bills with all these pieces in it. And we didn't have all these continuing resolutions. It seems like a free for all. That's how I see it. We used to have order and custom and practice that kept things in a fairly reasonable responsible way. But now it's pretty much a field day. Everybody can do whatever they want to, I think. That's a big change.

SCOTT: Do you think you would recognize today's Senate if you came back and worked? You've been out for almost 10 years.

GUSTITUS: Probably not.

SCOTT: You think it's changed that much?

GUSTITUS: I think it's changed a lot. Of course, I would recognize it to some extent. I'm sure you still have to put statements in the [*Congressional*] *Record*. Bills are brought up. There are unanimous consent agreements. Actually, are there still, every once in a while, unanimous consent agreements? The rules that we lived by in the '80s and up to the mid-'90s made a lot of sense. Issues were supposed to be deliberated by committees before they went to the floor. I think that's the biggest concern about the way that amendments work now. You can bring things to the floor and bypass committees. Instead of being the exception, it feels more like it's the rule now. We did one thing like that that I remember so clearly feeling nervous about. We had a big drug act back in the '80s. It was so important that everybody said no, we don't really have time to go through committee. They appointed [Sam] Nunn, and I think it was Rudman, and said those two are going to figure out the package for this anti-drug act. They sat in that room right off the Senate floor—

SCOTT: The Marble Room?

GUSTITUS: Maybe it's the Marble Room. They sat there and if you had a provision that you wanted in the bill, you almost took a ticket. You didn't quite do that, but you said that you wanted to present it to those two. Then they put this package together of this anti-drug act. This was in the '80s when everybody was so concerned about crack and cocaine. Everybody wanted to do a mandatory minimum because they wanted to be the sponsor of a mandatory minimum prison sentence. Mandatory minimum within 100 feet of a high school. Mandatory minimum [for drug possession above a certain level]. Three strikes and you're out. That bill never went through a committee. That just went to the floor because everybody said, it's urgent. That, to me, is a very dangerous way to legislate. Those things get stuck in committees, but there is a purpose for a committee because those people are supposed to know those jurisdictional issues, and they are supposed to give it thought, and they are supposed to have hearings and talk to people about them and give people an opportunity to comment on them. That's not the way it works now.

SCOTT: Where do you stand on the filibuster? There's been a lot of discussion of late, people are thinking again, perhaps in this new Congress, about attempting to revise the filibuster.

GUSTITUS: Our former legislative director, Rich Arenberg, whom I admire, is one of the advocates for retaining the filibuster. He wrote the book with Bob Dove on it.² But I do disagree with him on this one. I really like the lawsuit that Common Cause has brought to say that it's unconstitutional to allow for a filibuster and require a 60-vote majority because by interpreting the Constitution in the way it should be interpreted, according to Common Cause and others who are part of that lawsuit, the Senate is supposed to operate on a majority rule. There's nothing in the Constitution about a filibuster. It says the Senate can set its own rules, but its rules have to comport with the intention of the Constitution. The argument before the district court right now, it's just at the beginning of its journey, is that it violates the Constitution to have the filibuster. I like that idea because I think that's what's happened is nobody intended that it should take 60 votes to vote on Head Start, or the defense budget. I'm very supportive of reform.

SCOTT: Reform, but you would still support the right to filibuster, but you would reform the threshold to end debate? Is that right?

GUSTITUS: I did say reform, as opposed to eliminate the filibuster. But I think if you reform it to such extent, then it's not a filibuster anymore. I don't know how I would reform it. I think you have to eliminate the filibuster. I think you have to allow for majority vote and then let the election rule. If the Senate does terrible things as result of majority vote, that's it. Have a majority vote and go back to having committees really do their work so that when the item comes to the floor it's a very thoughtful piece of legislation. Impose your rules in terms of, if you want us to be the saucer, impose your rules to make sure that we give a lot of thought to what we bring to the floor. By the time we bring it to the floor, let the majority rule. I think I would go in that direction.

Interestingly enough, the George W. Bush tax cut came in through a majority voting to support it, because it was part of the reconciliation process, and the reconciliation bill was not subject to a filibuster. That would have been a consequence of not having a filibuster, would be that a majority would have voted for the tax cut anyway. But that's okay. I can live with that, if the majority voted for it, but then it would have been subject to a hearing, and I don't know if his tax cut was subject to a hearing. But it's a good example of what would happen if we didn't have a filibuster. It happens in the reconciliation process.

² Richard Arenberg and Robert Dove, *Defending the Filibuster: The Soul of the Senate* (Bloomington: Indiana University Press, 2012).

SCOTT: I know that you have been very busy, actually, since you've retired from the Senate. We talked a little bit about the Commission on Wartime Contracting, but another thing that you've been doing is that you helped to found the National Religious Campaign Against Torture in 2006. Can you talk a little bit about that? How did you get involved and why? What prompted your involvement and then what have you been doing with that vehicle?

GUSTITUS: I was, like a lot of people I think, really shocked when the story came out in 2004. It was Sy Hersh in the *New Yorker* and CBS, I think, came out with the pictures of Abu Ghraib. But what shocked me more was the lack of reaction by the administration. I really expected that President Bush would have said, "This is appalling; we're going to get to the bottom of this; I need to know what is going on. This is not America." But that's not what happened. It was more, "These are the acts of a couple bad apples." The response was so tepid, I was really shocked. There is still a lot of trust in me for the people in public office wanting to do the right thing.

But I followed that story closely. More and more came out that it was more extensive and we had a torture program and we had black sites. That was just unbelievable. Jane Meyer did a lot of fabulous work on it in the *New Yorker*. By the time Christmas rolled around in 2005, I decided I just had to speak out. I ended up organizing some demonstrations at Vice President Cheney's house. Had I gone through that before at a previous—?

SCOTT: No.

GUSTITUS: I hadn't told you that?

SCOTT: No.

GUSTITUS: I thought I had. Do you know the man who has the pedophilia sign at the corner of Massachusetts where the vice president lives? It's where the Vatican embassy is.

SCOTT: No, I haven't seen the signs.

GUSTITUS: Okay, there's a man who—I thought I told you all this—there's a man who stands out there, an old man, with a big sign that says "Catholics support pedophilia." He holds this sign. He turns out to be a very nice man but he is obviously very disturbed by some incident in his life. Every time you go by there, you see the man.

In December of 2005 I thought, I just can't go through the holidays without speaking out against torture. I decided if he can do that for pedophilia, I can put on a sandwich board against torture and stand out across from Vice President Cheney's house and say "no" to torture.

I talked about it with some people from my church. I go to a Unitarian Universalist church in Bethesda. They all said we want to do it, too. So we ended up organizing a vigil outside Cheney's house and it was a religious vigil and it caught on. Other churches came. We got Protestants, Jews, Muslims, everybody, people started to come. Every Wednesday we did this big candlelight vigil down Massachusetts Avenue.

SCOTT: You walked? Or you had people stand—

GUSTITUS: No, we stood along the edge of Massachusetts Avenue. I think at the maximum we probably had 250 people at the largest vigil, so it wasn't ever really big. But we had big banners against torture saying, "America doesn't torture." "These aren't our values." "What would Jesus do?" Those kinds of things. A friend of mine who came to that vigil heard about a conference that was going on at Princeton in January of 2006 on the religious response to torture. I do not care to go to conferences, I don't find them to be that successful. It's like Chinese food, you go and it's all interesting at the time but then it's gone very quickly. But I decided to go. I went to that conference. It was sponsored by a gentleman by the name of George Hunsinger, who is a theologian at Princeton, a Presbyterian theologian, who had called together leaders from a number of faith groups, and did a two-day session on what we knew about what the United States had done with respect to torture and why it's so morally wrong and why people of faith have to speak out.

I just jumped in with both feet. It was exactly right for me, it was the right way I wanted to respond to the issue, through a faith-based perspective, a moral issue, so they were just trying to figure out how to get started. I advised them on how to approach Congress, how to do their advocacy. They needed somebody, they didn't have anybody who knew Congress at all. Then in the meantime I organized through my own church, in June, a big anti-torture conference. We had 250 people there from 60 different congregations. Senator Levin came and talked, and Sy Hersh came and talked, we had a couple of ministers. It was a great day. It was really a great day. Out of that we created a Washington Region Religious Campaign Against Torture as a sub-unit of the National Religious Campaign Against Torture. That summer we organized ourselves officially as a 501(c)3, NRCAT did. We needed officers, so I ended up becoming the president and I've been the president ever since.

SCOTT: What have you been working on?

GUSTITUS: We spent a couple of years fighting for an executive order to end the torture. We worked with other organizations, and President Obama signed the executive order ending the torture program and closing the sites just after he was sworn into office. That was great, that was a terrific victory. But we also wanted a commission of inquiry with subpoena power in order to investigate and determine exactly what we did. How did it all work? How many people—we tortured some people to death—how many people did we torture to death? What’s happened to the people who did the torture? You have to care about those people also, because those are the people you asked to do things that made them sick. There was a Mormon woman who joined the army, doing army intelligence, I believe. She went over to Iraq and was asked to go into “the tank” where there was an Iraqi detainee and she was asked to sexually abuse him, or make him uncomfortable. Demean him, really. She just couldn’t do it. She said, “I don’t want to do it.” They said, “It’s an order.” She didn’t want to defy the order, but she did defy the order and she ended up committing suicide a couple weeks later. Whether that was directly related—nobody knows why people commit suicide—but she did.

It’s clearly the people we tortured, but it’s also the people whom we asked to do terrible, terrible things that they never should have been asked to do. We asked for a commission of inquiry, but President Obama decided not to do the commission, which is a huge disappointment for us. He does not want to look back, he says, he wants to look forward. We think he’s absolutely wrong on this. We’re still fighting for a commission of inquiry. Under international law, we have an absolute obligation to investigate and prosecute. It’s not something that we can dismiss. It may be something like in Guatemala, you do it 20 years later. In Argentina you do it 30 years later, 40 years later. At some point we’re going to have to do this because there is no way to escape accountability for torture. Torture, genocide, and slavery are three acts that no country can commit with impunity. You absolutely have to be held accountable for that. Whether you have signed the treaty on this or not, or part of the Geneva Conventions, international law says you can’t engage in any three of those and if you do you have to hold yourselves accountable. That’s one thing.

We ended up also deciding that NRCAT should work against any and all U.S.-sponsored torture, anything that the U.S. has sponsored that is related to torture. Over the last five or six years there has been some really good work done on the use of solitary confinement in U.S. prisons. Solitary confinement is a form of torture. It definitely meets the definition of torture under the UN Convention against torture. So we have a whole operation going now to address trying to end solitary confinement in U.S. prisons because the United States has more people in prison in solitary confinement than any

other country in the world. We're a leader, if not the leader, in the use of solitary confinement. It's pretty awful. We have people in solitary confinement for 10-20 years. I never did human rights issues when I was up here. It was just not in my bailiwick. It was not something I did. I have become immersed in the human rights world and dealing with human rights organizations and I find it very satisfying. It's very good work. I volunteer, I don't get paid for it.

SCOTT: What's it like to be petitioning Congress for something when you have worked here for so long? I suppose you know how things work and that must help.

GUSTITUS: It helps a lot because you know that they are people. An average person is intimidated by the institution. But you know where these people go get their sandwiches and how these people use the post office and that they take coffee breaks. It's very real and practical how you approach somebody. Also, you know what a staff person wants and needs. They don't want a long glowing flowery explanation of your issue. They want to know: What are the key issues? Who is against it? What are the consequences? What are you asking me to do? It's very clear. What is the ask? What are the pros? What are the cons? What's the ask? What's in it for my constituents? There are about four or five basic things that a staff person wants to know. You have to be really honest with them about what the negative aspects are of what you are asking them, as well as the positive so that they trust you. Building trust is so important. When I worked up here, there would be lobbyists who would know more about things of what other members were thinking about my issues than I did. I relied on them to tell me. I would give them clear information and it's that kind of relationship that is a really good one when you are both working for the same goal. If you can trust each other like that you can get a lot out of it. My encouragement to the people who do advocacy for us is also to develop those kinds of relationships where, when something comes up on torture, you're their go-to person. The staff person is going to pick up the phone and say, "Hey, Linda, from NRCAT, what does this mean? Is this worth it?" I don't do much of the advocacy myself. I'm more the guiding person at the top. We have a couple of people who are on staff who do that.

SCOTT: Where is Senator Levin on this issue?

GUSTITUS: He has been fabulous. He has been one of the leaders, really. He actually held a hearing maybe six years ago on the use of torture within the Department of Defense, what the role of the Department of Defense was in the torture program.

SCOTT: As chairman of Armed Services.

GUSTITUS: Yes, as chairman of Armed Services. He set up a little staff of three or four people and assigned to them learning about what the military did with respect to torture. The torture program was largely CIA [Central Intelligence Agency], but the military was also involved. It was the role of Secretary of Defense [Donald] Rumsfeld and the psychologists who brought this torture program to the military and what the military role was. He did a great hearing and report on that.

SCOTT: Senator McCain is ranking on Armed Services and they've both been—

GUSTITUS: Yes, and they both signed the report that the committee issued. Right now the Intelligence Committee has done a 6,000-page report on torture and the torture program, under the leadership of Senator [Dianne] Feinstein [D-CA].

SCOTT: Will it be public?

GUSTITUS: That is the absolute key question.

SCOTT: Have you been working on this issue?

GUSTITUS: That's what we've been advocating, a lot—to get them to vote to report the report, but also to make as much of it public as possible. Because that may be the only commission, so to speak, that we actually get—that is, the Senate Intelligence Committee's work on this. The word we have is that it's a good report, it's well done, but we won't know that until we see it. A lot of it could be classified, but there are ways to get around that with your findings.

SCOTT: What do you mean by that, there are ways to get around that?

GUSTITUS: Well, you might not be able to report a document that names names, like who was tortured or where they were tortured. But you can have the committee say we find that there was indeed a torture program and the techniques used were torture. We find that these techniques did not lead to good intelligence. In fact, this could have been found—those kind of findings are releasable.

SCOTT: There is a way to narrate the story without getting into the specifics, which move you beyond the classification restrictions.

GUSTITUS: That's right.

SCOTT: Where do you pick that stuff up? I guess you learn as you exercise oversight how to write those things like that.

GUSTITUS: Yes.

SCOTT: One thing that we haven't talked about is that even before you retired and a little bit after, you worked as an adjunct at George—

GUSTITUS: At GW [George Washington University] and American University law school.

SCOTT: How did you start that work?

GUSTITUS: The work at GW came as a result of a professor there who was involved with me on some regulatory reform issues. When I was involved in the regulatory reform work, I got involved with the ABA [American Bar Association] at sessions on regulatory reform. They had an administrative law section so I would go to some of their conferences and either speak or be present to hear what they were saying. Through the course of something like that, I met this professor who was teaching at GW and she wanted to take a leave of absence for a semester. She was teaching federal regulation in the business and public policy schools. Her subject was federal regulation. She asked if I would like to teach it while she was gone. I hadn't taught before and I've always thought about teaching so I agreed to do that. But when you think about it, here I had my kids [laughs]. I don't know why you take on things like that.

Teaching is a lot of work if you do it well. It's a lot of work, it's a lot of time. I did that course. I think I did that for two to three years. She didn't come back that next semester, and then she changed. I think I taught that for two or three years, I can't quite remember. Then a little time passed and then later on Tom Susman, who is currently the governmental affairs rep for the ABA, but at the time was a lobbyist for the Business Roundtable on regulatory reform issues, and he and I had worked together a lot, he had lobbied me a lot on regulatory reform. We had grown to really respect each other and like each other. He was invited by the American University Law School to do a course on lobbying, how to be a lobbyist, which is a really good course for that law school. It's a really smart course. He thought it would be good if he did it with me, with me from the inside perspective. We put together a curriculum and we taught that for I think five or six years.

SCOTT: Every semester?

GUSTITUS: No, just once a year. It was very practical. It was how you lobby. What are the ethics of lobbying? How you do a one-pager, just those kinds of questions I referred to earlier. What does the staff person really want to know? How to be sure to be nice to everybody, including, and especially, the receptionist. How all that works. It was a very practical approach to lobbying. It was a good course.

SCOTT: Those are both very good schools and they are here in the district, which means that they tend to draw students that are interested in these types of issues anyway. Have you been surprised, pleasantly or otherwise, about students' knowledge of Congress?

GUSTITUS: I would say shocked about their lack thereof. I am deeply, deeply concerned about the lack of education that is going on in America, in colleges.

SCOTT: About civics in particular?

GUSTITUS: I won't speak to the sciences, I don't know the sciences and I'm guessing they do a better job, but in the social sciences I'm really concerned. You have to have a knowledgeable electorate on the basics of how government works for them to appreciate it, and understand it, and be able to vote and make choices about it. It is really shocking to hear what young people don't know. And historic information! Some of them don't really understand World War II. Seriously! It's really unbelievable.

So for me when I was doing that legislation class, and these are law school students, I would start with, "How many branches of government are there? How do committees work? Who is the head of the House? Who is the head of the Senate?" Obviously, a lot of them knew the branches of government. But often there was a pause, they would have to think. It's not encouraging, I have to say. I was not encouraged by the level of knowledge of the way that government works.

I'm just really concerned about education in general. We have these AP courses where we let kids take AP courses in high school and they are taught by people who aren't necessarily the best people in terms of those courses. If you take a college level government course in high school, with a high school teacher, versus in college with a college professor, I just don't believe that it's the same course. I just don't believe it. All these kids take these AP courses in high school and then by the time they get to college they are taking Film Noir and Food Production as opposed to taking those courses which are so important. I'm pretty down on the college education system.

SCOTT: You told us at our first meeting, before we were recording, that you had thought about becoming a teacher after retirement. Do you want to say a little something about that? I thought that was really interesting.

GUSTITUS: I had wanted so badly—I still do—I want to teach young people about government. I want them to care about government. I want them to value government. I want them to understand all that goes into it and how complicated it is and how we can't just be simplistic about "good guys" and "bad guys." The movie *Lincoln*, that's Steven Spielberg's goal, I think, is to show how hard it is and how important it is. I've always wanted to teach young people about government and then get them engaged in public service. I'm always trying to encourage young people to see public service as a career.

I thought I would go teach government in high school after I left the Senate. I did go to take courses because you had to be certified. I took courses and was headed towards my certification. I started doing substitute teaching, which was not an attractive thing to do. I was shocked at the lack of respect that the high school students had for teachers. And the language. I'm kind of an old school person. That was a really good, in a sense, bad experience for me. In the Senate I had been treated with so much respect and then I went and taught and let's just say there was less respect. Even my white hair didn't seem to impress the students. It was really a step down. I knew then that I had retired. Then I tried to get a job at my local high school as a government teacher. I went and I taught a course there with the person who was in charge of the government department. I went into his AP class to talk about lobbying on legislation. Literally, in this class, the girl who was at this desk that I was right in front of when I was teaching, she had both of her legs on the desk like this, crossed, like this on her desk. She was sitting like this.

The teacher didn't say anything about it. My daughter was going to that school at the time, so I took the coward's way out. I didn't say anything. If I had been the teacher I would have—that's not how you sit in front of a guest. I wouldn't even let them sit that way for me, of course. I realized that school has changed. It's a very different kind of institution. I didn't like it. It would have been a lot of hard work emotionally for me. I also decided eventually over the course of the year that I didn't want to be stuck with a seven-to-five job. I would have loved to have established something where I could go from class to class and give my little lecture. I'm still thinking about that, actually, trying to arrange something where I could go around to various schools and talk about government. But being there from seven to five is not what I wanted. I was not ready to go back into that. I was misguided when I thought I would take up teaching.

SCOTT: Did you become certified in the end?

GUSTITUS: I was so close, but no, I didn't become certified. I could go back, I think I have just one more class. I also took the classes at UDC, which was another discouraging experience because it was so badly run. Professors walked in 10 minutes late and didn't know the material. It was a disappointing experience. The whole education system for me was not something that looked really encouraging.

SCOTT: You've had such a fascinating career here in the Senate and I thank you so much for sharing these stories with our office, because I think that scholars are going to be very interested in this material. You've given us an insight into government oversight from the congressional side that we want to know more about. Is there anything that we haven't covered in our interviews that you would like to mention?

GUSTITUS: I don't think there's a burning issue. One thing we didn't talk about, though, was executive privilege, which is an important subject. I realized when we were talking about oversight that I didn't mention executive privilege, that is, the ability of the president to make the argument to withhold information from Congress and Congress's challenge to try to get that information. I don't think it would take a whole other interview, just to say that it's really the two equal branches of government at loggerheads when the president doesn't want to reveal information and Congress wants it. The way it's interpreted by Congress, for the most part, is we have access to everything that is necessary to the investigation, and the president's position is, "Wait a second, I don't think you have a right to the recommendations and the comments that I get from my personal staff, because otherwise they won't give me the candid information that I need and we'll feel frozen here and I won't be able to operate in the way I should operate." Congress has come to recognize some of that because they know that they would feel that way about their own documents, you know, if they had the e-mail from their chief of staff about something that was exposed.

It's a balancing act. We're always trying to work out that kind of arrangement. There are extreme situations where a president will try to exert executive privilege far beyond that kind of very confidential intimate staff document or relationship. That's where Congress has to muscle up and say, "No, we want that and it doesn't meet the requirement for executive privilege." Where it gets played out sometimes is in the courts, which is the third branch of government. But the courts don't really like to deal with that either because that's a matter of two equal branches fighting with themselves. You really have to try to work it out between the two branches. It comes down to personalities. How strong is the president? How strong is the chair asking for the information? How serious is the issue? How important is the issue?

One example to show how you try to work it out is, when we were involved in Wedtech, that Wedtech case involving Ed Meese, there were documents we wanted from the White House. The White House said, “No, we can’t give you these documents.” We said, “We want to see the documents.” The way it worked out was they said, “Okay, you can come and you can read the documents. But you can’t take them. You can’t take notes.” We said, “We’re okay with coming and seeing them and reading them, but we do have to take notes, but we’ll keep the notes confidential. We won’t make the notes public. But we do reserve the right, based on what we see, to request the document, and we’ll fight over it at that point.” So we did that.

SCOTT: And they agreed to it.

GUSTITUS: They agreed to it. This was with President Reagan. I forget who his White House counsel was. We met in the national security room, what do they call it? Where the clocks are?

SCOTT: The Situation Room?

GUSTITUS: The Situation Room! We met in the Situation Room in the White House and they brought out the documents. I think it’s because it’s the only office they had that was available. It’s a small building, the White House, and the Situation Room at that time, if it’s the same one, is so small. It’s right across from the White House mess and that’s small. The White House is shockingly small. We met in the Situation Room and we went through the documents and read them and made notes and negotiated getting a couple of them. That’s the give and take of how that worked.

More recently, though, with President Bush, where Congress wanted, this is really early in the Bush administration, Cheney’s list of people he met with on this energy task force, and he said, “No, I’m not going to tell you who I met with on the energy task force.” Congress could have really pushed, but they didn’t because they didn’t have a chair in the party that was willing to force the issue. The person who was interested in it, and I can’t remember who it was, went to GAO and said, “GAO, you have some authority to try to get documents, you can ask. See if you can get it.” GAO went to court over it and the court said, “No, GAO, you really don’t have the authority to get that document.” It was never obtained, but in part because there wasn’t a person here in position in power to be able to force the issue. The whole issue of executive privilege ends up being one of politics and personality and timing and what the issue is.

Also during Reagan, Anne Burford was the head of the EPA. There was a big investigation done by the House, by [Representative John] Dingell’s Energy and

Commerce Committee on the Superfund sites. There were allegations of fraud and mismanagement involved. Dingell subpoenaed these documents from Burford and the White House told her not to give them up. She told Dingell, “You’re not going to get them.” They went ahead and issued a contempt citation, they voted to hold her in contempt for not coming up with the documents. At the last minute—because the consequence of that was that she was going to go to jail—the White House relented. I’m sure Burford picked up the phone to the White House and said, “I do not want to go to jail and I don’t care if they get these documents. I don’t want to be the person in jail.” So they relented and Congress got the documents. The reality was, as a result of that investigation, Rita Lavelle, who was the head of the Superfund program, went to jail. There was criminal activity involved.

SCOTT: And she, the head of the EPA, resigned as well, didn’t she?

GUSTITUS: I don’t know if Burford resigned. Possibly. That could have happened. But the point is, the stakes were really high. There really was criminal activity there. There was a member of the House who had power and subpoena authority to force the issue.

SCOTT: The way you describe this, it sounds like individuals matter more than party affiliation? You haven’t talked as much about the political side of this.

GUSTITUS: I think individuals matter more than party affiliation. There are ways to use your power even if you are not in the right position party wise. But if you are a powerful person and you know how to use it, you can accomplish a lot.

That’s important to know about. The last point I want to make about that is, when the courts did weigh in on this, it was during Watergate and the issue was the White House tapes. Congress wanted those White House tapes and the president said, “No you can’t get the White House tapes.” It ended up there was a case also going before Judge [John] Sirica at the time. Sirica did order a release of the tapes, and it was not only the release of the tapes to the House, I think it was probably to the prosecutor.

SCOTT: It was to the special prosecutor.

GUSTITUS: It was to the special prosecutor. But then the House got them also, but the issue there, and Sirica said it, we’re talking about a potential crime here. At that point, the White House loses its protection of executive privilege. That’s the hallmark, I think, or the benchmark for executive privilege. If you are really talking about criminal activity, I think the executive privilege has a much harder time, if not vanishes altogether.

SCOTT: I suppose on the side of the executive branch, somebody has to be willing to—you could be talking to someone fairly low-down at some agency, in terms of one of your investigations, one of your inquiries on OGM, and the White House or somebody has to say, “Yes, we’ll support this person’s exertion of executive privilege.” Does that sound right?

GUSTITUS: It sounds right. Really only the president can exert executive privilege. The parameters of executive privilege, the umbrella of how far that goes out is pretty limited in Congress’s perspective—in a good oversight chairman person’s perspective. It’s pretty limited to that White House and direct contact with the president. The further you get away from that, the less strong the argument for executive privilege is. If it’s a document between a staff person and a secretary, that doesn’t wash. The secretary is the creature of Congress. We created that department and we can tell that secretary what we want. The president was created by the Constitution so he has his—and in the future hers—has his own prerogatives and we’re a co-equal branch. But we create these departments. The departments shouldn’t be able to mess around with us and deny us what we want. That’s really where the power comes from. When you go through a period where Congress doesn’t do oversight, you lose staff people like me—I’m not tooting my horn on this, it’s just experience—people who know what Congress’s authority should be—

SCOTT: And the history of that claim of executive privilege and the back and forth.

GUSTITUS: It’s got to stay there. It’s so institutionally important.

SCOTT: Thank you so much. This has been a wonderful experience. Thank you.

GUSTITUS: It has, thank you. It was really fun for me too. I really enjoyed it.

[End of Fourth Interview]