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Billings, Leon oral history interview

Don Nicoll

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Interview with Leon Billings by Don Nicoll

Summary Sheet and Transcript

Interviewee

Billings, Leon

Interviewer

Nicoll, Don

Date

September 16, 2002

Place

Washington, D.C.

ID Number

MOH 368

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Biographical Note

Leon Billings was born in Helena, Montana on November 19, 1937. His parents were Harry and Gretchen Billings. His father was an editor and publisher of a progressive newspaper; his mother was a crusading journalist. He graduated from high school in Helena, Montana in 1955, and then attended Reed College for one year in Portland, Oregon. He completed his undergraduate studies and took graduate courses toward an M.A. at the University of Montana at Missoula. Billings worked as a reporter and organizer for farm groups in Montana and California. He met his first wife, Pat, in California. They married in Montana and moved to Washington, D.C. on January 4, 1963. While in Washington, Billings worked for the American Public Power Association for three years as a lobbyist. In March 1966, he was offered and accepted a job on the Subcommittee on Air and Water Pollution on the Public Works Committee. He worked for Muskie helping to coordinate work on environmental policy. From 1966 to 1978, he served as Muskie's chief of staff. He served on the Democratic Platform Committee staff in 1968 and in 1974, was co-chairman of a Democratic National Committee task force on Energy and the Environment. He later served as President of the Edmund S. Muskie Foundation; a tax-exempt foundation endowed with a \$3 million appropriation from Congress to perpetuate the environmental legacy of Senator Muskie.

Scope and Content Note

Interview includes discussions of: Clean Air Act; Clean Water Act; 1972 presidential campaign; 1977 amendments; the auto industry and auto emissions standards; Senator Muskie's legislative skills and strategies; his relationships with other committee members; and anecdotes during this time period.

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Transcript

Don Nicoll: It is Monday, the 16th of September, 2002, and we are interviewing Leon Billings at 1625 K Street NW in his offices. The interviewer is Don Nicoll. Leon, let's go back to 1970 or '69, whenever you started work on what became the Clean Air Act of 1970. What was the major issue that, from your point of view, the country had to deal with in that legislation?

Leon Billings: Well, in 1969 Muskie introduced legislation to nationalize the air quality standards process. And the '67 legislation, to the best of my recollection, basically required a regional process for developing air quality standards. And Muskie wasn't satisfied with the progress, and so he introduced a broadening piece of legislation, but it was very much a bill that built on the '63, '65, '67 acts.

And I can't remember exactly when, but at some point in the '69-'70 period, I got leaked a set of fourteen or seventeen bills that the Nixon administration proposed to introduce on clean air. And which, by the way, was interesting because there was ah I immediately gave them to Ned Kenworthy of the *New York Times*, who immediately began writing front page stories about

these various initiatives that Nixon was talking about, most of which were contrary to the direction that Muskie was going in. And the White House had a fit, to the point that Richard Nixon called the FBI in to investigate the Office of Management and Budget and so on.

What they didn't know was I actually got this set of bills from a civil servant who worked in NIOSH, the National Institute for Occupational Safety and Health, who was at best a fifth level bureaucrat, probably a GS12 or 13, young fellow I'd known for years. I mean they just, this, the vetting process for legislation took it all the way down into the bureaucracy. But there was a scandal, a reported scandal, because of the Nixon people's fury with this legislation getting out. At that point -

DN: They were able to get close to the source?

LB: No, they never got close, never got close. One of the things that I learned, Don, and I think I learned it from Dick Murphy who was Bob Stafford's long time legislative director, was that when you make the decision to leak something, you always make the decision to lie about who leaked it, and you never admit to having done it, or you never admit to knowing who has done it. In this case, actually, interestingly enough, no one ever asked me where I got it, and I wouldn't have told them had they done so.

But he had int-, and I think, you know, retrospectively, we made a mistake, but Nixon had proposed national emission standards, he proposed national ambient air quality standards. He proposed a number of, you know, what would be seen in the context of today's Republicans, as very progressive policies. But it was clear that the Nixon White House saw Muskie as a principal adversary in '72, and they wanted to steal his preeminent issue. So that was one set of facts.

We held hearings in '69. Muskie used the hearings to belittle some of the Nixon proposals. He used the hearings, Phil Hart, his really dear friend, had put in a bill drafted by a lawyer named Joe Sachs, which would allow class action suits against polluters. And Muskie was totally offended by that concept, so he used the hearings to lay a basis for dealing with that.

And then in 1970, we had, we first, in 1970, after we came back, we had to deal with the conference on the oil pollution legislation. The so-called Water Quality Improvement Act, which had been sitting around for a year and a half because the House didn't want to act on the bill, which established liability for oil spills and for chemical spills (and perhaps the most radical environmental bill written to date, in some respects is still one of the most radical environmental laws), until there was oil tanker that broke up in Tampa Bay, which happened to be in the district of a guy named [William Cato] Cramer who was a conservative Republican congressman, but the ranking member in the House Public Works Committee. So all of a sudden that bill began to move, and we got it through to the, on the president's desk in April.

And then we began to try to mold a Clean Air Act. Now the House passed relatively early on what was left of the administration's clean air package, which included, among other things, regulation of lead in gasoline. We, my recollection is that we started meeting *in camera* in the summer of '70. And at one point there was a very serious air pollution episode in New York and

there was a lot of talk about excess deaths associated with it.

And we had an interesting committee, probably the most interesting committee that we had. Senator William [Belser] Spong [Jr.] of Virginia, who at one point in one of those sessions said, you know, “Ye gods, people are out there dying and we're sitting in here having a debating society.”

Tom Eagleton of Missouri, who had come to Congress two years before, who had just come through the coal mine health and safety debate on the Labor Committee, and was furious that there were no deadlines and that there was no way to keep Congress and the government accountable. Howard Baker of Tennessee, who was a technocrat, a protege if you would, of a guy named Al [Alvin] Weinberg who was at the Oak Ridge National Laboratory.

We had John Sherman Cooper who was once described by my colleague Tom Jorling as the most ethical man he ever met, but a guy who even in his later years was willing to experiment with legislation. We had Birch Bayh of Indiana, fresh off his battles with Nixon on Supreme Court nominees. And then we had some relatively conservative folks, but it was a good committee, and it was a committee of thinkers.

And Caleb Boggs of Delaware was the ranking member, and he was a very dear man who almost without exception voted with Muskie, and almost never asked for anything. He would say things like, “Well, I need to check that with the garden clubs back home,” because they were the influential environmental lobby in the state of Delaware in 1970.

The issues were, no, Muskie told his colleagues that the premise on which the federal government can exert a dominant role in the clean up of air pollution would have to be protection of public health. And you will recall, and history will show, that in the earliest Clean Air Act he had written a provision which required the Public Health Service to develop scientific analyses of the impact of air pollution on health, so-called air quality criteria documents. And finally, in '67, '68, '69, those documents had begun to be published.

And I remember one occasion, you and I were in a meeting with Muskie and Dr. C. C. Johnson of the Public Health Service, in which they were talking about how these air quality criteria documents should be formatted. And Muskie said, in essence, “I don't give a damn how you do it, I just want you to say that there is a number that reflects the best scientific evidence at the point at which adverse health effects occur.” Which became, which actually, Public Health Service wrote into the documents, and they became the premise on which air quality standards were adopted at these various regional conferences around the country. That conversation probably took place in '67 or so.

Well by '70, those documents were out there, standards had been adopted around the country, all the standards, air quality standards, in many cases were much more rigorous than any of the business community wanted. And they got Nixon to propose that air quality standards be adopted nationally rather than regionally. And I'm not exactly sure of the course of events, but at one point in the mark-up sessions, Caleb Boggs says, “Well, you rejected everything else Nixon wants, how about nationalizing air quality standards?” And Muskie went along with it. And I

don't think any of us thought through the implications of that move because what it did, we were to learn later, was effectively take citizens out of the clean air movement and turn it over to the technocrats. But in any event, the, for Muskie the drive was to have a public health standard against which to measure the success of air pollution control programs, so he was willing to make that compromise.

Well, the unique, this was, there were, there was myself and Tom Jorling who were the two critical staff players in the room. And really, with the exception of Barry Meyer with Senator Randolph, nobody, no other staff even participated in the open discussion. And there was Eagleton, Baker, and Randolph, who kept trying to slow things down. Cooper who became enamored with the idea of writing a piece of landmark social legislation. Bayh, who was a critical supporter but not an innovator. Joe Montoya, whose staff person, Karl Braithwaite, had his proxy, so Montoya voted for everything Muskie wanted and I'm sure he never knew what he was voting on. But that was sort of the core group, plus Boggs.

Eagleton declaimed at some length about the fact that the government kept announcing these major massive programs, but there weren't any deadlines so the public never knew whether they were going to be achieved. And so he demanded and insisted that the committee adopt deadlines for the achievement of clean air and other objectives, including clean cars.

And Baker, who was, Howard Baker, who was instrumental in these discussions, felt that the committee had a responsibility to not press beyond the limits of technology. And so there sort of developed a dynamic where Muskie saw air quality standards and deadlines as technology forcing, and Baker who saw technology as the limitations on how far you could go to achieve standards. And in many respects Muskie won that argument, and Baker supported it, though Baker had qualms about the leaving sort of open-ended, 'what happens if you can't get there in the time provided'.

And Spong, who I meant to mention, Spong was just absolutely essential, because number one he was a southerner, which meant that he was helping moderates and liberals shape a bill. And he very badly wanted to have a Clean Air Act which said to the American people that we were going to clean air up in a time certain. So the, at one point in August, Muskie, the committee was meeting and they were talking about auto emission controls. And they had basically come up with the structure of the Clean Air Act, and what they were going to do to sort of facilitate this regional approach that had been established in '67, and how they were going to integrate national standards into it. And that left two open questions: one was auto emission standards, and the other was how to deal with new sources of pollution.

There was a lobbyist, now retired in North Carolina, for the steel workers named Jack Sheehan who had fought the OSHA wars. Sheehan was convinced that if you allowed too much regionalism in pollution control, you would create havens for dirty air or dirty water, and the governors would be able to sell their states as a good place to come and pollute. The solution of that, a solution crafted in its entirety by Ed Muskie after a, Muskie and Sheehan had a testy relationship having to do with some banking bill, what was it, the Truth in Lending. And I think several years before that Muskie had effectively thrown Sheehan out of the office.

But they came together on new source performance standards basically saying that if you are a new source, you had to use the best available control technology so that at least there was a level playing field. Not to say that states couldn't go further than that, but there would be a minimum standard of technological And that was extremely important because it really eliminated labor's reservations about the legislation.

Now, auto emissions were a separate issue. Gaylord Nelson, with the support of the United Auto Workers and the Sierra Club, introduced a bill to ban the internal combustion engine. And Muskie, sensing the value, the political value and the political impetus for environmental protection, he saw this issue as much larger than his colleagues, grabbed on to that bill and said to his colleagues, we've got to do something about auto emissions or else we're going to have Gaylord Nelson ban the internal combustion engine as an amendment on the Senate floor.

So then the question was, 'Well what can we do?' And Muskie instructed me at a mark-up to find out from the administration, which at this time was the National Air Pollution Control Administration under John Middleton, what level of reduction of auto emissions we would have to achieve in order to remove the automobile from its contribution to urban air pollution, after the fleet had been changed. I called Middleton. The next morning he called me back at about five minutes to ten, we had a ten o'clock mark-up. And while he dictated I knocked out on my old manual typewriter a one page memo to Muskie which, in effect, articulated the Barthrow-Minovsky, who were a couple of scientists, I think they were Public Health Service scientists who had done an analysis of this, as "the best technical information" available. And I knocked out this memo which said, basically, ninety percent reduction in emissions would be required. So I took it down to the committee, I was actually late, which never set well with Muskie, presented the memo, typos and all, and he read it to the committee. And the committee adopted it.

And then there ensued a discussion of what happens if they can't make it, the [Howard] Baker theory. And Randolph, of course, wanted to have a two, at least a two year delay, Muskie wanted a one year delay. And they did battle, Muskie ultimately prevailing. And so on the eve of the congressional, I've been saying August, I meant July, because on the eve of the August recess, Muskie and the committee, subcommittee came out and had a press conference in which it was announced that the committee had adopted this legislation with deadlines.

But the most controversial provision was the auto emission standards. The auto companies went ape, and Muskie and the committee promptly left town for the August recess. Tom Jorling and I had a series of meetings with industry to satisfy Randolph's demand that we hear the views of interested parties. A Ford vice president called Tom Jorling a Communist for wanting to produce a Volkswagon type car, which I thought was an interesting mixed metaphor. And then we promptly went on vacation. And when we came back, the full committee reported the bill and it went to the floor.

Now, there was one other important, this bill had a number of important revisions, and by the way, the printed copy of the bill was thirty-eight pages long. And I like to compare it to the fact that the printed copy of the 1990 amendment was three hundred and thirty-eight pages long. This was the, during the course of the debate in committee, Tom Jorling, the minority counsel,

had come up with it, we had proposed to the committee, in addition to a fairly substantial enforcement mechanism, the adoption of a citizen's suit provision, and we had convinced Muskie that this was a viable option. In part that came about because neither Tom nor I, nor the senator for that matter, liked Phil Hart's class action provision.

And so when that provision was raised in committee, there was a fair amount of debate over it. And Muskie finally said, "Well, gentlemen, it's either this or Phil Hart's bill. Now, if you want to fight Phil Hart on the floor of the Senate on his class action provision be my guest, but I think we ought to deal with it here in committee." And of course, if you look back over the past thirty plus years, that provision may have been the single most important provision of law in terms of making it work.

[We] went to the floor, had basically a debate on the amount of time for the standards, and a debate on the, and a debate with [Robert Paul] Bob Griffin of Michigan, and a debate with Roman [Lee] Hruska [R-NE] who opposed the citizen suit provision. Passed the bill unanimously, went to conference with the House, thought we had an agreement, recessed for the election, came back for a lame duck session after the election, and the House had welched on the agreement. The House agreed before we left to adopt the Senate auto emission standards. We came back and they'd welched.

And we went into a series of conferences and discussions which ultimately, a couple things happened. One was, we managed to leak to Jack Anderson, who was, for the purpose, that's a columnist, a gossip columnist if you would, a story about the fact that one of the House conferee's family owned a huge auto dealership in Oklahoma City, and therefore was likely conflicted on the issue of the Clean Air Act. And after that story ran, Jarman never showed up for another conference, and Harley Staggers had his proxy.

And we rolled up to adjournment, and Muskie told Staggers, it was Staggers, Ancher Nelsen from Minnesota, the ranking Republican, Paul Rogers, Jarman, and I think Jim Broyhill of North Carolina but I'm not sure, and said, "Well gentlemen, I'm perfectly willing to come back here next year if you want to take back to the public that you were unwilling to accept this legislation. But I can assure you, it'll be a tougher bill next year." And got up and left. And we were called back, and I'm not sure but it wasn't the same day, and Staggers informed Muskie that by a vote of three to two, the House had receded to the Senate provision, and he had voted Jarman's proxy for the Muskie bill.

[The legislation] went to the White House, the White House might have got, well, it's gone into a black hole. Jennings Randolph got very excited about the fact that the president wasn't going to sign the bill. On December 31st, sometime in that period, Randolph and Cooper had gone to the White House, the White House announced that they were going to sign the bill, and they deliberately didn't invite Muskie to the signing ceremony. So the headline in the *Washington Post* the next story said, "Nixon signs Clean Air Act, Muskie not Invited". The irony of it was Muskie was in Maine for the Christmas holidays and he wouldn't have come back for it anyway. But I was later told by one of the Nixon White House staff people that, "they left the Clean Air Act sitting on one of the radiators in the Oval Office, and it obviously slipped off and fell behind it, because they didn't know where it was, and when they finally found it they signed

it." Anyway, that's sort of, that's a quick story. Muskie

DN: Let me ask you a question about that period. How did the White House play its role as the legislation was working its way both through the Senate committee and then in the conference?

LB: Actually, in the initial consideration of the legislation, Bob Finch of California was secretary then of Health, Education and Welfare, and his undersecretary was a guy named John [G.] Veneman, who was also from California. And they were very supportive of clean air initiatives and what Muskie was trying to do, and so on. Now, that may have been in part because when this all started in '69, Muskie was not the putative front runner, it wasn't until after Chappaquiddick that Muskie became the front runner. The, because there were no hearings per se, on the structure that the Senate committee reported. It was, it all evolved in mark-up, the whole thing evolved in mark-up. The administration was virtually not involved. I don't even think the Republicans were talking to him about what we were doing.

The, after we went to conference, and after we had gotten what we understood to be an agreement from the House conferees on the auto emissions issues, among others, and as I mentioned, we went out for election recess. When we came back the conference began to meet on November, I believe November 19th because I believe, I remember that day because it was my birthday, there was a letter from Elliot Richardson, who was by then secretary of HEW, opposing the Muskie bill, with particular focus on the auto emissions provisions. And that became the basis for the House resistance to doing what we wanted to do. And so it, it changed the politics of the bill pretty substantially. The EPA had been created officially on December 6th of that year, had really no role to play, it was all HEW. And there wasn't any, I'm trying to remember whether, I don't think we had any interaction at all with any of the legislative liaison from the White House.

DN: So they did not attempt to negotiate directly with you or with the Senator?

LB: Not to my knowledge, I don't recall, I don't recall that there was any, anything more than that letter. There may have been, but the, I know that the, when we came back from the August recess, the heads of the auto companies had demanded a meeting with Muskie, and that was a humorous meeting. You were there, if I remember correctly.

It was Ed Cole of General Motors, no, it wasn't Ed Cole, it was Pete Estes of General, Pete Estes, John Ricardo of Chrysler, a guy named Jerry Myers who was a vice president of American Motors, and it may have been Lee Iacocca with Ford. And the, they came in and expressed the outrage that Congress would have the temerity to tell them how to build cars, and it was a very contentious meeting. And I observed afterwards that it was the first time that the auto company executives had ever felt that they had any responsibility to deal with the Congress of the United States. And Muskie observed that if the people he saw in that room were any measure of America's captains of industry, he could understand why the Japanese were beating us technologically. But that, all that meeting did, I think, was steel his resolve. And I think that probably happened to a number of people.

I think, you know, one of the interesting things about the Clean Air Act of 1970, which would not be terribly interesting to anybody but a historian, is that the Clean Air Act passed unanimously. Even though, and Phil Hart voted for it, Bob Griffin of Michigan, who had taken the floor and strenuously opposed the bill, passed, did not vote. And that's what caused Gene McCarthy to say to Muskie on the elevator on the way off the floor, he said, "Well Ed, you finally found an issue that's better than motherhood. There are some people out there who are opposed to motherhood."

DN: Now, after, during this period, who was the first administrator of EPA?

LB: Ruckelshaus, Bill Ruckelshaus from Indiana.

DN: And they were not playing a role. Did they start with a role in '71?

LB: Yeah, they started with their role in '71 and they, when Ruckelshaus went out to California and announced that it was insane to try to implement the Clean Air Act, and basically destroyed the efforts that Mayor Bradley of Los Angeles was making to try to achieve the objectives he had. It was interesting that the administration, Ruckelshaus administration, did a pretty good job on the, their responsibilities with respect to auto emissions, but they did a terrible job with their responsibilities to implement the regulatory structure. They undermined it at every opportunity.

DN: And from your point of view, was that deliberate policy?

LB: Oh yeah, yeah. I mean this was, you know, it's hard to put it in context, and I've tried to do this with some of the things I've spoken about and written over the years. The reason the Clean Air Act occurred, the reasons were: Number one, the fact that environment had become an attractive, unifying issue in the country. Number two, the fact that Ed Muskie saw an opportunity in a crisis and maximized the response to it. Number three, a unique combination of United States senators sitting on that committee. Number four, a staff that had developed, in large part because of the relationship between the senators, a capacity to work together which was very different than any other staff on the Hill, part of which was growing out of you and Bill Hildenbrand, who was Boggs' person, and part of it evolving through me and Tom Jorling and others.

And then finally, the fact that there was no, while there was no organized environmental lobby, there was also no organized business lobby. You had the trade associations, the Chamber, NEM, American Petroleum and Paper, and so on. But the trade associations were not effective lobbyists. By and large, with the exception of Senator Randolph and some of the more conservative older members of the committee, nobody on the committee had any truck with them. I mean, they just didn't consider them to be credible, they had virtually no access to the members. Their, it was, our disdain for them was so great that we would work very hard to find a representative of a company within an industry to testify, rather than listening to the trade association because it wasn't of any value, there was no contribution to make.

And so that, in every essence, Muskie caught the business community before it was organized to

deal with an issue like this, and took it well beyond where they would be able to deal with it in the future. And, you know, we've spent the last thirty years defending it, but it was, he, he, he saw how high they could jump and set the bar much higher than they would ever be able to.

And so that, that probably, I think those are the elements. To a degree they were there two years later for the Clean Water Act, but the dynamics of the Clean Air Act were truly unique among the legislative initiatives. And I suspect over time, you know, you will read about other pieces of legislation. And I suspect that today the business reform legislation that [Senator Paul S.] Sarbanes got through has a piece of that, but I don't think you'll find any place in American history, a bill that was as far reaching as the Clean Air Act get enacted with such rapidity and with such unanimity, and with such scope as the Clean Air Act.

And that was because of Muskie's, Muskie had a unique vision. He'd thought a lot about these things when they weren't popular, he had the capacity to out wait his opponents. He never got up and left the room, which was one of the major weaknesses of liberals. And he would argue with anybody about anything for however long they wanted to argue about it. He would know the detail of the subject matter.

There was a provision in the Clean Air Act of 1970 which had to do with patents or warranties or something that Dick Royce, who had been chief clerk of the committee at the time, had convinced Muskie that it ought to be in there. And then Royce got contrary instructions from his chairman and was told to get the piece out, and the problem was that he had done such a good job of convincing Muskie, he couldn't unconvince him about the provision. And that was the way Muskie was. But his, and it wasn't, you know, I'm willing to take a lot of credit for, you know, doing the grunt work on this stuff, but the intellectual capacity and the ability to build a consensus, which is the element that's most missing in American politics today, was the essential Muskie. He said to me one time, he said, "Leon, the man that's in the middle is in control," he said, "you just have to be able to define what the extremes are so you can set the middle that you want." And that's what he did.

DN: When did he say that to you?

LB: Oh, he said that to me in the mid-seventies. We were talking about, after the, after what I call the Sam Nunn election of '74 when, you know, we'd had about ten years from the Lyndon Johnson election in '64 to the '74 mid-term elections in which there really had been a liberal control of both the House and the Senate, numerical control. And after that election he said, you know, "Things are never going to be the same around here any more, because I'm going to find myself on the left because somebody else is going to be defining where the middle is."

DN: You mentioned John Middleton and the call about the work that had been done by the scientists. He apparently felt reasonably free, even though he was a senior administration official at that point, to call you and to work out arrangements on legislation and implementation.

LB: Yeah, there were no impediments, all the way up to the surgeon general. The interesting thing that has disappeared, one of the things that disappeared, the surgeon general was

considered to be a career public health professional, and the people who worked for the surgeon general were considered to be career public health professionals. Even though Middleton was brought in out of the Air Quality Research Laboratory in Riverside, California, he was never considered to be a political appointment. And he, his job was to be as professional as possible. He clearly believed in his mission, because he wasn't in any way constrained. And to my knowledge, there was never any effort made to constrain he or his fellows, whether it was people, the medical doctors and researchers who researched Triangle Park, like Jack Finkley, or Middleton or other.

DN: Now, you mentioned that the environmentalists were not organized in the late sixties and into seventy. As we look back, it's hard to recognize that, thinking about what's happened since then. Why hadn't they gotten organized during that period?

LB: Well, I don't think they had an issue. The Sierra Club, if it existed before 1970 as a national organization, wasn't focused on environmental issues, it was focused on conservation issues. There was no, the word environment wasn't even used then, and we still have a confusion, I mean, you know, we had some wonderful support from some of the old line conservation groups like the Wildlife Federation and so on, that the, I'm trying to remember what Lou Clapper's outfit was, Izaak Walton League. Izaak Walton League was a great supporter -

End of Side A
Side B

DN: This is the second side of the interview with Leon Billings on the 16th of September, 2002. You were talking about the environmental groups.

LB: And the conservation groups were more interested in water pollution than they were in air pollution. The most significant environmental group of the sixties was the League of Women Voters. And they, for them, Clean Air was an organizing tool, and they were very deeply involved in the regional air quality standards issues and so on, and they didn't see it as a partisan issue, which made it possible for them to take the issue and run with it. But there was no, there was virtually no organizations that were out there other than that to care about whether people could breathe or not. The Lung Association didn't really exist in that context, though my recollection is that in some of regional field hearings we would get Thoracic Society representation and so on. But the whole organized environmental phenomena didn't really start until the mid-seventies.

DN: But during that period, Ralph Nader attacked Ed Muskie, or his people did.

LB: An interesting era. Yes.

DN: What was the background of that?

LB: Well, I've never quite understood it. John Esposito was, I think, the author or the principal author of a book called Vanishing Air [Vanishing Air: The Ralph Nader Study Group Report on Air Pollution. Viking Press:1970], in which Ed Muskie accused, I mean in which Ralph Nader

accused Ed Muskie of being a captive of the paper companies, and writing national environmental policy in a manner that benefitted the paper companies of Maine. And the, it hit a pretty sore nerve and Muskie reacted to it, and his reaction is in the archives. He put out a very elaborate statement which we all worked on. In retrospect he probably shouldn't have. But in any event, he reacted to it and part of, I believe, part of the stimulus for him reaching well beyond the structure of the legislation we had originally been considering, was to be able to effectively eliminate the criticism or the challenge that he wasn't sufficiently environmental in his And I really, I really think that Nader so angered him that he wanted to make absolutely sure that that charge would not stand. And, well, he did.

Nader, you know, Nader, interestingly enough, and this is a vignette that's not in anybody's biography. We had a provision in the Clean Air Act in 1970 that Nader didn't like. It had to do with some informational requirement in the auto provisions. And he called me and he said, and he asked me to change it. And I told him I couldn't do that because the conferees had already signed off on it. And he said, "They'll never know." And I said, "Are you, Ralph, are you suggesting that I should change a provision of law that the conferees have already agreed to without telling them? Isn't that dishonorable?" And he hung up on me.

And then later that day I got two telephone calls, both of which were from acquaintances, one of which was from a friend, telling me that I could never reveal that Nader had asked me to change the outcome of that piece of legislation, knowing full well that the conference had signed off on it, or else, quote, 'he would get me'. I mean, this, he was not highly regarded by a lot of us. But his attack on Muskie certainly stimulated a response.

DN: Now the, from '70 to '72, following the Clean Air Act, during that period and after, Senator Muskie was involved in his own quest for the presidential nomination. How did that affect your work on, during the time of his campaign, how did it affect your work and the work of the committee?

LB: Well, the, at some point in '71 we actually organized an official designation of Tom Eagleton to be vice chairman of the subcommittee, so that we could conduct hearings and carry on activities. And Eagleton stepped in and did everything that Muskie ordinarily would have done. Though there was, in that period, times when Muskie would become re-engaged in the work of the subcommittee, much to the frustration of the people who were by then running the office and running the campaign, because they thought we were diverting him, or distracting him from the campaign trail. And in fact, he very much wanted to be diverted and distracted from the campaign trail. And I, you know, I never examined the psychology of it, though I was certainly the beneficiary of much of the anger about it, but he continued to play a role.

He, if I remember correctly, John [Varick] Tunney [D-CA] was elected in the '70 election, and he became a member of the subcommittee. And Tunney decided, I think he was elected in '70 [John Tunney was elected to the U.S. Senate in 1970, after serving three terms as a Congressman]. Anyway, he decided that he would craft a concept for water quality that was the parallel of Muskie's concept for air quality. And I and other members of the staff had extensive meetings with Tunney and his two staff people, Jane Frank, who is now Congresswoman Jane Harmon, and David Cathcart, and Tunney, talking about his idea to have a national water quality

standard.

And at one point, again I've, I'd have to go back and review notes to put the exact time on this, but it may have been in '72. I'm not, I just don't have, I can tell you that we passed the Clean Water Act in 7—, on October 16th of '72, but there's some time frames I haven't put together in my mind. But anyway, I wrote a memo to Muskie saying that Tunney has this idea, and I don't think it will work for this reason, and I had given Tunney every one of these reasons in these private meetings. So Muskie comes in to an executive session, a mark-up session, and he proceeds to read my memo in its entirety. And Tunney turned red in the face, he accused me of being a quisling, a traitor, and stomped out of the room.

But in any event, the, Muskie was somewhat but not wholly disengaged from that process. He was very much engaged in shaping what became the Clean Water Act, because we did in fact go through a very intense period in which we discussed what kind of a structure would be required to get the Clean Water Act to work. And he was integrally involved in the decision to abandon the water quality standards as the regulatory mechanism, and just come up with the concept of effluent limitations as the regulatory mechanism, and ultimately was the key member of the conference committee. When, my recollection is actually, that we passed the Clean Water Act in the fall of '71. And there was a hearing, maybe it was later than fall, but Muskie was deeply involved, and I think his involvement in 1971 in anything, ticked off the campaign people who were trying to control events.

The House held a hearing on it December 6th, 1971 in which Nelson Rockefeller characterized the Clean Water, the Senate-passed Clean Water Act as a trillion dollar mistake. And I remember that Muskie said at the time, "Only Nelson Rockefeller would know what a trillion dollars is." Anyway, then the House just sat on the bill, and didn't do anything with it. They, actually they met in December and they voted the bill out, but they didn't file a report for four months. I think that's what happened. And in the meantime Muskie was off winning New Hampshire, or losing it, and then he came back and was a conferee.

But also in the interim, John [Anton] Blatnik had a heart attack, he was then chairman of the House committee, and his place was taken over by a guy named Ray Roberts. Roberts was not John Blatnik on the whole, it took Had Muskie not come back we would not have survived the Clean Water Act, because the, his idea of having, building on technology as a means of controlling effluence, going from best practical technology, best available technology, and implementing the Corps of Engineers permit program, transferring it to law and so on, would never have gotten through if he had not been the chairman of the conference committee.

Now, here's an interesting point, the, midway through our consideration of the Clean Water Act, the court upheld a very obscure 1899 law called the Refuse Act of 1899. And that law is very simple, it said that the discharge of pollutants into nav-, of oil or other pollution into the navigable waters of the United States, is a felony and subject to, not only to penalty, but also you can collect bounties if you identified somebody who was violating it. And needless to say, this caused some *Sturm und Drang* among the business community. Russell Train was then chairman of the Council on Environmental Quality, and he wanted to handle, he wanted to create regulations to regulate discharges. And Muskie, we had a provision in our bill which responded

to that need, and the House didn't want to go along with it.

So Muskie, and I think the only time I've ever seen or heard of this up to today, arranged to have a hearing, have the conference committee hold a hearing. And it was held in the F100, and he had Russell Train come up and explain why they needed a permit program. And essentially using that vehicle and the arguments that he advanced in that forum, which was a seminar for the House Rules, managed to get the House members to buy on to the permit program. I mean, and that was, that was a beauty to behold. I mean it was quite, just, it was so well orchestrated, and it was orchestrated in an intellectual perspective. Muskie really liked Russell Train. Russell Train was probably the, was then at CQ, he later became an EPA administrator, and Muskie liked him in both capacities. They had a capacity to communicate that was pretty rare as far as I was concerned.

DN: You had a chance to observe that develop. Do you remember how it started, how it got under way, and how they interacted directly?

LB: No, I really don't. I know that, I recall one instance, this was some years later, in which Muskie and Train were meeting, and he may have been the EPA administrator at the time. And Train said, "You know, my experience has been that in any given period of time I can get one or two things out of the White House. So I'm very careful about what I ask for, because I want to make sure I get it." And, I mean, that approach really pleased Muskie, because he saw the wisdom of, I mean, he'd heard Ruckelshaus say, "Well, you know, I talked to Nixon for over half an hour and he spent twenty-five minutes talking about various county chairmen in the state of Indiana, and I never get around to what I went in there to see him, but fortunately it was just he and I, so I could tell the people outside whatever I wanted to."

Train, and Train, you know, Train was honest with Muskie. He would say, look, you know, Muskie would say, you know, "You never do it my way, you always do it somebody else's way." And he said, "Well, you're on my side already. It's the other guys I've got to influence." But it was a nice relationship, and I think it maintained. I don't know how often they saw each other, but they certainly had a great deal of respect for each other. And I think also there was sort of an old school aspect to the relationship, even though Train came from a significantly different economic background, I think there were some old school ties.

DN: How did Muskie and Ruckelshaus interact?

LB: For the most part pretty well. I mean, Ruckelshaus was shrewd, he, he did some things which really irritated Muskie, like his ridicule of the Clean Air Act in Los Angeles. On the other hand, when he made the decision with respect to extending the deadline for the auto industries, even though, auto industry, even though Chrysler clearly had violated the good faith provisions, Muskie was satisfied that it was a very thoughtful and legally structured decision and he respected that. The problem I had is, the nice thing about Russell Train is that, and he left after Gerry Ford, and Ruckelshaus came back around, and I'm not sure that, I'm not sure, I have to sort that out, I really haven't, you know, if he had left government at the same time as Muskie and not come back I'd probably have a better sense in my own mind.

DN: After the '72 election, and after the Clean Water Act of '72, where did your attention turn in environmental legislation?

LB: Well, you know, in, after the presidential election we had a period of, I would say despondency on Muskie's part, and perhaps on my part, too. He wasn't very interested in doing any of the things that I was doing, and I wasn't very interested in spending any time with him. And so, you know, he actually, and it's really important to get in this oral history, went off and worked on the War Powers Act. Hopefully you'll have a chance to talk to Brian Atwood at some time about that, because Brian was one of the staff people. But he, you know, he was, he had decided after the election, the failed election, that he was going to become engaged in foreign policy and be a big thinker, and he wasn't going to spend his time in the tedium of the Senate.

I actively sought the job as administrative assistant, and he told me that I was unprepared for the priorities that he was interested in, and that's why he offered the job to Maynard Toll who was very much the international type. And so we, with the exception of really extensive hearings in '73 and '74 on the whole question of the National Academy of Sciences study, and the automobile emissions extension, we did some little things, but we didn't do a lot. It really wasn't until '75 that he re-engaged, because the Clean Air Act had, the, it was pretty clear the auto emissions, the auto companies weren't going to meet the NOx standards and the standards for oxides and nitrogen, so the Clean Air Act needed to be extended.

Also, there was a huge problem with the discharge of dredge and fill material in water programs. So in the '75-'76 period we began a process of what Muskie referred to as a "mid-course correction" in the Clean Air and Clean Water Act. And the, we actually got quite a long ways. The issues had changed: we'd had a Supreme Court decision on prevention of significant deterioration, we'd had the auto issues, we had pretty clearly some implementation issues, and so we set about trying to craft a bill that kept things moving forward without closing the country down.

And we ultimately passed a bill through the Senate, got a bill through conference with the House, and it got to the Senate floor, and [Edwin Jacob] Jake Garn of Utah insisted that the conference report be read and, you know, I think that was a lame duck session also. And finally around four o'clock in the morning we gave up the ghost and let the bill die, Muskie recognizing that that was problematic because the auto companies didn't have standards, they had standards they couldn't meet, and so we would have to come back in the next year.

In the Clean Water Act case, the House wouldn't compromise on the dredge and fill issue, and they were really arrogant about it. And for some reason, Muskie wasn't there and I took the bill down, and I just, I just left, and so that bill ended up dying. But I, I'm not exactly sure why Muskie wasn't there, he may have been in conference on something else, but, oh, you know what, we've left out a whole chapter here and we got to go back.

In the '73-'74 period, there was a thing called the energy crisis, and the, there was an attempt to gut the Clean Air Act in this emergency energy legislation. And the, Jim Schlesinger, who was then secretary of energy, and his pet dog Al Alm (well I shouldn't say that about him because he's no longer with us), but anyway, came to see Muskie and, actually invited Muskie to the

White House for lunch. And he and I went down, and Schlesinger told Muskie that there were some unimaginable number of power plants in this country that couldn't convert from oil to coal, because of the Clean Air Act.

Well, it was a lie. When we got back, I checked it out. There were, I think he said over a hundred power plants; well there were over a hundred power plants that were burning oil, but there were only sixteen power plants that had the capability of converting from oil to coal. And Muskie was absolutely outraged that a person in a position like Schlesinger would just outright lie to him, and he called him on it. And I think he wrote him a letter, and I think that's probably in the archives, too.

And so we went to conference the, this was the winter of '73, early '74, we went to conference with the House. And it was one of those conference committees in which there was a cast of thousands. I have to tell you a vignette first. I walked into one of the staff meetings, and all these staff people were sitting around in the room. So somebody from either, from the conference committee, House or Senate, said "Well, Leon's here, let's talk about the Clean Air provisions of the agreement." And I looked at him and I said, "Leon didn't come here to discuss the Clean Air provisions with you. Senator Muskie has instructed me to talk about them with Congressman Rogers, and I'll talk about them with his staff, but they're not subject, you have nothing to do with it." And I looked around and said, "Seeing nobody from Roger's staff here, I'll go back to my office," and I turned around and left. And that stopped that.

Well anyway, so then we finally got the principals together and, you know, it was pretty clear that everybody wanted to pounce on the Clean Air Act. In the first place, Muskie was not in a good mood. And so he listened to this for a while, and suddenly he pulls, he reaches in a pocket, he pulls out a letter and he, a folded letter, and he says, "This is a letter from Adlai Stevenson, Senator Adlai Stevenson, the thrust of which is that if we weaken the Clean Air Act, he'll filibuster this conference report and we'll never get it passed. So if that's what you want to do, let me know so I can tell Senator Stevenson." Well everybody, you know, "Oh no, oh no." And so Muskie said, "If that's not what you want to do, Paul [Rogers] and I will work, Paul and I will work something out and we'll get back to you." Well, they did, we did, we got it done.

That letter was written by a guy named Len Dickwood, and the letter said something like, you know, "Gee, Ed, I really hope that you won't weaken any of the provisions of the Clean Air Act because I really care about the Clean Air Act." And so it was this totally innocuous letter, but it was, you know, you couldn't have played a better poker bluff than that one, and he got his way with it. *(Pause - interrupted by staff)*

LB: Now, skipping back to the Clean Air Act, so they, in '76 both the Clean Air Act, as a result of the Garn filibuster, and the Clean Water Act as a result of the Dick Sullivan filibuster, Dick Sullivan being a former chief counsel of the House committee who didn't believe me when I said I'd take the bill down rather than compromise with him, having learned that from Muskie.

We came back in '77 and we had, we had a couple of problems. The auto companies needed to know what their emissions standards were going to be by turnaround time, which is the first week in August, when they shifted to the next year's models. And the, Muskie didn't want to

compromise on the auto emissions standards too early.

One of the enormous skills that Muskie had was determining the right time for making a deal. And we, there were a number of issues in the Clean Air Act, including the PSD issue, prevention of significant deterioration. And so I talked to Howard Baker and I said, "Look, I know you want to go from a .4 NOx standard to a 1.0 NOx standard, and I absolutely promise you that before the bill passes the Senate we'll have a 1.0 NOx standard. But the auto companies want a lot more than that, and we can't afford to give it to them, and Muskie doesn't want to compromise with you until the compromise with you becomes the compromise that passes the Senate." And Baker said basically, all right, but don't *expletive deleted* diddle me, and I mean, he was finger in the chest type.

So we went to the floor and there was this young senator named Don Riegle who had an auto industry amendment, and he didn't know that we had a deal with Baker. So he offered his amendment, and I went over to Baker and I said, now. Baker stood up, offered his amendment as a substitute, it was adopted, and Riegle didn't know what hit him. And in fact he came up to me afterwards, he says, I guess the next time I do this I should know what the rules are. But this thing was a total Muskie orchestration. So we got out of the Senate with what we wanted.

By this time, because of the Legislative Reorganization Act of 1976, the House committees had been reorganized. And when they did away with the old Merchant Marine Fisheries Committee, some aspect of its jurisdiction was transferred to the Commerce Committee, and along with that came one John Dingell. John Dingell had succeeded in taking control of the committee away from Paul Rogers, who was then subcommittee chairman, and he had gotten an amendment through, an auto industry amendment through on auto standards, and then, on the floor. And John Breaux, of Louisiana, had gotten a similar amendment to the PSD provisions through on the House floor. And under the then extant House rules, if you prevailed on an amendment on the floor of the House, you became a member of the conference committee.

So we had for the first time a real conference with the House, where Dingell, who wasn't chair, refused to compromise on auto emission standards. And because he and Breaux were both on the conference committee on the majority side with the Republicans, they controlled the majority of the conference committee. And Muskie kept saying, you know, "I've gone as far as I want to go. There aren't any auto plants in Maine. If you want to close down the auto companies, then that's your decision." And all of this just drove Dingell nuts, I mean he just

Finally the, and Jennings Randolph was an absolute nervous wreck. And one of the staff people had painted some dice with the standards on them, .4 NOx, .1 NOx, .9 CO. And Randolph actually proposed, in a backroom session of the committee, throwing the dice to determine what our position ought to be, and then tried to get Muskie to go along with it. And Muskie, Muskie looked at Randolph, I mean this was probably as nasty as I ever saw him with Randolph, he said, "Jennings, we're not children here, this is serious business." And interestingly enough, in putting Randolph down that way, all the rest of the committee members backed off. And he said, Muskie said, "Dingell will give in if we hold fast."

And so we went back in, and I remember Wendell Anderson, a senator from Minnesota, made

this really ludicrous speech about how he couldn't jog any more because the air was so dirty. And finally, Dingell threw up his hands, swore, stormed out of the room. Rogers called the vote, and the Muskie provision was accepted. And then came PSD which was still outstanding, and Breaux started looking around for Dingell because without Dingell he didn't have the votes. And Dingell refused to come back into the room because he needed to get the bill out of there, so he let, you know, basically Rogers conceded to the Senate position, or the staff negotiated position on PSD, and we got the bill through.

But it was, it was absolute, you know, that whole period of time it was Muskie's willingness to sit on his butt and not move, you know. Now of course, part of this time he was in a wheel chair because he'd had these back problems. In fact, at one point we had a conference committee meeting in the Senate Appropriations Committee hearing room, and it was on the water bill. And Jim McClure was there, and Quentin Burdick was there, and John Chafee was there, and it was really difficult for me because I didn't have anybody there who was anywhere close to Muskie philosophically. But Jim McClure insisted that we follow Muskie's lead, even though he was in the hospital.

I had gone out to the hospital the night before, and Muskie was talking to me about rats on the ceiling, he was under some kind of medication right after, either right before or after his surgery. So McClure and Burdick said, "Well you're going to have to call Ed and ask him what we do." So I went up to the phone on the corner and I called Dial-A-Prayer and carried on, the only time I did this in the fifteen years I was with Ed Muskie, I called Dial-A-Prayer and asked, "what I should do?" And I came back and [said], "He said, 'tell them no'." And I, you know, I talked to him about this later when he was, and he agreed that I did the right thing. I always figured with Muskie that "no" was the least dangerous response.

But anyway, so . . . we got the Clean Air Act through. And during that time, in May of that year, we had a meeting at the White House, Muskie, Dingell, Jimmy Carter, myself and some other staff, in which, and Paul Rogers, in which Dingell and Muskie respectively made their positions to the president, and known to the president. And I think afterwards the president indicated that he had sided with Muskie, he told Dingell he sided with Muskie. No, it must have been before, because when we went out of the room I shook hands with him and told him who I was. And he said, "Oh, I know who you are, you're the subject of the second most unpleasant conversation I've had since I've been president." And I said, "Oh, what was the first?" He said, "When I told Dingell I wasn't going to go along with him on auto emission standards."

Anyway, the, I mean that was where I think, it was one thing for Muskie to guide through the '70 Act, or even the '72 Act, when he had a substantial public majority, a perception of the urgency of the problem, significant liberal support in the Senate, a committee that was very strongly in his favor. It was quite another thing in 1977 with a very different Congress, not only a different House because of their rules, and Dingell and Breaux's success, but the Senate which was now a much more conservative institution, for him to be able to pull off something that in essence preserved the underlying laws pretty much intact. There were compromises we probably didn't want to make, but they were all compromises that were within parameters of acceptability, they never really got outside. And that was a unique legislative skill.

DN: And he was exercising that in spite of enormous physical difficulties.

LB: Yeah, his, as I said, I don't think he, I know he went to some of the Clean Air Act conferences in a wheel chair, and he was in great pain. I don't think he attended but maybe one of the last of the Clean Water Act conferences. You know, the Clean Water Act of '72 I think had forty-five, forty-four mark ups and forty-five conferences, forty-four committee meetings, and forty-five conferences. Can you imagine doing that today? Just amazing.

DN: Not the same kind of commitments. We're virtually at the end of this tape; let's take a break here.

End of Interview