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Interview with Jim Buckley by Don Nicoll and Leon Billings

Summary Sheet and Transcript

Interviewee

Buckley, Jim

Interviewer

Nicoll, Don
Billings, Leon

Date

October 31, 2000

Place

Washington, DC

ID Number

MOH 239

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Biographical Note

James Lane Buckley was born on March 9, 1923 in New York City, New York. He grew up in Connecticut and attended college and law school at Yale. After that, he practiced law in New Haven for four years and then went into business with his father in New York City. In 1970, he was elected to the Senate where he worked with Senator Muskie on environmental issues. He later became a judge for the United States Court of Appeals for the District of Columbia Circuit. Further information can be found in the Biographical Directory of the U.S. Congress.

Scope and Content Note

Interview includes discussions of: childhood and education; early interest in the environment; his career in the Senate; Air and Water Pollution Subcommittee; Public Works Committee; Commerce Committee, Interior Committee; contributions to the Clean Air Act; perspective on environmental issues as a Republican; and discussion of the terms “conservative” and “conservationist”.

Indexed Names

Asbell, Bernard
Baker, Howard H. (Howard Henry), 1925-
Billings, Leon
Buckley, Jim
Muskie, Edmund S., 1914-1996
Nicoll, Don
Randolph, Jennings
Tunney, John Varick
Webster, Daniel

Transcript

Don Nicoll: It is Tuesday the 31st of October, the year 2000. We're in the Circuit Court of Appeals of the District of Columbia in the, ah, Judge Buckley is going to correct me.

Hon. James Buckley: This is the United States Court of Appeals for the District of Columbia Circuit.

DN: Thank you. And we are talking with Judge James Buckley and former senator of the United States. Don Nicoll is the interviewer, with Leon Billings. Judge Buckley, would you state your full name and date and place of birth for us?

JB: James Lane Buckley, March 9, 1923, New York City.

DN: You grew up in New York?

JB: I grew up in Connecticut.

DN: In Connecticut. And you went to school in Connecticut pretty much, I gather?

JB: Various places, but I went to a boarding school in New York, New York state that is, Millbrook, New York, and then college at Yale, and then law school at Yale.

DN: And you practiced law in Connecticut?

JB: Four years in New Haven, than got, went into business with my father in a company headquartered in New York City that involved oil and gas exploration outside of the United States.

DN: And when were you elected to the Senate?

JB: In 1970.

DN: And when did you first become aware of Senator Muskie?

JB: I don't think anyone could have followed environmental issues as I had for some time without being very much aware of him. So don't give me, don't ask for a date, but certainly in the late sixties I was very much aware of him.

DN: You had a strong interest in environmental matters?

JB: Yes, hm-hmm.

DN: What, when did that start?

JB: For as long as I remember I've been fascinated with birds, and if you're fascinated with birds you start being fascinated by where they live and what keeps them healthy and so on. When I ran for the Senate, environmental issues were very much my, on my mind and very much in my platform. I remember receiving a call from one, incidentally I was a candidate of the Conservative Party in New York in a three-way race, and one of the Conservative Party fathers sent me a letter chastising me for wasting time on a non-issue.

DN: And what was your response to that?

JB: I didn't have time to respond. I found it when I was cleaning out my desk after having been elected.

DN: One of those opportunities lost. And when you came to the Senate did you immediately embark on work related to the environment?

JB: I was number ninety-nine in the pecking order in the Senate which didn't give me a wide range of choices, but fortunately I had wanted very definitely to be on the Public Works Committee precisely because of its environmental agenda. And that is not one of the most favored committees in the Senate, at least not in those days, and I had no trouble getting that spot.

DN: And were you on the Environmental Subcommittee with Senator Muskie?

JB: Yes.

DN: Which was called in those days, Leon?

Leon Billings: Subcommittee on Air and Water Pollution, I believe.

JB: Now the committee on Public Works, period.

DN: And Senator Muskie at that time was Chair of the committee.

JB: That's right.

DN: What kind of committee did it seem to be when you came on it?

JB: Excuse me, he was chair of the Environmental Subcommittee, Senator Randolph was the chairman of the committee. What kind of an agenda?

DN: What kind of a committee was it?

JB: Oh, it was, are you talking about Public Works or the Subcommittee?

DN: The Subcommittee.

JB: It was an excellent committee to work on, it, in fact this observation is true of the entire committee in that you had no feeling of partisanship, there was no haggling back and forth. The members of the staff served both sides equally. There were a lot of arguments on how one could best achieve this, that or the other objective but it was quite different in this respect from any other committee on which I served.

DN: Were, did you feel a full partner in the deliberations of the committee?

JB: Yes, I did, and it takes a little while to learn the ropes. I came in from private life, but I think I very quickly established that my interest was genuine and I was certainly welcomed in every discussion and I felt very soon that I had full participation.

DN: And you came to the committee at a time of intense pressure on the Clean Air Act and on other legislation. Were there areas of difference between you and Senator Muskie?

JB: I can't think of any areas of difference. I can think of a particular insistence of mine with respect to all legislation, and that was to make sure that there would be a balancing of costs against benefits, and that provision be made to maintain that, to take the costs into account. I don't think it shocked anybody but it may, it may have been that this particular aspect would have been ignored or not included.

DN: And how did that play itself out in the committee?

JB: I think that the legislation I had a hand in always had such provision, and Leon will correct me if I'm wrong.

DN: And did you, did you find much resistance from your colleagues on both sides of the aisle on that question?

JB: No, no, I think it made sense. The argument being made in those early days of environmental legislation was that environment imposes a cost on society. Therefore these, the bills to purify, to have cleaner air and purer water were in effect internalizing the cost imposed by polluters on society as a whole. So there was a recognition that there were costs and there were benefits. And the only question was to make sure that you don't, at least in my judgment, that you don't try to achieve at the outset at least, such stringent standards that you impose costs

that way outweigh the benefits that society would realize.

LB: Can I just throw in -?

DN: Go ahead.

LB: In that context, you were then, I'm sure still are, a fiscal conservative, Muskie was somewhat more fiscally liberal. And if I recollect, you differed on how much money to commit to the Federal Construction Grant Program. You thought that the amount was somewhat higher than was appropriate and expressed those views in the legislation. I know you didn't vote against the legislation, but you were concerned about the cost.

JB: I was concerned very definitely, and especially as New York had proven a very good citizen early in the game and had had a different formula of reimbursement. But I think kind of a compromise that was worked out was we went to the new standards, I think eighty percent instead of some lesser percent federal construction. But New York was able to recover the difference between what it had spent and what it would have had under the new legislation. You have a very good memory, better than mine.

DN: In fighting that issue in the Senate as a whole, how did you and Senator Muskie prepare for meeting the arguments that might come from other members who didn't agree with you on the construction issue, for example? Was there a joint effort?

JB: I just don't recall, this is the kind of detail that just escapes me.

DN: What was Ed Muskie's style in the committee in dealing with some of the contentious issues?

JB: He listened, I think he listened well. He had, of course, his, what he pioneered I guess, is a concept of forcing change by setting up a standard and then relying on industry's ability to catch up with it. He, I found him very gracious but I also found he had a very short fu-, a fuse when he felt that he was being played games with, I'm thinking in terms of hearings. But the nice thing about him was that he defused himself awfully quickly. So there were these sort of storms that I think served their purpose of causing people to put the nonsense aside.

DN: Did you find yourself at any point with any major disagreements with him?

JB: Probably so, and again I, my apologies, there may have been towards the end of this period when we had, well, emission limitations. What is that code word, the something-or-other standards that apply to the automobile industry?

LB: Oh, tailpipe standards.

JB: Tailpipe standards, right. And I felt that we weren't talking about, and this is more related to fuel effic-, well, to fuel conservation rather than environmental standards because the standards were not changing. And I just felt that the marketplace would make the proper

adjustments.

DN: You thought that the cost of fuel would push people toward having more fuel efficient cars?

JB: Yes, which was in fact happening during the various Arab oil crises. Now I'm con-, now I'm getting a little bit of confusion between what I was doing on the Environmental Subcommittee and what I was doing on the Commerce Committee.

LB: Commerce Committee was handling the café standards and we were handling the auto emission standards. But just to refresh it, there was that debate in 1975 and '76 in your last two years there, on whether we modified one of the key emissions standards, the NOx [nitrogen oxides] standard, and you and Howard Baker and others wanted to modify it. And Muskie said, if I recollect, to the two of you, "That's a tactical judgment, not a policy judgment and just don't ask me to do it before I need to do it on the Senate floor." And you and Senator Baker went along with reporting out of the committee a bill that was tougher than you wanted to end up with, to accommodate his tactical judgment, but you held it very, you held it very close to that. And you were a member at that time.

JB: I was a ranking member then. And I had a meteoric rise in the Senate, but unfortunately I was only there one term. But I do recall in that bill that I did accomplish something that I had been trying to for some time and that was to experiment with the so-called pollution tax as an alternative approach to the mitigation of pollutants. And there was a provision in that bill for precisely placing a tax on NOx emissions from stationary sources, but I sus-, but then Congress adjourned before that bill was adopted and I have a feeling -

LB: Jake Garne read it if you recall, remember he read, he forced the committee report to be read on the Senate floor at midnight, at night, on the last day of the session and finally we threw in the towel, and uh.

JB: I was probably campaigning in a losing campaign in New York at the time.

DN: And were you supported in that pollution tax proposal by -?

JB: Yes, the committee adopted it and the Senate adopted it, and there were no alternative strategies at that time for controlling that source of pollution.

DN: Were, in the efforts in the committee during the early to mid- 70s, were there any striking differences of opinion among the subcommittee members as you recall? Not simply you and Senator Muskie but other members of the committee, was there much division in that subcommittee?

JB: If you're talking about Water and Air, no. No, I think we all knew that the problem had to be resolved. We might have had tactical differences in how to go about it; there may have been differences as to the circumstances in which the enforcement of the standards might be suspended or delayed or deferred. There were questions about what that standard should be,

would it be the so-called 1492 standard, namely how the United States, how North America existed when Columbus first came here, or whether it would be a more health related standard. And I think the health related is what prevailed. There was a lot -

LB: But, what you're referring to too Senator, if you recall, that debate, the clean water aspect of that debate, was more a debate between you and Senator Muskie and Senator Baker and others on one side, and Senator Tunney on the other, so it was not, if I remember correctly it was -

JB: No, I didn't mean me versus Muskie, although I guess this is the context of this interview. I would say that where I broke ranks with Senator Muskie and others, having nothing to do with this, was noise pollution. As a federalist, I believe that Congress had its, derived its authority to work in the environmental field based on the fact that water and air and birds and animals and so forth do not respect geographical boundaries. But I saw no reason why we should impose standards on jack hammers for New York and New Jersey as the sound doesn't travel all that far. By the same token I saw every reason to maintain, to insist on standards where it came to aircraft, trains and so forth.

DN: And how did that difference of opinion play out?

JB: It was amicable, people recognized me for what I was, and I lost. I lost no sleep either.

DN: As you look back on the experience in the subcommittee, did you get much of a sense of how the subcommittee arrived at the point that you found it in 1971 in terms of the way it operated and functioned, and this is also a question related to the full Public Works Committee?

JB: Well I walked into a situation that obviously had existed for some time. I would credit the non-partisan atmosphere to Senator Randolph. I think he set the tone there, and I, I'm not, I don't mean to suggest that Senator Muskie was resisting this in any, to any degree. I just had a feeling there was a common purpose there to be achieved and that we were working with a blank blackboard. We were conscious of the fact that we could make mistakes, and I think this meant that we were willing to listen and try to reach a consensus. I thought it was an exemplary approach to legislation.

DN: In your time serving on the subcommittee, did you and Senator Muskie have any opportunities to talk about your respective interests in the environment? You've mentioned your interest in birds from early age. Did you chat about how he came to his strong feelings about the environment?

JB: No, not that I recall anyway. Unfortunately this, Congress then, and I guess more so now than it was then, is so occupied. There's such a premium on getting the work in front of you done, there was very little occasion for quiet reminiscences and discussions or things of that sort, which I very much regretted. We know the whole folklore about the Senate being a club and all that implies in terms of leisure and getting to know fellow members and so on. I suspect that was true in another era but certainly not today. You're constantly having to run from one place to another and that running from one place to another was, it measurably increased the pressures to do that during my six years.

But we worked on, the first bill that I worked on of major legislation was the, updating the amendments to the Water Quality Act. Our hearings were scheduled, we had relatively little interruption in doing our work, we managed to get a mark up out in a matter of I think four, five, six months, something like that but well within the year we'd reported out a bill. Five years later we were going through the same exercise with respect the Clean Air Act. And my memory there was, time and again waiting for a quorum to appear because four or five, as many as three or four competing committee or subcommittee meetings had been scheduled for that same time. It was a much more difficult process to go through and as a result it took twice as long before anything was reported out.

DN: And this was a change that you observed in your term in the Senate.

JB: Six years, yes.

LB: May I ask you to spend a little bit on one point, and that is, when you came to the Senate committees met to do their business in executive session.

JB: Right.

LB: So the Clean Water Act was written behind closed doors. The Clean Air Act amendments in '75, '76 that you worked on, were written in public session. To what extent do you think that, shifting that process from open, from closed to open affected that ability to -?

JB: Well, I think it had a very definite effect, but nevertheless if you compare the scheduling, if you compare the cards I used to carry around with me for my first year in the senate with my last year, it was, you could see graphically why it was more difficult to get people to constitute a quorum. But, the fact that there are all of these people sort of looking over your shoulder slowed down the entire process. It seems to me that as in any other human activity, business negotiations, talking to your wife, or writing legislation there has to be adjustment, there has to be compromise. And this is much more easily accomplished without people looking over your shoulder, or the chances there'll be headlines, you gave away this, etcetera, etcetera, etcetera. And under present circumstances I personally was not a fan of the open air mania or whatever that took hold, I guess after Watergate.

DN: Do you recall discussions of that question, whether to be open or closed sessions during your time there?

JB: Perhaps on one or two issues there may have been reasons given for asking for a closed session. I don't recall, frankly, but the rules have been changed that these sessions would auto-, mark up sessions would automatically be open unless somebody could come up with a reason, persuasive with the majority, to close it. And then once you called for a closed session there was always a risk that someone would say, 'ah-hah, nasty work is going on'. But human beings it seems to me are much more able to get something accomplished when they're working privately and they can cajole, give and take and all the rest of it. I always felt that the test was whether or not you ended up with something you could defend.

LB: As a footnote to this, which is an important footnote I think, when Muskie agreed to have Bernie Asbell write The Senate Nobody Knows, one of the things that Bernie wanted to do was to be able to sit in on executive sessions and meetings with the Senate and so on. So my recollection is that the first thing that he did was ask you if you would mind if Asbell sat in on your meetings with him when you were crafting the '75 amendments. And you said that was fine in term--, and, and because of that that book became a considerably better documentation of that era, but it was. So the, the, I guess the point is that, obviously neither Muskie or Buckley were afraid of being observed, but I think both felt that there was a more productive dialogue that could take place without having all of that external force (*unintelligible*). Is that a fair -?

JB: That's fair, and we knew that this wasn't somebody with a special interest to exploit or nothing's going to be leaked out to the press. And of course this extended not only to what would otherwise have been executive sessions, but private conversations that Ed and I would have. At that time I was a ranking minority member, and so we had a lot of occasion to get together and try to work out this detail and that.

DN: And the difference essentially is between contemporaneous exposure of the discussion and the subsequent publication in the book.

JB: Right, yeah.

DN: Which does make a big difference, it seems to me. The, the quality of the debate I take it from your comments, changed in the Senate as a whole during that period as there was more, more emphasis on posturing, if you will.

JB: Television hadn't come in yet. No, I'm not sure there was a difference in the quality of the debate. I'm not sure the quality was ever that good during my six years. There were no Daniel Websters that I recall. It would, I think the greater effect would be in the quality of the law making, whether you had the chance to think things through. One of the things that I do recall is that important witnesses would be called in both those, work on both of those bills. We had a chance to hear them out with some kind of leisure and to ask questions and get answers during my first couple of years. And towards the end the bell was always ringing and you had these people who were in the middle of a sentence and then the committee would run off and in fifteen or twenty minutes they'd come back -

DN: These were bells for floor votes?

JB: Votes, floor votes, yes, and the thread would have been lost. I think there was a consciousness of a greater pressure to push people through the process and get their testimony at least recorded, rather than using the opportunity to really explore what was back of the views being expressed, and to ask questions that might have tested this theory or that.

DN: What was the underlying pressure for increased activity, that is the competition between floor votes and committee work?

JB: Well, I'm riding a hobby horse here, and that is the desertion of the tenth amendment, that the more activities, the more types of human activities that are brought to Washington, the more business there is, the more bills are reported out, the more votes there will be, and the more amendments and so on so that the Once upon a time the Senate was considered the world's greatest deliberative body and I imagine that it was, but that was at a time when people had the opportunity, when they were in Washington six or seven months. There was a relatively small body of areas in which the Congress legislated.

One of the rules in the Senate that is routinely waved every morning is one that says there will be no committee work performed while there is debate on the Senate floor. What that suggested was that the entire Senate would be there listening to what went on. I asked the parliamentarian towards the end of my six years when that rule began to become desuspended as a matter of routine, and he said, "Back in the fifties." So that will give you some idea of the pace with which what I view as the expansion of federal concerns into areas that had previously been exclusively the business of the states, has had the effect of interfering with the ability of Congress to do its work well.

DN: From your perspective, was the work of the Subcommittee on Air and Water pollution part of that trend? Were there issues that you felt other than noise perhaps that should not have been brought to the Congress and to that committee?

JB: There may have been, but that's the only one that sticks to my mind. I had no problems whatsoever with air, water and the biota.

DN: After you left the Senate, you spent some time in international negotiations relative to environmental issues, did you not?

JB: I was, this is sometime more showing the flag as it were, I went to Nairobi at the tenth anniversary of the Stockholm Conference. I was then in the State Department and I was the co-chairman of the U.S. delegation. But I did, while in the State Department, I did interest myself in seeing to it that the U.N. Environmental Protection Agency was adequately financed funds to the importance of the work, but that was a very small part of my State Department agenda.

DN: Did you carry any lessons that you'd learned in the air and water pollution subcommittee to that particular responsibility, or was it irrelevant?

JB: It pretty, pretty irrelevant, except that, put it this way, I understood something about the nature of environmental costs. I also had become very much interested in the endangered species problem and, which actually in the Senate was the Department, or rather the Interior Committee had its particular interest there, am I correct there?

LB: It was. They finally, right after you left they moved it to Public Works.

JB: Where it belongs.

LB: And then Environment to the Interior.

JB: I was also on the Interior Committee for a while.

DN: You have -

LB: You once compared that for me, and you once observed on what it was like to sit in a business meeting in the Interior Committee versus sitting in a business meeting in the environment and Public Works, in the Subcommittee on Air and Water Pollution, and that it was very different. That might be useful to -

JB: Well, I mentioned that partisanship as being evidenced in committee as well as on the floor, and that is where I bumped into it, both there and in my experience with the Commerce Committee. The sides were drawn, very different views as to, for example, the degree to which oil and gas industries should be regulated and if so how, and is it being the result of the Arab oil boat boycott, so that, and also staff was rigidly divided between majority and minority. Staff, you only went to your minority staff if you happened to be a Republican as I was, or vice versa. That was all foreign to the experience in the Public Works and in the Environmental Subcommittee, and as a result I think that more effective work was done in the latter.

DN: As you look back on your experience in the Senate and your encounters and work with Senator Muskie, what from your point of view were his major contributions and what from your point of view were his shortcomings as a senator?

JB: You know, I've never focused on people in those terms. I felt this about Senator Muskie in terms, in the context of environment which is where I had my principal contact with him. He understood there was an urgent need, I think that he was open minded in terms of listening to people on both sides and trying to find out how one best achieved, how one best met these needs. I had mentioned his short temper which I think was usually salutary because of people who were the objectives of his outbursts deserved it. But he never, that never impeded the flow of business and may have actually hastened it. Obviously a man of great intelligence.

At the stage where we were, I think that the strategy he adopted and I guess pioneered, of saying, 'we've got to do something. Well, here are going to be the standards that we understand on the basis of existing knowledge, are needed to be maintained in order to safeguard health, and it's up to American society to do whatever can be done to meet there.' But he was very open to allowing the flexibility, the ultimate flexibility to be there, so that the impossible would not be required. Such phrases as, "best achievable technology", and it was understood that what was achievable meant realistically achievable, in other words there was an economic ingredient to be taken into consideration. So I found him fair minded, I found him open minded, but never losing sight of the objective and driving towards that objective. Downside, he obviously had lots of down sides but I can't think of them right now.

LB: That's all right, I may do a tape later.

DN: Leon, are there other questions that you have that you'd like to pursue?

LB: Well I just, again, this is not necessarily, I view this as, Don's doing an oral history of Senator Muskie and to a degree this is an oral history of my career, too. You one time said, and I think you may have said it at one of our business meetings, mark ups, that, and you've say it much more eloquently than I have, that conservative and conservation came from the same root after all, and you were making a point. I think it's a useful point to make here.

JB: I could never quite understand why conservatives in American politics had not enthusiastically adopted the environmental cause. And as I thought this through two things occurred to me, it is in the nature of conservatism to say if it isn't broke don't fix it. And I think the reason conservatives did not, political conservatives did not worry about the environment is that they were not well enough informed to realize the degree to which, if it was not broke it was reaching that saturation point where suddenly it would be broke unless some of these measures were not taken. I don't know if that's what I said at the time.

JB: The other thing I wanted to say, and this is, it doesn't have to be on, in fact you can turn it off.

DN: Well before we do that I wanted to pursue the question of your development as a conservative conversationist, if you will. You said that you, early in your life, became interested in birds. Was this something stimulated by parents or a teacher or friends, or simply observation?

JB: Just observation. They just fascinated me from as long as I can remember, and I think my brothers and sisters and parents thought this was a little odd and so on, but they encouraged it.

DN: And over the years have you encountered other conservatives who share your passion for conservation?

JB: Yes, they do exist. They feel a little beleaguered at times. Incidentally, one thing that I think I did contribute was that the, quote, conservative senators in Congress thought: number one that I knew what I was talking about; and number two that I was not a zealot. In other words my emphasis on cost balancing, the balancing of benefits, resulted towards the end in when environment, new bills would come on the floor and nobody knew what they're all about, that a number of conservative Republicans started coming to me and saying, "Do I vote for this or against it?" So I was beginning to get a little following.

DN: Did you and Senator Muskie ever discuss ways in which you could appeal to certain members of the Senate that he could not reach?

JB: I think first of all if there was such a feeling it was tacit, it was implicit in the role I was playing on the committee.

DN: You were both discreet.

JB: We were both discreet.

DN: Thank you very much, Judge Buckley.

JB: Thank you. I'm, you know -

End of Interview