GOLD AND LIEBENGOOD
Interview #4
Friday, December 19, 2003

RITCHIE: We had talked last time about when you left the Senate and went to Gray & Company. The following year you formed a company called Thompson, Gold and Liebengood. Why did you leave Gray & Company, and what was Thompson, Gold and Liebengood?

GOLD: It was Thompson, Gold and Liebengood for six weeks. Then it became Gold and Liebengood, because we had a change in the ownership there. Only a few Americans know that it was Thompson, Gold and Liebengood! Including Thompson, Gold and, Liebengood themselves.

I enjoyed working at Gray & Company and they were always very good to me. I never left for reasons of disaffection or dissatisfaction. But Howard Liebengood and I had known each other for a very long time. He had left the Congress. He had been the Senate sergeant at arms. He left to go to work at the Tobacco Institute and had worked on the cigarette labeling legislation. But that project was over and I think he was looking to do something different. So we had lunch one day and decided over a nice bottle of Bordeaux that maybe we would try to do something together. He was a trusted friend and I felt very comfortable in developing a business arrangement with him. We began putting together the idea of a firm and we started it on the first of August 1984. Bob Gray was disappointed when I told him, but I don't think he could argue with the concept of entrepreneurship because he was an entrepreneur himself.

So we began on the first of August 1984, had the ownership change to make it just Gold and Liebengood by the middle of September. The bulk of the people who joined us in the original core came pretty well toward the end of that year. By the first of January '85 we were up to the original core strength and built from there.

RITCHIE: This was a time when Senator Baker had announced his retirement. Were you drawing from any of the people who had worked for him?

GOLD: None of them, except for one of the secretaries. We did not go to Baker's staff to look for allies and employees. We found them in different places because we wanted to have a bipartisan firm. In some cases, two of them were former Democratic members of the House. Another one was a very active Democratic lobbyist. A fourth one was another Democrat, who had been working on the [Walter] Mondale presidential campaign. A fifth one was yet another Democrat, a tax specialist who worked for David Boren. And then we got the assistant secretary of Health and Human Services out of the Reagan administration. That was the original core team. So actually, the two main partners, Gold and Liebengood, had Republican background but there were more Democrats than Republicans in the original group. It held together, actually, very well.

One other person who joined us was Bill Hildenbrand. But he didn't come out of the Baker operation. He had been at that point the secretary of the Senate and was retiring. Bill was never full time, even in his most active years, but he still was a valuable person on the team.

RITCHIE: I was interviewing him at that time, and in fact I went down to your offices. They were in the new Willard extension, and Bill showed me the view from the office, which was looking toward the Washington Monument. He assured me that it was the best view in Washington except from the White House.

GOLD: [Laughs] The best view in Washington you could rent! We actually didn't start there. We started over at Connecticut and L, but we stayed only eighteen months. Our area was expansion space for the law firm of Gibson, Dunn, and Crutcher. They wanted the space, so the building was happy to let us out of the lease. And Howard Baker at the point was with Vinson and Elkins, a Texas law firm, and he was going to lease space at the Willard, and he persuaded us to lease space in there as well. His concept was that Pennsylvania Avenue was going to become the American Champs Elysees, and he wanted to be part of that. He didn't have to twist our arms. He was on the eighth floor of the Willard and we were on the ninth.

RITCHIE: What was his relationship to your firm? Did he have any kind of formal ties to it?

GOLD: He was a competitor. Vinson and Elkins had a growing legislative practice at that point that was built around Howard Baker. But he was also a help to us from time to time, including sharing of some business where he thought that somehow we could assist or round out the capacity they had at Vinson and Elkins. So we actually did work cooperatively on several client matters. But he was not a consultant to us nor were we consultants to him, nor did we have any formal business relationship of any kind.

RITCHIE: This was also at the same time that he was being replaced as Republican leader. There was an election, probably the most open election for a leader in the last two decades, a pretty hotly contested race with five candidates, all of whom went into the conference thinking that they had commitments from enough senators to win. You said that you had given some advice to Senator Stevens. Were you working at all on that campaign?

GOLD: I actually was consulted by them all. I thought it was difficult for an outsider to take sides in an internal election like that. I further believed that one might be successful in the fact that his candidate won but even so the candidates who lost were also powerful members who that person would have helped to defeat. So I didn't think I should be gratuitously involved in that election and I wasn't. I did talk to staff and some cases the member in every one of those situations. The circumstance with Stevens was unique because he asked me to travel to Alaska and help him write a rules-change platform. I did that, and I helped him as he requested, but did not involve myself further.

RITCHIE: Do you have any theories about how that race turned out? It was extremely close, was it a one-vote difference in the end?

GOLD: Twenty-five to twenty-two between Dole and Stevens. The difficulty in handicapping a race like that was the way the system operates. If you don't have a majority but only a plurality, then the lowest candidate drops and you have another round. So depending on who dropped in what sequence could very well affect the outcome at the end. The story that I was told about that contest was this: five candidates were running, Dole, Stevens, Lugar, Domenici, and McClure. McClure had a core conservative vote so was thought to really be immune from losing on the first ballot. But on the first ballot, McClure was the first fellow out. He had seven votes and Domenici had eight. How did that happen?

I was told by a very senior McClure person that on the morning of the vote, Senator Jeremiah Denton went to McClure and said that over the weekend he had been researching senators' records on abortion, and he found that in McClure's record McClure had once given a pair on an abortion vote, and that this was really callous because it was not an appropriate regard for life, so he could not vote for somebody who would do something like that, who would trade out a vote to a pair on an abortion issue. Domenici, on the other hand, had a perfect record and so Denton was breaking his commitment to McClure and voting for Domenici. Now, what if he hadn't done that? What if McClure had eight and Domenici had seven? Where would Domenici's votes have gone? You never know. So it came down to a Dole-Stevens race, but it wasn't necessarily going to go there. You just never know in a race like that who's going to vote for whom, in what sequence, and how it will affect later ballots. It was phenomenally interesting, I'll say that.

RITCHIE: Did you work at all with Senator Dole after he got to be leader?

GOLD: To a degree. I had worked a lot with Dole's people when Dole was chairman of the Finance Committee, and I knew a number of them pretty well. But they were reasonably self-sufficient. Although I did consult with all five candidates, the leader with whom I would have had the closest relationship would have been Stevens, if he had won.

RITCHIE: Who as whip would have seemed to have had a very good shot at winning that election.

GOLD: He had a very good shot at winning that election. Dole had great power coming from the Finance Committee. Moreover, as I recall through the mystic chords of memory, Dole's election elevated [Robert] Packwood to the chairman of the Finance Committee. Packwood, going to Finance, elevated [John] Danforth to the chairmanship of the Commerce Committee. So Dole's election would be responsible for more musical chairs than Stevens' election would be. That had the effect of giving more people a stake in Dole winning than would have had a stake in Stevens' winning, and probably just enough people to determine the margin of that very close election.

RITCHIE: Was Senator Dole a very different type of leader than Senator Baker?

GOLD: Well, on the face of it my impression is he was somewhat more insular than Baker. But I have difficulty in evaluating this. I was intimately engaged in the Baker operation, saw it from the inside. I looked at the Dole operation from the outside and the perception or the perspective is just different. I thought Dole was a very effective leader, but I did think he was more insular than Baker had been. Their styles were different.

RITCHIE: Did he ask you anything about procedural issues at that time?

GOLD: He really did not do that much. I had a few conversations with staff. In 1986, when Dole was just two years into his leadership, the Republicans lost the majority. Senator Byrd came back in as majority leader and he fired the Senate parliamentarian, Bob Dove, and Dole picked Dove up to serve in the same capacity basically as I served for Baker. Then Dole had absolutely no need to consult with me, because he had his own resource there. Consequently, from that point forward I would talk to Bob from time to time but I didn't talk with Dole about procedural matters because Bob was available.

RITCHIE: I remember that was a big surprise when Senator Byrd let Bob Dove go as parliamentarian. Did you have any sense of why that happened?

GOLD: I have wondered about that all these years. I never saw the justification for it. For all the world, it looked like retribution for what the Republicans had done to Murray Zweben. I have been told by people that the firing was due to this event or due to that event, and I suppose if one wanted a rationale for firing somebody you could always find an event that would give you that rationale, but Bob Dove was an extremely experienced parliamentarian who had worked very closely with Senator Byrd in the prior era of Democratic control as assistant parliamentarian It was not my assessment that he had operated, after being appointed by Senator Baker, in a partisan way. I never thought there was any justification for firing him. I didn't think that then, and nobody has ever given me an explanation that would cause me to think it now.

I didn't think he should have been fired in 1987 by Byrd, and I didn't think he should have been fired in 2001 by Lott. To my way of thinking, there are two reasons that you might fire a parliamentarian. One is because the person somehow doesn't have integrity and is making rulings on other than a purely professional basis. The other thing, which can be related, is if he's a partisan, that somehow you don't have a level playing field in that office,

and he's not fair to both parties. It's the nature of the game that somebody's going to be disadvantaged by your ruling. It is very much a zero sum situation. But if the parliamentarian operates with integrity, makes the ruling on a professional basis, has at least a rationale that people can understand even if they don't agree with it, does not show undue favoritism to one side or the other, gives people a level playing field in his office, then I think that you ride the waves and the buoy stays above the water. So therefore the instability in the parliamentarian's office in more recent years, either the actual instability or the threat of instability, to my way of thinking is wrong.

RITCHIE: Whatever the cause in '87, the end result didn't help the Democrats in the slightest because Bob Dove wound up sitting next to Senator Dole, and that seemed to be a huge asset for the minority at that stage, to have somebody with that kind of expertise, as you had been for Senator Baker, keeping an eye on what was going on and offering strategies.

GOLD: I would agree with that evaluation. This year there was a moment in the spring when some senators recommended that *this* parliamentarian, Alan Frumin, be fired as well. Senator Frist was opposed to it. There was simply not the foundation to do it. When Murray Zweben was fired in 1981, which could be argued by some as initiating the era of instability in that office, there was the argument about excessive partisanship and that somehow or other he was too compliant with Senator Byrd, and that he had intervened in a law suit on a gratuitous basis against Senator Goldwater, who had filed suit against the Senate. There were considerations of partisanship that could be grounds for a dismissal, even if the person nonetheless understood the rules and was competent. Competent but partisan should get you fired from that job. Incompetent but nonpartisan, that should get you fired from that job too. But when you're competent and nonpartisan, then there's no foundation for it. I do not understand why Bob was fired in 1987 or why necessarily he was dismissed in 2001

RITCHIE: And in the meantime you have to invest a lot of time in training people to move up into those positions.

GOLD: Well, it's a career job. Will people make it a career if they think it's unstable? In one sense, maybe it's an inducement because they think they can get the job faster, but on the other hand, it is like being a legislative judge without the benefit of tenure.

You can be fired at will, and fired without cause. That is a very difficult position to ask somebody to invest a lot of time in, because although the position carries a great deal of authority and power—in the sense that the presiding officer almost never disagrees with the advice of the parliamentarian or acts contrary to it—you are working in a zero sum environment. Somebody is always going to be angry with you, always going to be questioning you, and in some cases they shoot the messenger.

RITCHIE: In the meantime, you were very busy with Gold and Liebengood. There are a lot of clippings in the files about the types of things that you were involved in. I wondered if you could talk about some of bigger cases you handled. Fiat was one of your clients, wasn't it?

GOLD: Fiat was a client and that was a defense contracting situation. It was not my client but a client of the firm's, and I did some work on it. The principal client that I represented consistently through all those years was the National Football League. I also did a fair amount of work on health issues, Native Americans, and others. But the NFL was the principal client.

RITCHIE: There was a big case in '85 that you were involved with, when Senator Dole was the majority leader, getting an NFL bill through Congress.

GOLD: Well, it was an antitrust case. Al Davis, who owned the Raiders, as he still does, moved the Raiders from Oakland to Los Angeles. The NFL tried to block the move. This was 1982. It was presumed at that time, because of some court rulings that were not in the Ninth Circuit, which was where this case arose, that sports leagues had the right to make those judgments, but the allegation was that the effort to keep Al Davis out of Los Angeles and in Oakland was an antitrust conspiracy and consequently led to a triple damage award in favor of Davis.

The NFL sought legislation to try to do two things: one, affirm that franchise location decisions—in other words to permit a team to leave or not to permit a team to leave—were not antitrust conspiracies, and make it retroactive, to put Davis back in Oakland. The retroactivity, I think, was a real problem. The legislation was introduced in the second session of the Congress. There were hearings in the Judiciary Committee of both chambers, but legislation did not move. Looking back, I don't think, with the retroactive provision in

there, there was any way that it could move.

RITCHIE: I thought you scored a victory in the House.

GOLD: No. Victories came later, but not on that one. We had, I think, good sponsors for this and good hearings, but nothing moved. That issue never did get resolved and to this day franchise moves that occur now in professional sports other than baseball are subject to the potential of antitrust litigation. The Raiders cases has had ramifications for years, not just with the Raiders' move to Los Angeles but also the Colts' move to Indianapolis, the Cardinals move to Arizona, and the move of the Rams to Saint Louis, the move of the Browns to Baltimore, and that of the Oilers to Tennessee, they were all done under the specter of that Raiders case.

The movement of the Rams is a very good illustration. The NFL did not want to leave the Southern California market to put a team in Saint Louis. At first they voted against the move. Then the attorney general of Missouri threatened them with a two billion dollar lawsuit, which was going to be thirty years of unpaid rent at the new facility and other costs times three. The case, of course, were it brought, would be heard before a local jury in Missouri. The NFL attorneys did not think there was really a case to be had, but you never know with a jury trial in the aggrieved jurisdiction. Consequently, if the NFL said, "You might want to have professional football back in Missouri but we're going to deny it to you because we're going to require the Rams to stay in Anaheim," that jury in Missouri might have just said, "Well, that will cost you two billion dollars." Consequently, the owners reversed themselves.

Similarly, when the Browns moved to Baltimore, the owner of the Browns did submit it for a league vote. The vote was scheduled for January 1996, but it was postponed until February. It wasn't decided, just postponed. Nevertheless, the fact that it was not agreed to in January stimulated the filing of a lawsuit by the Maryland Stadium Authority. Again, where would that case have been held but in Baltimore? So it's a very, very problematic thing and the franchise moves have happened in spurts over time, particularly in the middle Nineties where a couple of moves occurred and Congress had not passed creative antitrust legislation.

RITCHIE: But you mentioned that baseball does have this exemption. Was football trying to model theirs after what baseball had?

GOLD: No, the baseball exemption is not statutory. The baseball exemption was the result of a court decision in the '20s. We did not seek to have the broad antitrust relief that baseball has. Instead, what we did was seek a narrow relief that was grounded on the question of franchise movement. That was the limit of it, and the Congress was still reluctant to do it.

RITCHIE: How do you approach Congress on an issue like this? Football is a little different than something like the defense industry and all the other things going on. Probably every member is interested in the subject, but the question is how does it play to their local interests?

GOLD: It tends to break down between haves and have nots. In the case of the haves, you're really saying: "We want to be able to keep the team in the home location as long as it's well supported and not to allow a bidding war that will give somebody the incentive to make a unilateral decision to move." So the haves will tend to be with you. The have nots, of course, will be against you because they want the team to move.

The interesting story is that in the Congress that followed the one I just described, there was an antitrust bill introduced by Senators Danforth and [Thomas] Eagleton to keep the Cardinals in Saint Louis. The bill didn't command that result, but it gave the NFL the power to deny the move, provided we evaluated the proposed move according to certain objective criteria. The legislation came out of the Commerce Committee, where Danforth was chairman, went to Judiciary for a review. It was discharged from the committee by unanimous consent, and it sat on the calendar for a year and a half. There was a hold put on the bill by Al Gore.

RITCHIE: Who was one of the have nots?

GOLD: The NFL was engaged in litigation at the time with the United States Football League. The USFL had a team in Memphis. One of the purposes for the USFL lawsuit was to force a merger with the NFL, and the movement into the NFL of about a half a dozen USFL teams. Gore put a hold on the bill to try to up the ante. I remember having a

conversation with Pete Rozelle, where I explained to him the senator's approach. Rozelle said, "I can't do that to the league," and the legislation was abandoned. Gore's concept was: "We'll settle this all at once. Litigation will conclude, and the legislation will pass, and we'll have this merger."

In any event, the strategy didn't work. The USFL litigation went forward. The USFL won on the point that the NFL was a monopoly and was awarded one dollar in damages, trebled to three, because the monopoly was naturally acquired, and not illegally. The USFL thereafter collapsed. We never got the legislation, and Memphis never got a team.

RITCHIE: Have you tried bringing forth any further legislation relating to football?

GOLD: Actually, yes, we passed legislation in 1992, the Professional and Amateur Sports Protection Act, which is federal legislation on sports betting. States can have lotteries but they can't have sports lotteries. States can have betting schemes like race tracks and casinos, bingo, and whatever they want, but they can't have sports betting, with the exception of a few grandfathered situations like the sports book in Nevada. In the early 1990s, Oregon established a sports lottery, and it seemed like it had the prospect of bringing in some money. States were fairly cash-strapped, because we were going into a period of recession, and when you go into a period of recession money from any source is welcome. Consequently, in about a half a dozen states legislation was introduced to try to emulate Oregon's example.

The NFL opposed that legislation in each jurisdiction and was successful, but knew that at some point the dike would break and all of a sudden one state would follow another. The NFL, like all of the professional leagues, and the colleges for that matter, is terribly opposed to sports betting and polices it carefully. It's the basis for expelling a player from professional football. It's the reason that Pete Rose is not in the Baseball Hall of Fame. The game is family entertainment, and the NFL wants it to be seen as untainted. So point-spread betting and things of that sort raises questions about the integrity of the game. A lot of issues that the NFL faces are economic issues like the antitrust question I talked about a moment ago. Gambling is an integrity-of-the-game issue, which has economic consequences, but those are more indirect.

So we pushed that legislation on the federal level hard when it became apparent that there might be a need for federal preemption. Congress had spoken in the past to the issue

of sports gambling, because while they tended to give deference to the states on gambling issues they had always made an exception for sports betting. That was a foundation to move on this. It almost passed in the Congress that ended in 1990. Senator [George] Mitchell blocked it at the very, very end, from being included in a conference negotiation on a crime bill. It was introduced in the following Congress, had a number of cosponsors, I think more than two hundred in the House when it finally went. In the Senate there were sixty-two cosponsors. The leading sponsors were [Dennis] DeConcini of Arizona and [Orrin] Hatch of Utah, Bill Bradley of New Jersey, and Arlen Specter of Pennsylvania.

It came through the Judiciary Committee 15 to 1. It eventually passed the Senate 88 to 5, which would make you think that it was non-controversial. But it was anything but non-controversial. Senator Mitchell held the bill off the floor for eight months, for a variety of reasons he could probably explain better than I could. Finally we put together a letter with more than thirty signatures, a bipartisan letter asking him to move the bill. Senator Mitchell finally moved it and then voted for it. So as I say it passed 88 to 5. The bill went back to the House and it was further amended in the House by Bob Torricelli, who was then a congressman, trying to gain a one-year window within which the New Jersey legislature could pass legislation to allow Atlantic City to emulate the Las Vegas sports book. Jack Brooks helped out Torricelli and Bill Hughes, who was a congressman from Atlantic City. So the bill came back over with a House amendment, but it was ready to go on Yom Kippur, the day before a sine die adjournment.

Mitchell was running through a number of bills that were going to pass one after another. Somehow this bill was never on the list. So I inquired about it, and I was told there was a hold on the bill. Then somebody told me something they probably shouldn't have, which was who held the bill. The senator with the hold was Malcolm Wallop of Wyoming. He was one of the five senators who had voted against it earlier. It being Yom Kippur, with no votes until six, Wallop went out to play golf. The NFL didn't have a team in Cheyenne. Baseball didn't have a team in Cody. So what to do? We turned to our friends with the colleges and got the University of Wyoming and several of the trustees to start making calls to Wallop's office. The governor of Wyoming was very opposed to sports betting and also called Wallop's office. By the time Wallop came back from the golf course, he had a stack of messages. In the spirit of the moment, he released the hold. Bradley had the papers and went to the floor and got the Senate to concur in the House amendment.

The next day, Wallop had changed his mind and came back in with a desire to reaffirm the hold, and was told that the bill was already passed. President Bush 41 signed the bill. But it's a great object lesson on the ways of the Senate. How does a bill with sixty-two co-sponsors that passes 88 to 5 nearly die the day before sine die adjournment? How does it happen that that bill nearly died the day before sine die adjournment on the whim or wishes of one member? One member.

I have subsequently talked about that legislation to senior NFL executives who were out at Stanford this past summer, where they had a conference at the Stanford Business School with rising NFL executives. Part of the discussion was NFL-government relations, so they asked me if I'd come out there. I took my current hat off and put my old hat on and I talked to them a little bit about how the Congress does its business. I said, "Well, working with Congress is far more complicated than people think." And I gave them this illustration: "I will tell you how close this bill with great support came to not passing and why." If the bill had not become law in 1992, it would probably never have become law because in ensuing years there was an explosion of gambling all over the United States and states would have found a good self-interested reason to oppose that sports gambling bill. The fact that there is a maybe slightly better than ten-year-old federal statute that has kept sports betting out and away from the expansion of gambling that has otherwise occurred in this country, and that has recognized the distinction between betting on athletes and betting on horses All of that might never have happened based on one senator.

RITCHIE: I didn't catch—did you say why Wallop had put the hold on it?

GOLD: You didn't miss it because I didn't say it. He raised states rights concerns, federalism concerns. Wyoming didn't have gambling at all. The governor didn't want to have it. I don't think the legislature wanted to have it. But you know someday they might want to have it, so why should we stop them? Something like that.

I can remember three of those five people who voted against that bill. Packwood voted against it because of the Oregon sports lottery, which was not impacted by the legislation. It was grandfathered, but he felt that if Oregon could do it others should be able to do it. He split with Hatfield, who supported the bill. [Frank] Lautenberg voted against it because, after all, New Jersey casinos were going to be missing this business development opportunity. He split with Bradley, because Bradley understood as a professional athlete the

importance of trying to pass a bill like that. Bradley told a story about how one time he was playing in Madison Square Garden for the Knicks and somehow or other the Knicks had made a shot to make the game tighter but also to come within the point spread, that there was a lot of booing going on because of the point spread, and how distressed he was by that. He asked if it were his game or the gamblers' game? So Bradley had grave, grave concerns with the potential for an explosion of sports betting. It didn't matter to him whether or not he having to oppose the Jersey casinos.

RITCHIE: This seems to me a good place to talk about the hold as a parliamentary device. My understanding is that even though the hold is not in the rules, the leadership tolerates holds because they want to know if someone is going to object to a unanimous consent agreement, if someone has a problem, and that it's a way that a senator can send out a notice and try to get people to pay attention to his or her concerns. But what's the point of anonymity of holds? Senator [Ron] Wyden and some of the others have been arguing that you should have to confess your holds. Why are senators reluctant to do that, and what are the strategies involved?

GOLD:. Look, what is a hold? A hold is a notice to the leadership that somebody wants to assert procedural rights in the face of certain legislation. It can be pretty soft, as in "I want you to consult with me before you move the bill. I have amendments that I want to offer, and I need not to have a consent order that would preclude me from doing it." Something very, very soft. Or it can be tough, as in "I'm completely opposed to this measure. I object to the motion to proceed. I object to the bill itself. I don't want any unanimous consent order. And I want you to protect me." Understanding that there is not a precise definition for it, other than to say that it is a mechanism by which senators notify the leadership that they intend to assert procedural rights in some way with respect to legislation. Maybe not even to block it, but also maybe to block it.

If you didn't have holds, or a system for communication with the leadership, it would force members to come to the floor and do it themselves, which would create a lot of inconvenience. The leader could catch people by surprise and say, "I didn't know you were interested." That's not a good way for leaders to retain support. I think the better part of valor is to protect your own members. But protecting them means that you have know what they're up to, what they want. Consequently, you have holds.

The issue with holds is not whether there should be holds or not, but rather whether they should be disclosed. Senator Wyden, Senator Lott, Senator Grassley, and now even Senator Byrd have decided to become advocates of the public disclosure of holds. They have a public disclosure proposal that they introduced in the Rules Committee. Senator Frist, I think, has two concerns with it. One is that he's not absolutely sure that this is really a problem that needs a solution. Secondly, if you have a problem, his view is that there is a line that one should not cross unless there is no alternative. The line is that between public disclosure and private disclosure. Disclosure creates accountability, but it also probably creates intractability. Because now people are on the record on the issue. They can be lobbied to put holds on the bill, and the public will know if they actually did it. If the hold is removed, the public will ask: what did you get for removing it? You take negotiations into the public arena in ways that might make people harder to get along with, as opposed to being able to have a private conversation that will ease concerns and move legislation.

Because he is not convinced that this is a big problem, and because he is not convinced that if it is a problem, public disclosure might in fact be counterproductive, he and Senator Daschle sent a letter out in early November to all senators in essence saying: if you put a hold on a bill, you need to tell the sponsor if he's a member of your party, and the chairman or the ranking member, depending on which party you are in. If you don't tell them within seventy-two hours and ask the leadership, they'll be told. That means a Republican sponsor or a Republican chairman can find out information about Republican holds from Frist, and a Democratic sponsor or a Democratic ranking member, can find out about Democratic holds from Daschle. There won't be any disclosure cross-party. Frist and Daschle have said: we will evaluate this at the end of the Congress and see what kind of impact it's had and then decide if we need to do anything more on the subject. So they haven't ruled out doing something more, but they are basically taking an interim step, principally for the reason that they want to assist the resolution of problems, and they're worrying about public disclosure being counterproductive.

I don't think that the people who have been advocates of public disclosure will see this as anything other than a half-measure. In 1999, Senator Lott and Senator Daschle sent around a letter urging members to disclose holds to bills' sponsors and chairmen or ranking members, but there was no enforcement in that letter. This ratchets it up a little bit with an enforcement mechanism of leadership disclosure within the party. Maybe that's going to be enough, maybe's it's not. Maybe it's not going to satisfy people who really think that public

disclosure means the public's business being done in public, but I've seen a whole lot of the public's business done in private rooms. We don't have cameras in every meeting. We don't have the press in every meeting. If we did, I think there would be less business done.

RITCHIE: On the other hand, the Senate has continued holds because there's an advantage to it. There's an advantage to the leadership not to be blind sided by somebody objecting to a unanimous consent agreement.

GOLD: That's correct. It works for the leadership and it works for the individual.

RITCHIE: Some senators who have been the most abusive of holds have not been at all embarrassed about admitting that they put the hold on. I think of Senator Helms, he devised—

GOLD: I knew you were going to say that!

RITCHIE: The rolling hold.

GOLD: The rolling hold, sure. Well, I mean, some people wear it as a badge of honor. Senator Wyden—I just happen to have his statement here because I met with his staff person before I came over here—if I could read the first sentence of this, there is something that is incontestable. He says that "If you walk down any street in America, I'll bet you won't find one out of a million Americans who knows what a secret hold is." I am totally sure that that is true. He finds it very confounding that somebody puts a hold on a piece of legislation that he has and he can't find out the answer about who is doing the hold. After all, isn't it somehow anti-democratic (with a small "d") that somebody's able to do this?

But I think that for this *not* to be the case, the Senate would have to really change fairly dramatically as an institution. There would be people who would probably relish putting public holds on a bill, so they could get even more credit for doing it with a broader array of people outside, creating some of the problems that Senator Frist is anxious to avoid.

RITCHIE: They certainly give an enormous amount of power to an individual senator, even a minority within the majority party.

GOLD: Well, everybody has stories. My story is about Malcolm Wallop stopping three years of work, or nearly doing so, at the very last minute for a bill that passed 88 to 5. The only way that you could educate people about this is through stories like that. If you tell people: well, in the House it's kind of a majoritarian institution, but in the Senate a great power flows to the minority, to minority coalitions, to individual members; they can understand the words but they can't understand the meaning. They don't know what that really means. What do you mean, great power? Power to do what? How much power? So if you say a single senator can block legislation that is desired by ninety-nine others because the requirements to overcome his objection are so cumbersome that there may not be time to address them, that is a little bit more illustrative. It will strike the average person as being tremendously anti-democratic and tremendously unfair, but that's the nature of the Senate.

The power of the individual senator is lost on most people. I gave a tour this morning to a professional golfer and his family. We walked into the Senate chamber and later into the House chamber. Some of the differences were evident right away. Of course everybody knows there are shorter terms and more members in the House, and fewer members in the Senate, with longer terms. But that doesn't begin to describe the difference. There are cultural differences that are far deeper than anything that would be suggested, because you could have six year terms in the Senate and have a hundred senators and have identical rules to the House. The apparent differences mask the real differences. People miss the true story of the huge cultural divide and why you not only have the checks and balances between the branches but within the branch itself. It's not taught, as best as I can tell. I certainly never really got that in the formal education classes that I ever had, and certainly not even in law school legislation classes which focused on legislative drafting and not on legislative procedure. It is the goal, I would think, of things that I'm doing, and things that this historical office is doing, to help the public understand what the Senate institution is about.

RITCHIE: I think about somebody elected to the House of Representatives. When you walk in the door, even if you are in the majority party, you're not going to be heard until you've acquired some seniority, or you've got to be part of a number, a very large incoming class, or whatever. But otherwise you've got to bide your time to get to a leadership position or a senior position where you have influence. A U.S. senator walks in the door on day one and they've got that plus, because they can say, "I object."

GOLD: One of the reasons that I do a lot of procedure seminars with the freshmen is because I think that many of them don't understand what they've got. It doesn't mean that they will exercise their rights, but they do need to know their rights even if they don't exercise them.

RITCHIE: And how to exercise them effectively.

GOLD: Sure.

RITCHIE: It's possible to abuse those rights and make yourself obnoxious to your colleagues.

GOLD: Well, I've always believed that the Senate could tolerate one Metzenbaum but not many.

RITCHIE: There always seems to be somebody like that, there's always got to be one person who wants to be the outsider and be a thorn in the system, and make it work for them.

GOLD: Look at the example of Senator William Proxmire. He came to Washington and tried to play the inside game for a little while, and wasn't comfortable being there, and decided he just wanted to be an outsider. There are a number of iconoclasts and they are now from both parties, who relish the role of being the person that exposes all the hypocrisy.

RITCHIE: Wayne Morse for years.

GOLD: Wayne Morse. Paul Wellstone.

RITCHIE: James Abourezk. They often don't last for very long, but there always seems to be somebody who's going to play that role.

GOLD: One of the greatest political commercials I ever saw was a Metzenbaum commercial. It showed people who you could take to be lobbyists walking with finely creased slacks and highly polished shoes, but you only saw them from the knee down. They are plotting on legislation. "We're going to do this, and we're going to do this, and we're

going to do that." They start marching up the steps of the Capitol. "We're going to do this and we're going to do that." They get about halfway up and somebody says, "But what about Metzenbaum?" And they turn and walk back down the steps. [Laughs]

RITCHIE: To pick up on the stereotype of the lobbyists, do you have counterparts that you're competing against? Are you looking at groups of lobbyists who are on the other side on some of these issues? For instance, on sports betting, did you have lobbyists that you were having to contend with?

GOLD: Sure. We contended with the lottery commissioners from the states. We contended with certain representatives of state governments. They would say, "Well, look, you have a concern about sports betting and you know what? We agree with your concern, however we don't think it's a federal question, we think it's a state question." We had the people who made lottery equipment raising the same kinds of issues, I mean they didn't frame it in the sense of their own economic interest, they framed the issue in the sense of federalism. But nevertheless they were on the other side.

There are very often competing interests. The last issue that I worked on the NFL dealt with stadium overflights. That is, after 9/11 the banner-towing planes that used to appear all the time over stadiums, there is a reason that they are not there anymore. The reason that they are not is because there was a ban put in by Congress, which is scheduled to expire in a couple of months. It was a one-year ban put in by Congress as a security concern. That was hard-fought legislation because the banner-towers themselves were not all that well organized but they were all members of the Aircraft Operators and Pilots Association, which is a huge membership organization, who decided to take up the issue for them. There were also the people who were representing helicopters, and who represented blimps, wanting to do aerial shots over the stadiums. That legislation finally passed by coopting a number of those interests and by reducing the burden on pilots for whom traversing stadium air space was fundamentally incidental to their route. In other words, they take off from or landed nearby a stadium and they have to traverse the protected air space, but the stadium is not their destination, unlike the banner-tower where the stadium was the destination.

After a time, even if AOPA (which is the acronym for the organization) wanted to carry the banner-towers' position, it was inherently unreasonable, because 99½ percent of

all pilots would be *totally* left outside the impact of the stadium flight restrictions. So when the stadium flight restrictions were narrowed as much as they could be narrowed to still capture the problem, most of the potentially competitive interests had gone away. At that point it was baseball and football, and the big colleges, like the University of Michigan, who were arrayed on one side of the question, with the banner-towers on the other side of the question. You would think: well, that will make it easy because that doesn't sound like a fair or even fight. But the banner-towers had an ally in the administration. The administration claimed that Congress did not need to ban the overflights. They argued for regulation, saying they could assure safety by making some inspections and getting people to apply for waivers of general flight restrictions.

The administration was saying: this problem can be managed. The banner-towers were saying: this is an economic devastation and it's nothing but economic warfare between these interests that want to control advertising in the stadium and the people that want to fly contrary advertising above the stadium. Then you had a major membership organization, AOPA, saying that freedom of the skies is being somehow intruded upon. So what looks at first to be either an uneven fight or an obvious security concern after 9/11 was anything but simple.

RITCHIE: There's no shortage of people who do lobbying in Washington. There are more of them all the time. How do you compete? Is it by scoring a big victory and getting a reputation for that? How do you keep attracting clients given all the competition?

GOLD: Well, it's dramatically more competitive than it used to be when Howard Liebengood and I formed Gold and Liebengood. But I think the answer to the question is largely word of mouth.

Here's the nature of the problem: who's a good lobbyist? If you are a lobbyist you fundamentally have to have a good reputation in three places. Certainly with the clients. Certainly on the Hill. And the third place is the legal and lobbying community in this city. What kind of reputation do you have? Are you effective? Do you try to poach other people's business or are you respectful of other people's business? How easy is it for people to work with you? Because most times you do work in coalitions with other lobbyists. Clients tend not to put their eggs all in one basket.

Some business comes through formal responses to a request for proposal, but not that much. A lot of lobbyists are reluctant to respond to request for proposals because they are not sure that the competition is actually real. Particularly with public agencies as a matter of regulation or legislation the public agency must rebid a contract every so many years. So they put out a formal RFP. One of the people that responds to it is the incumbent. The agency is not in the least bit unhappy with the incumbent, so they go through the motions of a real competition but they really know where they want to wind up, and they wind up there. You don't want to miss out on offering a response to a real competition, but the difficulty is having the intelligence that would let you know whether or not the competition would be real.

Mostly business comes from word-of-mouth referrals. It could even be a member of Congress saying, "You're going to need some help. Maybe you'll want to talk to these people." As to how you get a reputation that would make somebody refer the business, there are lots of paths to glory: winning big victories, working well with others, having a reputation for being thoughtful, innovative, and imaginative.

RITCHIE: In your firm when you got started you brought in some recent members of Congress. Is that a plus, to look at the people who are leaving the institution and try to bring in somebody—Senator Don Nickles for instance is leaving as the Budget Committee chairman to go off to do lobbying—is that the kind of person who gets recruited by lobbying firms to bring in a new constituency?

GOLD: I don't doubt that if Don Nickles doesn't start his own firm somebody's going to pay him a lot of money to join their's. But I think it is very hard to generalize as to whether or not former members of the House or the Senate are worth hiring. Some people won't work with staff, they'll only talk to members, and that's of limited value. You've got to have somebody who can work with staff.

RITCHIE: Well, Senator Nickles is one whose former staff went out and were very successful at it. I've heard that he was astonished to discover that they were earning many times his salary as lobbyists while he was laboring in the vineyards of the Senate.

GOLD: I think Nickles is young enough to have another career and will prosper in a lobbying career if that's what he decides he wants to do. He's a smart guy, he's well

regarded, and would be someone I would call. A fellow who's done extremely well as a lobbyist is Bob Packwood. Why? Packwood was always an incredibly industrious worker. He was that way as a senator. He worked hard. He prepared. He knew his subject matter. He wouldn't speak until he had studied. It was in his nature as a senator and it's in his nature now.

RITCHIE: Another part of the equation is the press. Much of what's called lobbying is also called public relations. How much do you have to work with the media? Or is that not a major part of what your representation would be?

GOLD: It's often a big part of it. You have firms that are multidisciplinary shops, like Burson Marsteller for example, where they have a lobbying component but they also have a public relations component. Bob Gray, when I started out, was just like that. He had a lobbying component but a public relations component as well, so he would try to build a press strategy into the lobbying strategy, rather than the reverse. Trying to influence public opinion when approaching a political institution generally speaking makes a lot of sense.

In the sports betting legislation we passed in 1992, we hired a firm that was recommended to us by Bill Bradley for the purpose of conducting a grassroots campaign in about ten states. You don't need press relations and grassroots every time, but it can be an important component.

RITCHIE: When you are involved in a case that begins to get some publicity, is part of your job to counteract what you consider to be misleading publicity?

GOLD: How are you going to frame the issue? The old expression is: he who defines first defines last. You are either going to frame this issue or somebody else is. To frame the issue means defining first.

Look at the debate that's going on now in the wake of the passage of the Medicare bill. Opponents of that bill are going through a serious public relations campaign to discredit it. I think that when the new Congress opens the people who supported the bill are going to go through a serious public relations campaign to defend it, because in essence you can turn what is a signal legislative achievement into a defeat if people are convinced that it's a bad bill. The media war goes on all the time. It's very important. It is intimately tied in with the

politics and the substance of what you're trying to do legislatively.

RITCHIE: Well, the AARP is doing a hard-sell with its members to tell them they were on the right side on that bill.

GOLD: You bet. Otherwise, if you cede the forum, and you may not ever get it back. Because again, he who defines first defines last. You can never let the other side define first, whether your audience is just a member of Congress or the public at large.

RITCHIE: Do you find that the reporters who cover Congress regularly get the story right for the most part?

GOLD: For the most part. I used to say that when I worked up here before, I could read a story in the paper and know where the mistakes were. When I was outside I could read the story and know there were mistakes, but I wouldn't know where they were. Having come back up here, and back to knowing where the mistakes are in the story—and there always are some—but those folks have a hard job and I think that for the most part they do get it right. For the most part, the mistakes that are there are not material to a public understanding of the story.

RITCHIE: A lot of the complaint about coverage of Congress is that the press doesn't pay attention until the last couple of minutes of the fight. It's been going on in the committees and backrooms for a long time but only when it gets down to the floor fight then suddenly it gets to be a story.

GOLD: That's probably true. You get more in-depth stories in *Congressional Quarterly* or *National Journal* that tend to follow things along, but for the most part the public doesn't care about those kinds of machinations so it doesn't see anything until the end.

RITCHIE: Going back chronologically, we're still in the 1980s. In 1987 Senator Baker went down to the White House to be chief of staff. I wondered if you or Gold and Liebengood got involved in any way in his tenure as chief of staff in the Reagan White House?

GOLD: Well, Gold and Liebengood was a great beneficiary of his being chief of staff. Baker had sort of a kitchen cabinet of former senior staffers that he would have down to the White House, or the White House complex, for lunch once every couple of months. As long as he was there, we would go down and meet with him. It was helpful to him, I hope, it certainly was helpful to us.

RITCHIE: In the long term of his career, that was one of the more remarkable moments, of coming in and really salvaging the Reagan administration when it was on the ropes after Iran-Contra.

GOLD: He will be the great unsung hero of that administration. If you read about Reagan, who now is taking on larger-than-life proportions, at least for some people, you don't read much about Howard Baker. Iran-Contra is looked upon just as an aberrant moment, a mistake yes, but in the broader context look what followed it: he met with Gorbachev, he entered upon the INF treaty and so forth. The story ends well and he left office with high prestige, so they tend to miss what happened in the middle. He ended his first term on a high note. He ended his second term on a high note. But the whole second term was not a high note. Baker deserves a whole lot of credit for setting matters on the right course. But if you ask people about Howard Baker, those who remember him will remember that he was a senator, probably remember that he was the floor leader. A few people might know that he was ambassador to Japan. But I would bet you that a great many of them will forget that he was ever White House chief of staff.

RITCHIE: They assume that was James Baker, not Howard Baker.

GOLD: Exactly. So he won't get the credit for what he deserves, but he deserves a whole lot of credit.

RITCHIE: He really helped to restore a lot by bringing his own prestige with Congress back into that administration.

GOLD: He had a lot of credibility with Congress. He put it on the line, and Reagan gave him the flexibility to do so. He wound up happening to be one of Reagan's very best appointments, but again one of the least noticed.

RITCHIE: Do you think that that precluded Howard Baker from making a serious run for the presidency? He was thinking about it in 1988.

GOLD: He was thinking about it. I have always thought that the White House gave him a way out of it. His wife was not well by that time. I'm not sure he ever would have run. This was a perfect out for him. It was also a patriotic thing to do, to leave his law practice and go into the White House and try to undo the mess.

RITCHIE: Well, he got to be an acting president, in a sense, as chief of staff to a president who was not a hands-on president in many ways.

GOLD: To a large degree I suppose that's so. I just believe that he had put aside personal ambition that he might have put aside anyway to unravel a circumstance that was going to be extremely difficult. The opposition party was probably looking toward discrediting President Reagan as a way of creating a better playing field for their own nominee in 1988. I'm certain, for example, that Gore was hurt by Clinton's problems. If you had Gore running in 2000 in a situation where you had a prosperous economy and a successful incumbent administration of which you were a part that was fundamentally scandal-free, I doubt he would lose. Reagan's problems could have seriously damaged Bush in 1988, if Reagan had ended on a sour note. I'm not sure that Bush would necessarily have won. Baker made an important contribution on salvaging the Reagan legacy and helped to lay a foundation for the presidency of George Bush. It was a serendipitous moment for the administration when he got there.

RITCHIE: Well, we're at 1989, which was another turning point for you, and I wondered if this might be a good breaking point. We can then get together for another interview and pick it up from there.

GOLD: Sure. Glad to do it.

End of the Fourth Interview