

# **Stanford in Government: Forty Years of Influence**

By Chuck Ludlam (SIG intern, 1965 and 1967)

Seated next to Secretary of State Dean Rusk at a briefing that summer day in 1967, I wondered how he would respond to the question that was consuming me. As organizer of the briefing, one of six that Stanford in Government<sup>1</sup> held with Cabinet members that summer, I faced a complicated situation. Rusk was the leading Administration defender of the Vietnam War. As early as 1964, I had turned strongly against the war and had organized an anti-war protest at my Stanford graduation several weeks earlier. I saved my question for last: "In Vietnam, isn't the United States taking sides in a civil war and acting like a colonialist?" Rusk glowered at me, responded perfunctorily, and stomped out of the room. Mine was a fair question and his, a dismissive response. It was one of those encounters that made a lifelong impression on a lowly intern. I felt powerful and relevant, feelings that have led to my 32-year career in government and public policy and my boundless gratitude to SIG.

Over the past four decades SIG interns have had thousands of such encounters. We cannot measure what these experiences have meant — for the interns, the government, and Stanford — but we suspect that the cumulative impact has been profound on all three fronts.

In its 30th year in 1994, I organized a gala reception at the home of Senator Jay and Sharon Rockefeller here in Washington. It's time to celebrate again the manifest and multiple contributions SIG has made to our world.

SIG has found that exposing students to the fascinating nitty-gritty of the political process — warts and glories — encourages some of them to invest a lifetime in it and most to be more effective citizens. Politics is much stranger than fiction; it's a game driven by massive and conflicting forces, and it can be profane, fair, venal, idealistic, maddening, inspiring, pedantic, and even hysterically funny. Some interns recoil in horror, and others find it human and manageable. Only by immersion in it can students choose their point of view.

Immersing students in politics and government has been SIG's strategy since its founding in 1962-63 by Jamie Hunter (LLB '64) with a \$4400 grant from the William T. Grant Foundation. That first summer it placed 14 students as interns on Capitol Hill and "downtown" with the agencies and lobbying groups in Washington. Since then, approximately 4000 Stanford students have served as interns, mostly in Washington, but many in Sacramento and now overseas. SIG's annual budget is now \$150,000, of which 53% comes from endowments and every summer it awards 30 fellowships (a minimum of \$3,000 per student), including 13 international fellowships. The cumulative total

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<sup>1</sup> Originally named "Stanford In Washington," the program was renamed "Stanford In Government" in the 1970s when it began to offer internships in Sacramento as well as Washington. This left the "Stanford in Washington" moniker available for the University's campus in Washington.

number of fellowships over the years is in the many hundreds. In a typical year on campus, SIG sponsors dozens of public speakers and similar programs on campus, attended by thousands of students. It helps students secure internship placements and organizes an extensive program of speakers and events during the summer. SIG has a reputation on campus for providing superb and non-partisan service to the student body. And it has the potential for even greater accomplishments.

For early interns who had to navigate the turbulent 60s, SIG was critical in providing a constructive focus for our anger. My story is illustrative. I grew up in San Marino, California, a right-wing John Birch Society stronghold. Ignoring the Kennedy allure because of my parents' political bias, I sported an "I Miss Ike/Hell I even miss Harry" bumper sticker on my Mustang. I was involved in politics but only at the high school level. This introverted world died my freshman year at Stanford on Big Game weekend when President Kennedy was assassinated. A decade of bitter public debate -- cultural conflicts and divisive public policy between generations and throughout the nation -- tore the country apart. SIG and the 60s gave me a mission: to fight for social and political change on the inside, not from the barricades.

My first encounter with SIG was in the winter of 1964. SIG controlled a bank of internships that it dispensed to Stanford students. My application was summarily rejected; SIG didn't accept sophomores. Undeterred, I recruited my grandmother to place me in an internship with the Republican Congressman she'd helped to elect. SIG then permitted me to join its summer program. We summer interns watched enthralled as the Great Society and the Voting Rights Act sailed through the House of Representatives in what was perhaps the most dramatic legislative session in our nation's history. While students throughout the country took to the streets, and became increasingly radicalized and alienated, SIG challenged its interns to plunge into the government decision-making process.

This immersion taught me the lesson that's governed the public service careers of many SIG interns: Politics works in America. This was confirmed for me the summer of 1967 during my second SIG internship in the House. My roommate was a close friend of Al Lowenstein, who had taught at Stanford in 1964 and was a legendary champion of liberal causes. Al visited us often that summer as he attempted to recruit someone to run against President Johnson in the Democratic primaries. When he finally persuaded Senator Eugene McCarthy to run, many of us went Clean for Gene — reverting to 50s-style attire to mollify the voters in the conservative early primary states. One of the happiest moments of my political life was sitting in a McCarthy campaign office in Milwaukee's Polish ward, shocked but ecstatic to hear Johnson drop out of the race. We believe, with some justification, that we were personally responsible for ending his Presidency.

Through the 60s tumult — the Free Speech Movement at Berkeley, Martin Luther King's and Hubert Humphrey's speeches on campus, the election of anti-war activist David Harris as our student body president, the Trips Festival, Haight Ashbury, the Fillmore and Jefferson Airplane, Barry Goldwater, the March on Selma, the Tet

offensive, the King and Robert Kennedy assassinations, the Chicago Democratic Convention, and Kent State — SIG's influential message was consistent: Burrow into the political power structure.

SIG's influence survived Presidents Nixon, Reagan, Bush, Clinton and Bush, the end of the Cold War, Newt Gingrich, welfare reform, supply side tax cuts, recessions and booms, globalization, terrorism, and the wars in Iraq. The message was always the same: It's not someone else's problem. You can make a difference. Get involved.

SIG's influence has survived the distracting crosscurrents of political strife, promoting civic involvement as the alternative to cynicism and apathy. In a country that was founded on opposition to autocratic rule, it's no surprise that many Americans enjoy eviscerating politicians and public servants. So SIG's mission is difficult: encouraging talented students, who have many more lucrative job options, to enter public service; to fashion effective solutions for America's and the world's seemingly intractable challenges; and to take the everyday risk that they and their efforts will be subject to vituperation.

Now, in the early years of the 21st Century, we're facing new threats: The imminent retirement of 55% of the highest-ranking Federal civil service managers, just as we face critical new homeland security and terrorism challenges. Again, SIG's programs might help to supply the next generation of civil servants.

During the decade of the 80s, SIG faced its own challenges, experiencing several near-death experiences. Fortunately, these crises turned out to be blessings in disguise for both SIG and Stanford. The first arose when the Stanford Alumni Association, which had housed SIG for many years, urged it to find another home, while SIG's anonymous donor, who had single handedly funded SIG for twenty years, was concerned about the lack of sustainable funding for the program. He gave an ultimatum — unless other sources of funding and support were found, he would no longer fund the program at the end of the year. In a case of perfect timing, Stanford President Don Kennedy — a former government official who valued public service — had just hired Catherine Milton, with whom he had worked in Washington, D.C., to develop a strategy to promote public service/community service on campus. Catherine is the acknowledged Mother of Stanford's massive public and community service infrastructure. She also established the Corporation for National and Community Service in 1993 in Washington, giving the nation the same infrastructure.

I was already intensively involved as a mentor to SIG when its existence was put in jeopardy. Catherine and I teamed up and worked together to find SIG a new home and stable funding. In her report to the Stanford President on public service, she argued that SIG should not only be "saved," but should become a foundation of a new public service center at Stanford, a recommendation that led directly to the creation in 1984 of the Public Service Center in Owen House and in 1993, the Haas Center for Public Service. The idea was to tap the student energy and commitment and match it with inspired

teaching and leadership by people like Catherine. SIG might not survive on its own, but it could thrive in this haven.

This partnership has worked and the Haas Center has transformed Stanford's public and community service profile. The Center now has an annual budget of \$2.3 million. The Haas Center staff, especially Catherine Milton, Tim Stanton, Nadine Cruz, Jeanne Halleck, Suzanne Able-Vidor, and now Leonard Ortolano, nurture SIG and a hundred other student public and community service programs. The dedicated staff provides continuity and perspective to harness the students' enthusiasm. Because of its central role in promoting careers in public service, SIG is one of only two programs on campus that the Haas Center officially sponsors. During the fundraising for the Center, I thought it unwise to take anything for granted. Even though it had the strong support from Catherine and Don with their Washington experience, I realized that in the future support might change; therefore, I funded an office in the new building dedicated solely to SIG.

Another superb program, the John Gardener Fellowship Program, was established in 1983 as part of these interrelated projects to honor one of the most beloved and respected University Alums, John served as Health, Education and Welfare Department Secretary under President Johnson and founded Common Cause and Independent Sector, two influential public policy advocacy organizations, and the White House Fellowship Program. The Gardner program has now placed 120 Stanford and Cal students in year-long fellowships in Washington and around the world.

Another threat to SIG's future arose as the university decided to establish an academic program in Washington DC. Catherine had originally made a recommendation in her report for such a program and two SIG students, Leslie Hetch and Anna Jackson, volunteered for several semesters to help develop recommendations that eventually went to a faculty committee. Some wanted the University to "take over" the functions that SIG provided; instead, Catherine and I were able to design the campus we see today, the widely acclaimed Stanford in Washington Program. Students study at the Bass Center while interning on the Hill and with the agencies and then SIG interns take over the campus during the summer. The synergy between SIG and SIW enhances both.

SIG soon faced another challenge. Its new funding source, grants from the ASSU starting in 1985, was suspended when graduate students voted down the entire student fee assessment program in a low turnout election. SIG limped through the next year until the fee assessment program was reinstated, leading us to launch a series of very successful endowment campaigns to fund SIG, protecting it against these shocks. Twenty-three of SIG's thirty fellowships are now endowed and the endowment of its international fellowships will shortly be completed. SIG is now set to launch a new \$2 to \$3 million campaign to endow its extensive public speaker and events programming — a prestigious "naming" opportunity. As one would expect from a program led by effective student politicians, SIG has always maintained excellent relations with the University's Office of Development, which finds SIG an attractive cause to pitch to donors.

SIG has enriched the Stanford community in the nation's capital. The fact that there are over 7000 Stanford alums in Washington is certainly due in part to SIG. Alums are organized to serve as mentors to aspiring Stanford public servants, and provide housing during the summer. In the 70s and 80s I organized many whitewater rafting trips for the Stanford Club on the Potomac River (Potomac fever!) to fund stipends for the SIG summer program coordinators. SIG interns are routinely invited to many Club events and events held at the Stanford in Washington campus.

Through the years SIG has weathered classic crises that reflect the passions of politics. For example, in the early 80s SIG interns held an off-the-record meeting with a high-ranking official of the Reagan White House who had made, they believed, an offensively sexist remark. The interns were outraged and determined to "out" the official in the most embarrassing possible way. We knew that SIG interns would know all too well how to do this. I persuaded them that they were bound by the ground rules for the meeting and that they had no right to jeopardize SIG's standing and programs. Out of respect for SIG, they backed off.

SIG is responsible not only for starting my career, but also for influencing me to venture beyond public service in Washington and join the Peace Corps in Nepal in the late 60s. The SIG and Peace Corps experiences, plus extensive travel in the Third World, have enabled me to see that our political system is the most effective, decisive, open and substantive in the world. This understanding accounts for the fact that I'm still working on the Hill — where so many of the staff are in their mid-20s and last only a few years — and not yet jaded by the political process. I'm now focused on crafting a strategy to close the \$72 trillion funding shortfall for Social Security and Medicare, fashioning an industrial policy to secure the medical countermeasures we need to respond to a bioterror attack, and setting the terms for this Century's overriding reality, the economic and political competition between the United States and China. And to complete the circle, my wife — also a former Peace Corps Volunteer — are planning to "reup" as volunteers in Africa. SIG's influence continues.

SIG's greatest influence on the University and its students is the same as it's been on me: Its optimism. SIG's optimistic premise is that our society will be led, generation after generation, by capable, idealistic, and inspired public servants. It's an honor for me and the Hass Center staff to be associated with SIG. The thirty or more SIG student Presidents with whom I have worked, and many other SIG leaders, are among the brightest and most effective people I've ever met. We rarely know their political affiliations; it's just not important in comparison to SIG's compelling non-partisan civic mission.

SIG's ambition for the next forty years should be to extend its influence to the very foundation of the Farm. In contrast to Harvard and Yale, Stanford has yet to fully apply its academic acumen to the great public policy debates of the day. The Hoover Institution provides a model for what should be more pervasive at Stanford — academics immersed in and leading the myriad battles that will shape our future. Establishing a John Gardner School of Public Policy modeled on the Kennedy School of Government

would enhance Stanford's relevance. Every department at the University should offer public policy fellowships — engineering students can focus on science policy and art students can focus on funding for art in public spaces. Stanford could fund grants or make annual awards to academics who publish the most timely and influential reports on social or economic policy issues. SIG could assemble a consortium of high tech trade associations and Stanford Park firms to host an annual conference — call it the Frederick Terman Summit after the Stanford-based founder of Silicon Valley — focusing on the interconnections among entrepreneurs, technology firms, academia, and government. It could bring retired Congressmen and Senators to campus for extended stays; establish a National Advocacy Center and Clearinghouse for Public Policy Internships; and maintain the definitive national website on internships and public service careers. Stanford and SIG could found their version of the Cambridge Union Society, the oldest debating society in the world, and endow annual lectures on social policy/poverty or East-West issues. If Stanford is destined to be the richest university in the world, then it has obligations to the world that exceed its current grasp.

America's future will be determined in large measure by America's ability to extend our influence to the East, combining the power of Stanford's greatest innovation, Silicon Valley, the ultimate bastion of the individualist, with the endless possibilities of Asia's multitudes. It is natural for Stanford to take the lead on the myriad public policy issues that will make this possible.

In doing all of this, Stanford will continue to build on SIG's 40 years of leadership and service to generations of Stanford students and alums. Congratulations SIG. Well done. And thanks.

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Chuck Ludlam (BA ' 67) has served as the principal alumni mentor to SIG and many generations of Stanford students. SIG's office at the Haas Center is named the "Chuck Ludlam Room." He was one of 100 alums to receive the Centennial Medallion in 1991 for his service to the University. He had funded 25 summer fellowships and his dad, Jim Ludlam, has funded 20 more. For 20 years he gave a lecture at Stanford on "how to get a job/internship in Washington." He served for 26 years as counsel to the White House, Senate and House Committees, and the Federal Trade Commission, and 7 years as the principal lobbyist for 1000 biotechnology companies. He is retiring in June of 2005 and his wife, Paula Hirschhoff, and he are rejoining the Peace Corps to serve in Senegal. They both served as Peace Corps Volunteers in the late 1960s, Chuck in Nepal and Paula in Kenya.

# History and Work of the Office of Senate Legal Counsel

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## 1. Introduction

The Office of Senate Legal Counsel, which was created by Title VII of the Ethics in Government Act of 1978, Pub. L. No. 95-521, § 701, *et seq.*, 92 Stat. 1824, 1875 (1978), *codified principally* in 2 U.S.C. § 288, *et seq.*, was the product of several years of legislative work in the Senate, by both the Committee on Governmental Affairs and the Subcommittee on the Separation of Powers of the Committee on the Judiciary. The key document in the legislative history of the office is the report of the Committee on Governmental Affairs on the Public Officials Integrity Act of 1977, S. Rep. No. 170, 95th Cong., 1st Sess. (1977), *reprinted* in 1978 U.S. Code Cong. & Admin. News 4216.

As originally conceived, the legislation would have created an Office of Congressional Legal Counsel. The House conferees on the Ethics Act stated that the House was not prepared to establish a joint office, but agreed to a Senate amendment to establish an Office of Senate Legal Counsel. H.R. Rep. No. 1756, 95th Cong., 2d Sess. 80 (1978), *reprinted* in 1978 U.S. Code Cong. & Admin. News 4381, 4396. The interests of the House in litigation are represented by the Office of General Counsel. Senate Counsel and House Counsel cooperate in litigation pursuant to the direction of the conference report on the Ethics Act that "the Senate Legal Counsel should, whenever appropriate, cooperate and consult with the House in litigation matters of interest to both Houses." *Id.*

The Senate Legal Counsel and Deputy Legal Counsel are appointed by the President pro tempore of the Senate upon the recommendation of the Majority and Minority Leaders. The appointment of each is made effective by a resolution of the Senate, and each may be removed from office by a resolution of the Senate. The term of appointment of the Counsel and Deputy Counsel is two Congresses. The appointment of the Counsel and Deputy Counsel and the Counsel's appointment of Assistant Senate Legal Counsel are required to be made without regard to political affiliation. Ethics Act, § 701(a) and (b); 2 U.S.C. § 288(a) and (b). The office is responsible to a bipartisan Joint Leadership Group, which is comprised of the Majority and Minority Leaders, the President pro tempore, and the chairman and ranking minority member of the Committees on the Judiciary and on Rules and Administration. Ethics Act, § 702; 2 U.S.C. § 288a. As the Senate report on the Ethics Act states, "[t]he purpose of the Office is to serve the institution of Congress rather than the partisan interests of one party or another." S. Rep. No. 95-170, at 84; 1978 U.S. Code Cong. & Admin. News 4300.

## 2. Defense of the Senate, its committees, Members, officers, and employees

Defensive representation may be authorized when the Senate, a committee, Member, officer, or employee is named as a party defendant in a civil lawsuit, Ethics Act, Sec. 704(a)(1); 2 U.S.C. § 288c(a)(1), about the validity of a proceeding or action that was undertaken in an official or representative capacity. "The Counsel may not be directed to represent a defendant in a criminal action or an action involving the unofficial activity of the defendant.... [N]o representation may be provided in contested election cases." S. Rep. No. 95-170, at 87; 1978 U.S. Code Cong. & Admin. News 4303. The report of the Committee on Governmental Affairs sets forth the intention of the Committee that "[o]fficial capacity will cover any actions a Member of Congress or employee takes in the normal course of his employment," and that, in deciding whether a Senate defendant has acted within that individual's official duties, "the scope of the legislator's or aide's official duties be broadly construed." S. Rep. No. 95-170, at 87; 1978 U.S. Code Cong. & Admin. News 4303.

Examples in recent years of damage claims against Members, officers, and employees of the Senate include a defamation action by a government-funded researcher against a Member and legislative assistant for statements in a news release, *Hutchinson v. Proxmire*, 443 U.S. 111 (1979), a claim by a nursing home operator that communications by a committee chairman with federal and state health care financing agencies interfered tortiously with the business relationship between the operator and those agencies, *Brownsville Golden Age Nursing Home, Inc. v. Wells*, 839 F.2d 155 (3d Cir. 1988), a claim against a committee chairman, counsel, and investigator for damages for violations of the constitutional rights and common-law privacy rights of persons whose documents were obtained by the committee during an investigation, *McSurely v. McClellan*, 753 F.2d 88 (D.C. Cir.), *cert. denied*, 474 U.S. 1005 (1985), and a discrimination claim by a dismissed Capitol telephone operator against the Senate Sergeant at Arms. *Hanson v. Hoffmann*, 628 F.2d 42 (D.C. Cir. 1980).

The provision of counsel by the Senate does not commit the Senate to pay for damages that may be awarded. Thus, in reporting S. Res. 463 of the 94th Congress, a resolution (prior to the creation of the Office of Senate Legal Counsel) to authorize the payment of fees for defense counsel in *Hutchinson v. Proxmire*, the Committee on Rules and Administration expressly stated that those payments "would not include any amount that might possibly be obtained in the nature of a money judgment." S. Rep. No. 1041, 94th Cong., 2d Sess. 2 (1976). Payments of damages would require separate action by the Senate.

Thus, disavowing the intent to create a precedent on indemnification by the Senate for the constitutional torts of its employees, the Senate, in agreeing to S. Res. 337 of the



99th Congress, determined that "the unique circumstances" of a judgment in *McSurely v. McClellan* against the widow of a former Senate employee, as representative of his estate, warranted the acceptance by the Senate of the responsibility of paying judgments resulting from the former employee's actions. 132 Cong. Rec. 1924 (1986)(remarks of Sen. Roth). *See also* 136 Cong. Rec. 13151-52 (1990)(text of S. Res. 294, 101st Cong., and remarks of Sen. Ford on authorizing Senate contribution to settlement of damage action, *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977), *cert. denied*, 438 U.S. 916 (1978), against Chief of the Capitol Police); 126 Cong. Rec. 22771 (1980) (text of S. Res. 497, 96th Cong., authorizing back pay for Capitol telephone operator reinstated as a result of a settlement in *Hanson v. Hoffmann*).

In various cases plaintiffs have named Senate parties in challenges to the constitutionality of congressional practices or actions. These actions have included claims by an impeached judge that the Senate could not constitutionally receive impeachment evidence through a committee and that his impeachment trial was barred by double jeopardy, *Hastings v. United States Senate*, 716 F. Supp. 38 (D.D.C.), *aff'd on other grounds*, 887 F.2d 332 (D.C. Cir. 1989), a claim by a member of the Senate and members of the House that provisions of the Federal Salary Act of 1967 that were in effect at the time of the lawsuit violated Article I, section 6, clause 1 of the Constitution, which requires that the compensation of Members of Congress "be ascertained by Law," *Humphrey v. Baker*, 848 F.2d 211 (D.C. Cir.), *cert. denied*, 488 U.S. 966 (1988); *see also* *Boehner v. Anderson*, 30 F.3d 156 (D.C. Cir. 1994)(challenge under 27th Amendment to congressional COLA system), a claim by members of the House that the Tax Equity and Fiscal Responsibility Act of 1982 was passed in violation of Article I, section 7, clause 1 of the Constitution, which requires that all bills for raising revenue shall originate in the House, *Moore v. The United States House of Representatives*, 733 F.2d 946 (D.C. Cir. 1984)(the Senate was also a defendant), *cert. denied*, 469 U.S. 1106 (1985), a claim by members of the House and private persons that the editing practices for the Congressional Record, including those of the Senate's Editor-in-Chief of the Official Reporters of Debates, violate their first amendment rights, *Gregg v. Barrett*, 771 F.2d 539 (D.C. Cir. 1985), and a claim by taxpayers that the disbursement by the Secretary of the Senate of compensation to the Senate chaplain violates the establishment clause of the first amendment. *Murray v. Buchanan*, 720 F.2d 689 (D.C. Cir. 1983)(en banc). Both Houses' chaplains, who invite a limited number of guest chaplains, have also been sued for not inviting as a guest a nontheist to deliver secular remarks to open sessions of the Senate and the House. *Kurtz v. Baker*, 829 F.2d 1133 (D.C. Cir. 1987), *cert. denied*, 486 U.S. 1059 (1988).

Another source of Senate Legal Counsel jurisdiction, Section 303(f) of the Civil Rights Act of 1991 provides that "[f]or the purpose of representation by the Senate Legal Counsel, the Office [of Senate Fair Employment Practices] shall be deemed a committee, within the meaning of title VII of the Ethics in Government Act of 1978...." Pub. L. No. 102-166, 105 Stat. 1071, 1090 (2 U.S.C. § 1203(f)) *See Johnson v. Office of Senate Fair*

*Employment Practices*, 35 F.3d 1566 (Fed. Cir. 1994)(defending final decision in Senate fair employment matter); *Riggin v. Office of Senate Fair Employment Practices*, 1995 WL 452510 (Fed. Cir. July 31, 1995)(same).

The second kind of defensive representation the Counsel undertakes occurs when the Senate, its committees, Members, officers, or employees are subpoenaed to produce documents or provide testimony relating to official or representative functions. Ethics Act, § 704(a)(2); 2 U.S.C. § 288c(a)(2). See, e.g., *In the Matter of the Applications of the City of El Paso, Texas*, 887 F.2d 1103 (D.C. Cir. 1989); *Pittston Coal Group v. International Union, United Mine Workers of America*, 1995 U.S. Dist. LEXIS 11718 n.5 (W.D. Va. Aug. 11, 1995); *United Transportation Union v. Springfield Terminal Railway Co.*, 132 F.R.D. 4 (D. Me. 1990). Although authority to represent Members, committees, officers, and employees as defendants is limited to civil proceedings, authority to represent them when they are subpoenaed as witnesses extends to criminal proceedings as well. S. Rep. No. 95-170, at 88; 1978 U.S. Code Cong. & Admin. News 4304 ("[T]he Counsel may be directed to defend [Senate parties] if the case is civil or criminal in nature but only if the subpoena arises from the performance of official duties. Grand jury subpoenas for congressional documents and testimony are a matter of routine. Most such subpoenas arise when Congress investigates conduct which results in a criminal indictment.").

The representation of Members, committees, officers, and employees, when their testimony or documents are subpoenaed, helps to effectuate the Senate's power over the disposition of Senate documents, and to protect the Senate's interest in the attendance of its Members while the Senate is in session. Resolutions that authorize testimony by senators may recite that "by Rule VI of the Standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave," and that testimony is authorized "except when [the senator's] attendance at the Senate is necessary for the performance of [the senator's] legislative duties." When appropriate, resolutions may state that testimony is authorized "except concerning matters about which a privilege against disclosure should be asserted." E.g., 132 Cong. Rec. 19604-05 (1986) (text of S. Res. 460, 99th Cong.).

The Office of Senate Legal Counsel advises Members, officers, and employees when they receive subpoenas or requests for documents or testimony and assists them in determining whether a congressional privilege should be asserted. The office also assists in preparing Senate resolutions to permit the production of documents and to authorize Members, officers, and employees to testify on matters not subject to a claim of congressional privilege. Apart from language that is particularly applicable to testimony by senators, resolutions that authorize Senate testimony or the production of Senate records recite (with variations appropriate to the case) that "by the privileges of the United States Senate and Rule XI of the Standing Rules of the Senate, no evidence under the control or in the possession of the Senate can, by the judicial process, be taken from

such control or possession but by permission of the Senate.... [W]hen it appears that testimony of Members or employees of the Senate is or may be needful for use in any court for the promotion of justice, the Senate will take such action as will promote the ends of justice consistent with the privileges and rights of the Senate." *E.g.*, 132 Cong. Rec. 19604-05 (1986) (text of S. Res. 460, 99th Cong.). Where an issue of Senate privilege might arise, these resolutions often also will provide for representation of the subpoenaed Senate party by the Senate Legal Counsel. *E.g.*, *id.*

The representation of the Senate, its committees, Members, officers, or employees, whether as defendants or as subpoenaed witnesses, may be authorized by a resolution of the Senate. A resolution to direct the Senate Legal Counsel to defend the Senate, a committee or subcommittee, or a member, officer, or employee of the Senate, is subject to special rules on limited debate. Ethics Act, § 711(a)(2); 2 U.S.C. § 288j(a)(2). To enable the Senate Legal Counsel to take initial necessary steps to defend Senate parties effectively in "emergencies," particularly matters that arise during adjournments, S. Rep. No. 95-170, at 85; 1978 U.S. Code Cong. & Admin. News 4301, representation of Senate defendants or witnesses may alternatively be authorized by a vote of two-thirds of the Members of the Joint Leadership Group. Ethics Act, § 703(a); 2 U.S.C. § 288b(a). The Senate has also empowered the Joint Leadership Group by a vote of two-thirds to authorize Senate testimony or the production of Senate documents during adjournments. 128 Cong. Rec. 26769 (1982)(text of S. Res. 490, 97th Cong.).

The defense of individuals — Members, officers, or employees — may be undertaken only with the consent of the individual involved. Ethics Act, § 704(b); 2 U.S.C. § 288c(b). It is a basic principle of the American Bar Association's Canons of Ethics that a client be given the freedom to choose the attorney who will represent him. Accordingly, while this bill provides that, with respect to committees ... the representation by the [Senate] Legal Counsel will be mandatory, with respect to the representation of an individual, the Counsel can provide representation only if the individual to be represented consents. S. Rep. No. 95-170, at 88; 1978 U.S. Code Cong. & Admin. News 4304.

In some circumstances, representation of a Member, Officer, or employee by the Office of Senate Legal Counsel may be barred, as a matter of professional responsibility, because of a conflict between that representation and other responsibilities of the Counsel. The Ethics Act establishes a procedure to be followed when such a conflict is presented.

Under the Act, if a "conflict or inconsistency" exists between representation of an individual and other responsibilities of the Counsel, the Counsel is required to "notify the Joint Leadership Group, and any party represented or person affected." Ethics Act, § 710(a), 2 U.S.C. § 288i(a). Upon such notification, the Joint Leadership Group must recommend action to resolve or avoid the identified conflict. Ethics Act, § 710(b), 2

U.S.C. § 288i(b). If that recommendation is approved by a two-thirds vote of the Joint Leadership Group, the Counsel must follow the recommendation. If the recommendation is not so approved, the Joint Leadership Group is required to publish notification of the conflict and the proposed recommendation in the Congressional Record. *Id.* If after fifteen days the Senate has not directed that the conflict be resolved in another manner, the Counsel is required to follow the recommendation published in the Record. *Id.* Where an individual is not represented by the Counsel because of the existence of a conflict, the Senate may authorize reimbursement for that individual's fees and costs incurred in obtaining other representation. Ethics Act, § 710(d); 2 U.S.C. § 288i(d). For an illustration of this process, *see* 137 Cong. Rec. S10553 (daily ed. July 22, 1991) (text of recommendation of Joint Leadership Group on avoidance of potential conflict and S. Res. 156, 102d Cong., on the payment of legal expenses from the contingent fund).

### **3. Proceedings to aid investigations by Senate committees**

The Senate Legal Counsel may represent committees in proceedings to obtain evidence for Senate investigations. Two specific proceedings are authorized. 18 U.S.C. § 6005 provides that a committee or subcommittee of either House of Congress may request an immunity order from a United States district court when the request has been approved by the affirmative vote of two-thirds of the Members of the full committee. By the same vote, a Committee may direct the Senate Legal Counsel to represent it or any of its subcommittees in an application for an immunity order. Ethics Act, § 703(d)(2), 707; 2 U.S.C. § 288b(d)(2), 288f. The Attorney General is entitled to ten days' notice of the intention of the committee or subcommittee to apply for the order, although the Attorney General may waive the notice period and enable the committee or subcommittee to proceed sooner. *In the Matter of the Application of the United States Senate Permanent Subcommittee on Investigations*, 655 F.2d 1232 (D.C. Cir.), *cert. denied*, 454 U.S. 1084 (1981). On the request of the Attorney General, the district court is required to defer action on the immunity application for up to twenty days. The district court must grant the application for an immunity order if it determines that these procedural requirements have been satisfied. The witness may not refuse to testify on the basis of the constitutional privilege against self-incrimination after the immunity order has been communicated to the witness by the chairman of the committee or subcommittee.

The Senate Legal Counsel may also be directed to represent a committee or subcommittee of the Senate, and also the Office of Senate Fair Employment Practices, Civil Rights Act of 1991, § 307(f); 2 U.S.C. § 1207(f), in a civil action to enforce a subpoena. Prior to the Ethics in Government Act of 1978, subpoenas of the Senate could be enforced only through the cumbersome method of a contempt proceeding before the bar of the Senate or by a certification to the United States attorney and a prosecution for criminal contempt of Congress under 2 U.S.C. § 192, 194. The Ethics Act authorizes a

third method to enforce Senate subpoenas, through a civil action in the United States District Court for the District of Columbia. Ethics Act, § 705(f)(1); 28 U.S.C. § 1365. The House chose not to avail itself of this procedure and this enforcement method applies only to Senate subpoenas. Senate subpoenas have been enforced in several civil actions, most recently in aid of an Ethics Committee inquiry concerning Senator Packwood. *Packwood v. Senate Select Committee on Ethics*, 845 F. Supp. 17 (D.D.C. 1994); *id.*, 114 S. Ct. 1036 (1994)(Rehnquist, C.J., in chambers); *see also* S. Rep. No. 98, 101st Cong., 1st Sess. (1989) (proceedings to enforce subpoena of a recalcitrant witness in the impeachment proceedings against Judge Alcee L. Hastings).

The new civil action has important advantages, both for investigating committees and for witnesses. For committees, it establishes an expeditious procedure to test the objections offered by a witness and, if those objections are insufficient, to obtain by a judicial proceeding an order directing the witness to testify. A failure to comply with the order is a contempt of the court and may lead to the imposition of coercive sanctions. For the witness who asserts in good faith a legal objection to a congressional inquiry, the civil proceeding provides a neutral forum to determine the validity of the objection, without the initiation of a criminal prosecution.

The statute details the procedure for directing the Senate Legal Counsel to bring a civil action to enforce a subpoena. In contrast to an application for an immunity order, which may be authorized by a committee, only the full Senate by resolution may authorize an action to enforce a subpoena. Ethics Act, § 703(b); 2 U.S.C. § 288b(b). The Senate may not consider a resolution to direct the Counsel to bring an action unless the investigating committee reports the resolution by a majority vote. For fair employment matters, the Select Committee on Ethics has the responsibility for reporting to the Senate recommendations for the commencement of subpoena enforcement proceedings. Civil Rights Act, § 307(f); 2 U.S.C. § 1207(f). The Ethics in Government Act specifies the required contents of the committee report; among other matters, the committee must report on the extent to which the subpoenaed party has complied with the subpoena, the objections or privileges asserted by the witness, and the comparative effectiveness of a criminal and civil proceeding. Ethics Act, § 705(c); 2 U.S.C. § 288d(c).

There is a significant limitation on the civil enforcement remedy. The statute excludes from its coverage actions against officers or employees of the federal government acting within their official capacities. Its reach is limited to natural persons and to entities acting or purporting to act under the color of state law. 28 U.S.C. § 1365(a).

## 4. Representing the interests of the Senate as intervenor or amicus

The Senate by resolution may direct the Counsel to intervene or to appear as amicus curiae in the name of the Senate, or an officer, committee, subcommittee, or chairman of a committee or subcommittee, in any federal or state proceeding in which the powers or responsibilities of the Congress are placed in issue. Ethics Act, § § 706, 713(a); 2 U.S.C. § § 288e, 288l(a).

The Counsel may not be directed to intervene or appear in the name of an individual Member or any group of Members. Primarily the Counsel should represent the institutional interest of Congress. Individual Members have often brought successful legal actions in their own names which have benefitted Congress as an institution, but for the Counsel to represent such individual Members is likely to involve partisan considerations. S. Rep. No. 95-170, at 98; 1978 U.S. Code Cong. & Admin. News 4314. The Act provides that "[t]he Counsel shall be authorized to intervene only if standing to intervene exists under section 2 of article III of the Constitution...." Ethics Act, § 706(a); 2 U.S.C. § 288e(a).

This authorization permits the Senate to advocate an interest of the Congress in cases in which the Department of Justice has challenged the constitutionality of a statute. To enable the Houses of Congress to determine whether they should appear in litigation to defend Acts of Congress, the Attorney General is required to report to each House whenever he or she "determines that the Department of Justice will contest, or will refrain from defending, any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional." Department of Justice Appropriation Authorization Act, Fiscal Year 1980, Pub. L. No. 96-132, § 21(a)(2), 93 Stat. 1040, 1049-50, extended by Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. No. 102-140, § 102, 108 Stat. 1724, 1734 (1994). The Attorney General is also required to provide timely notice to the Senate Legal Counsel of any determination by the Department of Justice not to appeal, in a case in which the United States is a party, any decision affecting the constitutionality of an Act of Congress. Ethics Act, § 712(b); 2 U.S.C. § 288k(b).

The Senate Legal Counsel represented the Senate as amicus curiae in defense of the constitutionality of the independent counsel law. *Morrison v. Olson*, 487 U.S. 654 (1988). Other cases in which the Senate Legal Counsel has appeared to defend acts of Congress that were being challenged by the executive branch include *Metro Broadcasting, Inc. v. Federal Communications Commission*, 497 U.S. 547 (1990)(constitutionality of Congressionally mandated affirmative action requirement);

*Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983) (constitutionality of legislative veto); *Ameron v. U.S. Army Corps of Engineers*, 809 F.2d 979 (3rd Cir. 1986), *cert. dismissed*, 488 U.S. 918 (1988)(constitutionality of Comptroller General's role under Competition in Contracting Act); *Lear Siegler, Inc., Energy Products Division v. Lehman*, 842 F.2d 1102 (9th Cir. 1988)(same); *In re Benny*, 812 F.2d 1133 (9th Cir. 1987)(constitutionality of provisions of Bankruptcy Amendments and Federal Judgeship Act of 1984); *In re Koerner*, 800 F.2d 1358 (5th Cir. 1986)(same). The Senate Legal Counsel has also appeared in litigation to suggest prudential grounds for the Court not to decide the merits of an executive branch challenge to the constitutionality of an act of Congress. *American Foreign Service Ass'n v. Garfinkel*, 490 U.S. 109 (1989). In some cases the Senate Legal Counsel has joined the executive branch in defending certain features of a statute, while defending against the executive branch's challenge to other aspects of the law in question. Thus, in *Bowsher v. Synar*, 478 U.S. 714 (1986), the Senate joined the executive branch in defending the Balanced Budget and Emergency Deficit Control Act of 1985 ("Gramm-Rudman-Hollings") against a challenge that it constituted an unconstitutional delegation of congressional power, while opposing the plaintiffs' and the executive branch's claim that the Comptroller General's role under the Act violated the separation of powers. In *Mistretta v. United States*, 488 U.S. 361 (1989), the Senate Legal Counsel appeared in the name of the Senate in the Supreme Court to support the United States Sentencing Commission's defense of the Sentencing Reform Act of 1984 after the executive branch, which generally supported the Act, questioned the constitutionality of the provision of the law that placed the commission in the judicial branch. See 134 Cong. Rec. 12100 (1988)(statement of Sen. Byrd on S. Res. 434, 100th Cong.).

The Senate has also directed the Senate Legal Counsel to defend the constitutionality of a federal statute where the executive branch, without challenging the statute, has failed to defend it, *e.g.*, *United States ex rel. Kelly v. The Boeing Co.*, 9 F.3d 743 (9th Cir. 1993), *cert. denied*, 114 S.Ct. 1125 (1994) (constitutionality of qui tam provisions of the False Claims Act); *United States ex rel. Taxpayers Against Fraud v. General Electric Company*, 41 F.3d 1032 (6th Cir. 1994)(same), and also to defend the constitutionality of a statute where there was concern that the executive branch's defense, in light of legislative positions it had taken before the Congress, might be ambivalent. See *United States v. Eichman*, 496 U.S. 310 (1990); 135 Cong. Rec. S16191-92 (daily ed. Nov. 19, 1989) (statement of Sen. Mitchell on S. Res. 213, 101st Cong., authorizing appearance of Senate as amicus curiae to defend the constitutionality in that case of the Flag Protection Act of 1989).

The Senate Legal Counsel has also represented the Senate as plaintiff-intervenor in an action brought by members of the House to invalidate the President's use of a pocket veto in an intersession adjournment of the Congress during which each House had authorized an officer to receive veto messages from the President. *Barnes v. Kline*, 759

F.2d 21 (D.C. Cir. 1985), *vacated as moot sub nom. Burke v. Barnes*, 479 U.S. 361 (1987).

In several cases the Senate Legal Counsel has appeared as amicus curiae in the name of committees of the Senate in support of requests or subpoenas to obtain information in the possession of the Department of Justice. *In re Grand Jury Impanelled October 2, 1978 (79-2)*, 510 F. Supp. 112 (D.D.C. 1981)(appearance on behalf of Committee on the Judiciary to obtain Department of Justice documents relating to Robert Vesco); *United States v. Dorfman*, No. 81 CR 269 (N.D. Ill. 1981)(appearance on behalf of Select Committee on Ethics to obtain wiretap evidence relating to alleged conspiracy to bribe member of the Senate). A description of the proceedings and the transcript of the court proceedings in this case are found in Report of the Committee on the Judiciary Identifying Court Proceedings and Actions of Vital Interest to the Congress, 97th Cong., 2d Sess., H.R. Prt. No. 11, at 294, 407 (Comm. Print 1981).

Additionally, the Senate or its committees have appeared as amicus curiae in cases in which the interests of the executive and legislative branches are in harmony, but where there is still a special interest in separate Senate representation. *Turner Broadcasting System v. F.C.C.*, 819 F. Supp. 32 (D.D.C. 1993), *vacated and remanded*, 114 S.Ct. 2445 (1994) (constitutionality of must carry provisions of Cable Act). *Nixon v. United States*, 113 S.Ct. 732 (1993) (procedures used by the Senate in conducting the impeachment trial of former United States District Judge Walter L. Nixon, Jr.); *Bardoff v. United States*, 628 A.2d 86 (D.C. 1993) (subpoenas to senators). The Senate Legal Counsel appeared on behalf of the Senate in an action to support the executive branch's defense of the congressional frank, which had been challenged on the theory that it unfairly advantages incumbents over challengers. *Common Cause v. Bolger*, 574 F. Supp. 672 (D.D.C. 1982), *aff'd*, 461 U.S. 911 (1983). The Legal Counsel also appeared on behalf of the Committee on Governmental Affairs as amicus curiae in an appeal concerning a senator's participation in an oversight investigation of an executive department, *Peter Kiewit Sons' Co. v. U.S. Army Corps of Engineers*, 714 F.2d 163 (D.C. Cir. 1983), and intervened in the name of the Select Committee on Intelligence to represent the committee's interests in litigation under the Freedom of Information Act involving documents in the possession of an executive agency that the committee had generated in the course of an investigation. *Paisley v. CIA*, 724 F.2d 201 (D.C. Cir. 1984).

## **5. Advice to committees and officers of the Senate**

The Ethics Act details a number of advisory functions of the Office of Senate Legal Counsel. Principal among these are the responsibility of advising officers of the Senate with respect to subpoenas or requests for the withdrawal of Senate documents, and the responsibility of advising committees about their promulgation and implementation of rules and procedures for congressional investigations. The office also provides advice



about legal questions that arise during the course of investigations. Ethics Act, § 708(a)(5) and (6); 2 U.S.C. § 288g(a)(5) and (6). *See Report of Temporary Special Independent Counsel*, S. Doc. No. 20, 102d Cong., 2d Sess. 73 n.344 (1992).

## 6. Other duties

Section 708(c) of the Ethics Act, 2 U.S.C. § 288g(c), provides that the Counsel shall perform such other duties consistent with the purposes and limitations of Title VII as the Senate may direct.

When the office was changed in conference from an Office of Congressional Legal Counsel to an Office of Senate Legal Counsel, no specific provision was made for the representation of Senate interests concerning agencies which serve the entire Congress. One such entity is the Congressional Research Service. After an administrative law judge at the Federal Trade Commission issued a subpoena to CRS, at the request of oil company respondents in an FTC antitrust proceeding, the Senate used the catchall authority of section 708(c) to direct the Office of Senate Legal Counsel to represent CRS in order to protect the confidentiality of communications from CRS to the members and committees of Congress. *See* 126 Cong. Rec. 6892-93 (1980)(text of S. Res. 396, 96th Cong.). The Senate Legal Counsel has also defended the Public Printer in actions brought to restrain the printing of Senate documents. *See* 135 Cong. Rec. 11370-71 (1989)(text of S. Res. 143, 101st Cong.).

Section 708(c) was also used in the investigation relating to Billy Carter and Libya when the Senate directed the Counsel and Deputy Counsel to work under the direction of the chairman and vice chairman of the subcommittee charged with the conduct of that investigation. The Senate turned to the Office of Senate Legal Counsel as a nonpartisan office; the office became the nucleus of the investigating staff, and continued in that role under the direction of former Judge Philip Tone, when he was appointed to be Special Counsel to the subcommittee. *See* S. Rep. No. 1015, 96th Cong., 2d Sess. (1980).

Members of the office have undertaken other special assignments. In the Senate's investigation of Abscam and other undercover activities, the office detailed an Assistant Senate Legal Counsel to work on the committee staff. *See* S. Rep. No. 682, 97th Cong., 2d Sess. (1982). The Senate Legal Counsel served as counsel to the Senate Impeachment Trial Committee that received evidence in the impeachment proceedings concerning Judge Harry E. Claiborne. *See* S. Hrg. No. 812, 99th Cong., 2d Sess. (1986). An Assistant Senate Legal Counsel served as counsel to the Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr., *See* S. Rep. No. 164, 101st Cong., 1st Sess. (1989), and the office provided extensive assistance to the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings. *See* S. Rep. No. 156, 101st Cong., 1st Sess. (1989). The Senate has assigned the Legal Counsel duties in connection with the consideration of claims presented under the Federal Tort Claims Act. 128 Cong. Rec.

29927 (1982) (text of S. Res. 492, 97th Cong.); S. Rep. No. 649, 97th Cong., 2d Sess. 2 (1982).

In addition, the Legal Counsel provides informal advice to Members, officers, and employees on a wide range of legal and administrative matters relating to Senate business.

# CHRONOLOGY ON HUMAN CLONING ISSUE

Everything that has been done on the human cloning issue has been done by a team, including many members of the Executive Committee/Board/ECS, Carl, Chuck, Nancy, Suzanne, Dan, Libby, Megan, Patrick, our political consultants (Jack Clough, Dave Bockorny, and Bitzie Beavin), many members of our Government Relations and Bioethics Committee, and many other organizations including PhRMA, ASRM, AAMC, patient groups and medical societies.

## 1997

1. On February 19, 1997 the Dolly story breaks in New York Times
2. BIO supports President's call for a moratorium while NBAC reviews issue for 90 days.
3. During March, April and May BIO tries to persuade NBAC not to recommend enactment of a law. Submit statement recommending moratorium continue.
4. When it was clear in June of 1997 that NBAC would, in fact, recommend enactment of a law, BIO met with White House staff and tried to focus White House proposed law as narrowly as possible (making it clear that BIO does not support enactment of a law).
5. When it became clear in July that the House Science Committee would take up the bill BIO met repeatedly with committee staff and Congressman Ehlers about focusing on a narrowly crafted bill (making it clear that BIO does not support enactment of a law). Alison Taunton-Rigby appeared at a last minute hearing on the issue on July 22. BIO supported Rep. Rivers who offered several amendments to the Ehlers substitute, which had refocused the bill entirely on creation of an embryo, an issue not addressed by NBAC or in the President's bill. On July 29 the Science Committee reported the new Ehlers bill.
6. In July and September/October of 1997 BIO focused on a House and Senate appropriations bill amendment to include a ban on Federal funding of embryo research with "diploid cells" (a reference to cloning). Bill with this amendment become law.
7. In September/October of 1997 BIO worked closely with Senator Frist's office on strategy in case Bond, et. al., were to offer a Senate cloning amendment (never offered). Gave Frist's staff legislative language (making it clear that BIO does not support enactment of a law).
8. In Fall of 1997 made repeated attempts to recruit patient/academic groups.
  - A. Organized a briefing on September 27 (Alison Taunton-Rigby was presenter) attended by 20 patient groups and medical societies.
  - B. Held meeting of patient groups on October 23 attempting in unsuccessful attempt to organize a coalition.
  - C. Held multiple follow-up meetings with patient groups in unsuccessful attempt to organize a coalition.

9. In November/December of 1997 met with staff of Senators Bond, Frist, and Ashcroft to firm up relationships and gather intelligence about Second Session prospects.

10. In Fall of 1997, at suggestion of Senator Ashcroft's staff, met systematically met with Senate leaders of partial birth abortion issue.

### 1998

11. Nancy Bradish starts work at BIO on January 5.

12. Dr. Seed makes his announcement on January 7.

13. BIO researches whether we should call for FDA assertion of jurisdiction over human cloning. On January 21 BIO publicly calls on FDA to assert jurisdiction, which it does.

14. BIO develops list of 9 key drafting points for any bill on human cloning. Worked closely with PhRMA, which adopted the BIO list.

15. During this time BIO circulates letter to representatives of patient advocacy, academic research, and medical societies urging Congress to ensure that biomedical research is not damaged by any human cloning bill.

16. On January 12 BIO had a conference call of key members of the Government Relations and Bioethics Committees to discuss science at risk with a Ehlers-type bill. We thought we were least prepared on this issue.

17. On January 13 met with Senate Labor Committee majority staff (Jeffords) regarding bill.

18. On January 13 briefed staff of all minority members (Democrats) of Senate Labor Committee.

19. On January 14 BIO briefed 13 White House and Administration staffers regarding impending cloning debate. Urged them to get out-in-front of the issue so that they would not have to veto a poorly-crafted bill.

20. On January 15 met Senator Feinstein's staff to help her draft a bill which would not adversely affect biomedical research. Without any urging from BIO she had announced that she would be introducing a bill. We reviewed 10 drafts of her bill over the next few weeks and she introduced it on February 2 (S. 1602).

21. During this period met and talked repeatedly with staff for Senators Bond and Frist to make sure they completely understood the problems with the Ehlers bill approach (the science at risk) and the key drafting issues. Our strategy during this period was to keep Senator Frist off of the Bond bill.

22. By January 20 had met with staff of every member of House Republican and Democratic

- Leadership. When Speaker Gingrich says at a Republican Caucus meeting that banning human cloning is a "no brainer," House Whip Tom DeLay says, "It's more complicated than you think."
23. On January 20 met with House Commerce Staff (Howard Cohen, Rodger Currie, and Pattie DeLoatche) to discuss human cloning issue. Very cordial meeting. Entered into Email follow-up with Rodger Currie. A complete copy of all of the Emails which were exchanged is available.
  24. On January 20 the Society for Reproductive Medicine announced support for human cloning legislation (advancing a draft prepared by BIO).
  25. On January 21 BIO Executive Committee held conference call on human cloning legislation to review status and BIO strategy.
  26. On January 22 BIO met for first time with Senator Mack's staff to recruit the Senator as a champion.
  27. On January 22 got leaked copy of new bond bill. Set emergency conference call for next day to analyze it. Based on two hour conference call prepared memorandum identifying 24 problems or issues with the bill.
  28. During this period met with staff for 40 Hill offices.
  29. During this period Patrick Kelly was focusing the flood of Senate cloning bills. BIO drafted legislative language appropriate for a state legislature and used it to try to focus the Senate bills (while maintaining that BIO does not support enactment of a law).
  30. During this period had repeated contacts with White House and NIH staff urging them to become involved in the debate. White House finally put out a Statement of Administration Policy (consistent with BIO's position) on February 9.
  31. During this period coordinated with lobbyists for Merck (Victoria Blatter and Laurie Michel) and SmithKline Beecham (Eleanor Kerr), who were the most active Washington offices helping us on this issue. Merck has facilities in Mississippi and met with Lott's staff.
  32. Throughout this period consulted frequently with scientists at Geron and Origen about science at risk. Did same with academic scientists at University of California, University of Wisconsin, Harvard, and Johns Hopkins. Made sure that did not make misstatements about science at risk.
  33. On January 26 mailed letter of signed by 53 patient groups to Capitol Hill cautioning about potential impact of human cloning legislation. Letter not then supported by American Association of Medical Colleges (AAMC) or Federation of Societies of Experimental Biology (FASEB), which later signed the letter and joined in the effort along with other groups (for a total of 60 signers).
  34. On January 28 sent first BIO letter to the Hill on human cloning issue urging caution.

35. On January 28 sent letter to Speaker Gingrich outlining our concerns.
36. On January 28 invited to participate in a meeting in Senate Majority Leader Lott's office with Senators Bond and Frist, staff for many key members, a PhRMA representative, and representatives of 10 patient groups (recruited by BIO). Inconclusive discussion. Senator Lott did not attend. Frist staff asks those in attendance to submit draft legislative language.
37. On January 26 held BIO Gov. Rel./Bioethics Committee meeting regarding human cloning legislation.
38. On January 29 sent memo to Gordon Binder, Henri Termeer, Vaughn Kailian, Alison Taunton-Rigby, and Mitch Sayare regarding meeting in Lott's office. Sent draft of bill to submit to Bond and Frist in last ditch attempt to craft narrowly crafted bill. Later on this day sent a second memo with a revised draft. We submitted our draft language to Senators Bond and Frist on January 30.
39. On February 2 Senators Feinstein and Kennedy held a press conference to describe their human cloning bill (S. 1601).
40. On February 2 held last-ditch meeting with staff of Senator Bond and Frist to persuade them to introduce narrowly focused bill. Wanted to make sure that every possible effort had been made to avoid confrontation or surprise on their part about our views.
41. On February 2 held BIO Gov. Rel./Bioethics Committee meeting regarding human cloning legislation.
42. On February 3 met with staff of Congressman Ehlers to ascertain his intentions.
43. On February 3 Senators Bond/Frist/Lott held a press conference to describe their human cloning bill (S. 1599). Senate Majority Leader Lott introduced an identical bill, S. 1601, which was the bill for purposes of the Senate debate.
44. On February 3 within two hours of the release of the Bond bill, BIO had completed its analysis of its impact and began circulating it to our supporters. At same time drafted description of the science at risk with the Bond bill. The analysis and statement have proven to be accurate in all respects.
45. On February 3 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.
46. On February 4 BIO met with Senator Hatch's key staffers for two hours regarding the human cloning issue. Brian Moss of the Utah Life Sciences Industry Association arranged the meeting and attended. Hatch is chairman of the Senate Judiciary Committee, to which the Bond bill was referred.
47. On February 4 Carl sent memo to BIO Board of Directors with update on human cloning

debate and forwarding our analysis of the new Bond bill and the science at risk.

48. On February 4 heard indirectly that Frist staffer Jennifer Van Horn had thought BIO had questioned her competence (not a true statement). We wrote friendly letter to Senator Frist praising Van Horn.

49. On February 4 drafted statement for Senator Feinstein's use the next day for the opening of the Senate floor debate (submitted for the Record). Statement formed the basis for House Commerce Committee testimony on February 12.

50. On February 5 Senate Majority Leader Lott took S. 1601 off of the calendar -- after no referral to committee. An objection was made to the motion to proceed (from Feinstein and Kennedy) and Senator Lott immediately filed a cloture petition to end debate on the motion to proceed. Senator Mack made a powerful statement against precipitous action on the bill.

51. On February 5 BIO recruited Dr. Roger Pederson, consultant to Geron, to take the red-eye flight from California for briefings the next day. Briefings were for staff of all Senate Democratic offices and 20 science reporters (hosted by Feinstein/Kennedy offices). We took Roger over to meet with House Commerce Committee staff (Howard Cohen and Rodger Currie).

52. On February 6 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.

53. On February 9 New York Times publishes editorial entitled "A slapdash proposal on cloning." (Carl and Alan had met previously with NWT editorial staff in New York.)

54. On February 9 American Society for Cell Biology sends letter against Bond bill signed by 27 Nobel Prize winners.

55. On February 9 held BIO Gov. Rel./Bioethics Committee meeting regarding human cloning legislation.

56. Late on February 9 BIO is informed that the House Commerce Committee has invited BIO to be represented at its hearing on February 12 and that testimony is due by noon on February 11. We recruit witness that afternoon and next morning (a complicated process). Testimony is drafted on February 10 and morning of February 11 based on the earlier statement submitted to Senator Feinstein, the analysis of S. 1599, and the description of the science at risk -- no time to do new draft and drafted before we know the outcome of the Senate vote. Submitted on time to the Subcommittee. Send copy to PhRMA to help coordination.

57. On February 10 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.

58. On February 9 and 10 many rumors circulate that Senator Lott will not take the cloture petition to a vote moving instead to refer the matter to the relevant committees for 45 day review (a proposal made by Senator Mack).

59. On February 11 the cloture petition ripened and Senator Lott called for a vote. We had been quite sure he would lose any such vote and heard repeatedly that he would not, in fact, call for the vote. For reasons we do not understand, he did call for the vote, 12 Republicans voted against cloture, and the cloture petition (which needed 60 votes to pass) received only 42 votes -- 18 short. We heard that Senator Lott had termed this vote a "leadership vote" -- raising the stakes. Senators Mack and Thurmond made eloquent statements against precipitous action on the bill.
60. On February 11 and morning of the 12th spend ten hours prepping our witness for hearing.
61. On February 12 BIO was represented at hearing of the House Commerce Committee by Dr. Michael West, founder and Chairman of Origen. (Mike was the founder of Geron which he has left to found Origen.) Howard Cohen states that Mike's testimony is "balanced" and "substantive." We had met with virtually every member of the Subcommittee by then and all but one supported our position -- Republicans and Democrats.
62. On February 12 after the hearing House Commerce Committee staff (Howard Cohen, Rodger Currie, and Eric Berger) invite Michael, Chuck and Nancy for an hour-long discussion of the science at risk. A representative of the Catholic Bishops attends. Very cordial and substantive meeting.
63. On February 13 BIO hosted meeting with representatives of patient advocacy, academic research, and medical societies.
64. On February 17 attended meeting with House and Senate Republican leadership and key committee staff. PhRMA also attended. Meeting focused on understanding each other's position and moving on to resolve the controversy.
65. Agenda for week of February 16 includes (a) beginning to draft options which bridge the gap between Feinstein and Bond bills; (b) meeting with staff of House Commerce Committee minority (Cong. Sherrod Brown) regarding their draft human cloning bill; (c) sending out thank-yous to Senators and Subcommittee members; (d) assisting National Health Council organize its forum on human cloning on March 26; (e) meeting with other House Commerce Committee members; (f) ascertaining plans of the Senate Judiciary and Labor Committees for hearings/mark-ups, etc.; (g) preparing to testify at any such hearings; (h) many meetings on the Hill with key players; and (I) continuing work with coalition partners, NIH/Administration, BIO members, PhRMA, etc. to resolve the controversy.



# **Aspiration Statement**

**Chuck Ludlam**

**(serving with wife, Paula Hirschhoff)**

**Senegal**

**September 25, 2005**

## **Expectations about Peace Corps Service**

My desire to rejoin the Peace Corps is based on the simple fact that, aside from the decision to marry Paula Hirschhoff, joining the Peace Corps (Nepal 17, 1968-1970) was the best decision I've ever made. Over the 35 years since I served in Nepal, the pervasive and positive impact of this experience has become increasingly clear to me.

Serving again would be the latest and best way to express and realize the humanitarian values embedded in this service and gain the perspective and gratitude that such service yields.

While I've done my best to incorporate Peace Corps values and commitments into my hectic and highfaluting life as counsel in the U.S. Congress and White House, and as a lobbyist, it should be more straightforward to live these values and commitments in a village in Africa where the needs are so basic and obvious and the lifestyle is slower and less materialistic. I was never a kinder, more generous, more humble, and more patient person than when I served as a Volunteer and I want to return to this state of being in full measure.

This time around I'm excited about serving with my wife, Paula Hirschhoff, another former Volunteer. She and I met in 1988 at a Peace Corps function and it is clear that our relationship is grounded in the values that led us both to serve. I founded Friends of Nepal and she is a member of the Board of Friends of Kenya. I am involved with the FON Peace Initiative, seeking to quell the violence in Nepal. We have organized FON and FOK events at the NPCA conferences in D.C. I funded the construction of a science building in my Nepal village and we both provide financial support to many Nepali and Kenyan families. I have developed legislation and regulatory proposals in support of the Peace Corps. Many members of our social circle are former Volunteers. Serving together will surely deepen our relationship and the respect we have for each other, based on the experiences that brought us together.

I am very inquisitive and love to learn, and there is no subject more complex and fascinating than that of human culture. Learning how other cultures see and deal with the world, and learning to respect their choices, is an enriching process. I am confident that I'll learn many more lessons in life from the supposedly "less developed" world, and I am sure it will give me a sense of gratitude for the bounty in America.

I don't much like my relationship to goods and possessions. I look forward to living without many of them. In Nepal I learned that good health is not a given and rats, lice and physical inconvenience are the common experience for many millions of people. That is a sobering and useful lesson to learn again. I am rugged and do not anticipate that I will have much difficulty adjusting to the Third World living conditions. In fact, I prefer to serve in a community without modern conveniences. To me this is simply more natural.

My assignment as an AgroForestry extension agent -- essentially the same assignment I had in Nepal -- will focus my energies on basic human needs in Senegal, what I believe to be the highest calling of a Volunteer. Recalling my visits to my grandfather's apple farm, my seven summers of work on a cattle ranch in Arizona, and my gardening at home, I look forward to being intimately connected to the earth.

In addition, I have extensive experience with adventure travel and have some ideas how we might try to associate our village into that market. This would depend on its proximity to the "beaten path" for world travelers. If we are near the coast or a river, I have extensive experience in sea kayaking and whitewater kayaking and rafting, as well as snorkeling. This might be relevant to ecotourism promotion. My wife is an experience sailor, having grown up sailing in the Minnesota lakes.

## **Strategies for Adapting to a New Culture**

As a PCV agriculture extension agent in Nepal, I believed in the Green Revolution and the benefits it would provide -- nutrition and cash -- to my community. I came to live comfortably with what was possible in my village, to be nonjudgmental and nonpejorative about their response to my mission, and to work for change on terms the villagers could understand and accept. The village tea shop and twice-weekly market, not the paddy fields, were where I came to understand the culture and spread my message of change.

The Tharus, the aboriginal people with whom I lived and worked, had experienced essentially no contact with the outside world. I was the first westerner most of them had ever met. My Nepali coworker and I planted demonstration crops alongside the local trails, contrasting the new, high-yielding Green Revolution varieties fertilized by chemicals with the local varieties without fertilizer. The new varieties had a yield of 30-40 fold that of the local varieties.

The villagers would see this and say, "Chuck Ji, you are a good farmer." That was pretty much the end of their analysis. They didn't ask how I did it, or whether it was something they could try, nor did they proceed to change their own practices. Their approach to their world was accepting, or as we might say, passive or fatalistic. I had to learn to live patiently with this response and understand that they simply had little

experience or positive experience processing new ideas.

They did not tend to analyze problems, nor were they grounded in cause-and-effect, risk-taking, or trial-and-error. Theirs was a conservative approach, preferring the prevailing norm to the new, untried, and risky.

I came to believe that my role in the village was mostly to introduce the idea of change itself, to explain patiently that new ideas would soon impinge on their world, but not to assume that I would see many concrete changes during my two years of service. When I returned to Haripur in 1998, I found that every farmer had adopted the new agriculture techniques I'd advocated. I hope that I had eased the way to that end with my work thirty years before.

I have traveled in approximately 65 countries, many of them in the developing world, including Zaire, Rwanda, Uganda, South Africa, Morocco, Egypt, Afghanistan, Nepal, India, Burma, Cambodia, Thailand, Malaysia, Indonesia, China, Mexico, Belize, Costa Rica, Guatemala, Venezuela, Ecuador, Peru, Chile, Argentina, Palau, Yap, Papua New Guinea, Canada, and most of Europe. This travel has exposed me to many cultures and given me the skills to adapt to them. It's also given me an intense appreciation for the joys of interacting with other cultures.

It is obviously critical to learn the languages of my community. I took French in high school and have been taking French classes and private lessons all year in anticipation that we'd serve in a Francophone country. We understand we may also need to learn Wolof or Pulaar or another local language.

## **Personal and Professional Goals**

At age 60, I am retiring from the Federal government after a 33-year career as a lawyer, and am seeking to define my role in retirement. Serving again in the Peace Corps is sure to help me with that task.

We may well decide to extend our service in Senegal or find other international opportunities to serve throughout our remaining years. I may well identify organizations with respect to which to affiliate or even found a new one. I will certainly look for further ways to serve the people of Senegal, as I have found many ways to continue to serve the people of Nepal.

**Aspiration Statement**  
**Paula Hirschhoff**  
(Serving with husband, Chuck Ludlam)  
Senegal

September 25, 2005

## **Expectations about Peace Corps Service**

Expectations about my impending Peace Corps service in Senegal range from the broad scope of service to my country and my adopted continent of Africa to a narrow focus on personal and professional goals. I'm still idealistic enough to believe that the person-to-person ties established by volunteers make the Peace Corps one of the best foreign policy programs that our government has ever devised. I'm especially pleased to be assigned to a country that's predominantly Muslim during this crucial time for U.S. relations with the Islamic world. As for Africa, I am thrilled to be returning there once again. I believe that Africans have given the world more than most people realize or acknowledge. I look forward to enjoying those gifts and living again in a place where I feel so at home.

My expectations about my assignment (micro enterprise development for women) are still developing. I anticipate satisfaction as well as frustration in this work to empower women. Economic independence for wives and mothers in Africa, as elsewhere in the world, leads to a higher level of education for the next generation, as well as to better nutrition and health for the entire family. I recall those women in my community in rural Kenya who brewed gin or beer in their compounds. They generally used the proceeds to pay school fees for their daughters and sons.

The women in our town will probably have developed micro enterprises in the past. Perhaps their efforts have foundered or need to be expanded. Were I to return to the changaa-brewing regions of Kenya, I might try to steer the women to more legal, healthful enterprises. It may be that I'll be able to help Senegalese women analyze whether they are making the most of the resources at hand. It may be that they will need help to better organize their enterprise, which could bring my teaching skills into play. It's exciting to anticipate examining the natural environment to seek potential for income generation. Ecotourism might be a promising enterprise, depending on our site placement. My experiences in southern Africa taught me that promoting appreciation of natural resources in outsiders builds respect and conservation in the local people.

## **Strategies for Adapting to a New Culture**

Narrowing the focus of my expectations, I foresee that my husband, Chuck Ludlam, and I will participate actively in Senegalese family life as well as local community activities. We'll have to figure out how best to dress, eat, talk, and in general, behave, to be accepted and respected among the villagers. Fortunately, we both love trying unusual foods, so enjoying the meals we're served will be one way to adapt.

Getting to know the music and attending local celebrations including dances, funerals and weddings will be another means. Setting boundaries is, oddly, a means of adaptation too. We don't want to get overwhelmed and burned out. We'll need time alone and time with just the two of us to write and read and to discuss and consider what's happening to us.

At times we will feel impatient or guilty about our lack of progress and fatigued or disgruntled about the living conditions. These feelings may lead to annoyance or even anger. Fortunately, Chuck and I have been Peace Corps volunteers before. We can serve as a reality check for each other, and we can also draw on memories of our past service to provide perspective on the situation at hand. Moreover, we also have complementary personality traits: Chuck is bolder and more apt to forge ahead at times when I may feel it's inappropriate. I am more reticent, so I'm apt to hold back at times when I should push forward. We respect and embrace each other's personal traits and, as we do every day here in Washington, we'll practice our system of checks and balances.

However, we both agree that the best plan for adapting to a new culture is to be open and friendly, to ask many questions, and to make many quiet observations. During recent travels in Turkey and Egypt, for example, we often broke away from the small tour groups we were with and wandered together through the villages. As a result, we had some moving experiences: We were welcomed into homes, served food, and given gifts that we cherish, all with only a few words of the same language in common with our hosts.

We both acknowledge that learning the language is the key to in-depth understanding of another culture. To that end, I intend to review French intensively for the next four months and then embark on learning a local language when training starts in Senegal. In that way, I'll be able to ask many questions at the outset. In anthropologist style, I tend to keep many notes and journals, especially when I'm in a foreign land, so recording and reviewing my impressions of the culture will be an important means of adapting. It may be that we spend the first few months of our life in Senegal learning the language and culture well enough so that we can eventually have some impact in our job assignments.

## **Personal and Professional Goals**

My goals for applying to join the Peace Corps at this stage of life are much the same as they were in my youth: to explore a deep love of Africa, to fulfill a strong commitment to serve, and to address a temporary need to leave my easy American life to face new challenges in the world.

More specifically, I anticipate that this experience will enable me to fulfill some of the goals I set when I was pursuing a graduate degree in anthropology. For example, one of my aims was to incorporate values and practices of local cultures into

development/conservation strategies. I had worked as a senior writer/editor for about five years for U.S. Agency for International Development consulting firms, where I observed that development projects often employed a top-down approach that failed to involve the local people. I sometimes doubted that the projects themselves had much impact at the grassroots level. I also became disillusioned with my own work, because I saw no evidence that the publications I produced had much effect.

When I applied for Peace Corps, I assumed that I would be placed in an education program, since I 'd been teaching for several years. Now that my assignment is in micro enterprise development, I anticipate that I will have a chance to explore some of the ideas and theories about utilizing indigenous knowledge that I studied in graduate school.

Perhaps I could continue to fulfill many of these goals here at home. But serving in Peace Corps again has always been a personal goal. I said that I wanted to serve three times—once in my youth, once in middle age, and once in my older years. I'm not sure whether this is my middle age or my older years; if it's the former, then I'll have to serve again at a later date. And of course, learning French has been a personal goal too, as indicated by the various studies listed under the Foreign Language Section on my resume. This time I won't be able to put it aside after intensive study; I'll be called upon to use it daily.

A final personal goal is to share the Peace Corps experience with my husband. After we met at a Peace Corps event in 1988, I returned to Kenya for the first time in 20 years; he listened carefully to stories of my joyful reunions and decided to return to Nepal—his country of service. We traveled together and reunited with his Nepali friends for the first time in 30 years. We often explore other countries together in a traveling style that is closer to the ground and the local people than most tourists tolerate. And we also love going out of our way to help other people, whether it be our neighbors in Washington, DC or villagers in Africa. Serving together in Africa will be a logical extension of these experiences and will deepen our relationship and enrich our marriage.