Tom Polgar. 10-23-79

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Oral History Interview with Tom Polgar October 23, 1979. Washington, D.C. By Pete Daniel

POLGAR: My name is Tom Polgar. I'm twenty-five and have been working for Senator Morgan for two years and one month. I went to school at MIT in Boston for five years over a period of six years, finishing up in 1977. I got the job in sort of strange fashion. I was down in Mexico City on vacation, Christmas vacation in 1976. I met Morgan down there, and I was already looking for a job in the Senate. He agreed to hire me as an intern and give me a couple of months experience on the hill and let me look around for a job. After I had been working for him for a couple of months, I got put on the staff full time. What you try to do is make your indespensible.

Bascially right now I'm responsible for a rather wide variety of issues. I'm a legislative assistant; unlike some, I do not have a specific committee jurisdiction. I'm issue oriented. I'm responsible for anything related to HEW, which includes Social Security, plus federal employees, veterans, and Indians, where we do as little as possible. Where I really focus my activities is on health, education, and Social Security.

In health it's more a matter of Congress is always considering these issues, and they need to be informed about it more anything really active that Senator Morgan does.

The biggest battles that I've been involved in since I've been with Morgan, well, the first one in fact, the very first major issue I got involved with after being on the staff was whether or not to increase Social Security taxes. That was back in November 1977. We missed by just a few votes and a lot of arms got twisted in the process of effectively killing the bill by having it put off for three months. It killed the blll because it brought it too close to the elections, and they could never have stood passage of that kind of tax just before the '78 elections.

The other two really major long-term legislative battles
I've been involved in, were, first the Department of Education,
where Senator Morgan was one of the Congressional leaders of the
opposition to establish it, and second, which is still ongoing,
is the bill known by supporters as the Civil Rights for the
Institutionalized Bill. What this bill does is give the U.S.
Attorney General the right to sue states in behalf of people in
institutions run by state and local governments, primarily mental
health and mental retardation facilities and prisons. This is
still an ongoing battle. It passed the House in 1978, it got
out of Senate committee, we prevented it from getting to the floor,
it passed the House again this year, and they're still trying to
get it out of committee. I expect they will get it out of committee
before the end of the year. The question is can they pass it on
the floor?

DANIEL: He is for this?

POLGAR: He is against this. He is, again, the main opposition.

DANIEL: And what is the reason that he is against this?

POLGAR: Well, from a philosophical standpoint, he has a real objection to allowing the Attorney General to sue states, particularly over what he really thinks is a question of budgetary priorities. There have been abuses, real serious abuses, particularly in mental retardation and mental health facilities where they have just, literally, physically abused the patients. If the bill was only going to get at that, I think that Senator Morgan wouldn't have that much trouble with it. The problem is that the bill can also be used to get at states, and will be used to get at states, for not spending enough money in their institutions or not providing high quality care, nor providing them with, well, I'm not enough of an expert on all the things that mental health institutions do. But you do start getting questions of the number of employees per patient, how much individual counselling do they get, those kinds of things, which are really budgetary problems.

In these areas, the real problems have been that the mental health and mental retardation facilities are competing with public schools, with state highways, with prisons for that matter, and with all these other demands on the budget, and they lose. The mentally ill don't vote; that's the way it works at

at the state legislature. While we are sorry to see this--in fact, Senator Morgan was one of the big pushers for cleaning up the mental health institutions in North Carolina when he was down there--he doesn't want the Justice Department, of all people, to be able to go in and start reordering state budget priorities. DANIEL: This basically comes from his state's rights position that it's the state's responsibility?

POLGAR: Right. Basically, it does. And there's another point which Senator Heflin keeps raising, which is that this is going to be the first time that the federal government sees a social problem and responds by allowing the Justice Department to sue the states. In the past their practice has always, if you see a social problem you authorize a program and appropriate some money and tell the states that if they put up 20 percent or 10 percent or some percentage of the costs, they can get this big chunk of federal money to help take care of the problem. Well, that's not what they're doing here. What they're doing here is that they're just going to go and sue. So those are the philosophical objections.

We also have some very strong pragmatic objections in terms of the drafting of the bill. The bill was drafted by the Justice Department in conjunction with some of the advocacy groups who advocate on behalf of the mentally ill. The Justice Department for years just assumed they had the authority to bring suits like this. Beginning in '76, they started this kind of suit in

in 1971, beginning in '76, the courts started ruling that they did not have the authority in the absence of explicit statutes passed by the Congress. So they drafted this bill, and they drafted it as broadly as possible to give themselves as much freedom of action as possible, which is perfectly reasonable; I would have done the same thing if I'd been in their position.

From a practical standpoint, if there's going to be a bill, and we are sort of negotiating with its proponent on the Judiciary Committee, Senator Morgan's feeling is that the bill should be as limited, as black and white, as possible—remove all discretionary authority that the Justice Department might assume to try to shift the balance of power against the states, things like that. This is an ongoing battle; who knows how it's going to turn out?

The North Carolina House members in 1978, when the House voted on this, six out of eleven voted against it. Handicapped groups, Senator Morgan was the main opponent of the bill, the handicapped groups decided that they were going to embarrass us, and they twisted a lot of arms down in North Carolina in the winter and spring, and when the House voted on it back in July, I think it was, nine out of eleven voted for the bill, and one of the remaining two wasn't there. He probably would have voted for it if he had been there.

DANIEL: What are you doing now?

POLGAR: We're negotiating. We have taken the position now that if they, if the committee satisfies our practical objections to the problems with the bill, we will drop the philosophical objections and let the bill fly. So we've got some very intense

negotiations going on with Senator Morgan, with Danforth, with Exon, primarily, and the National Association of Attorney Generals on the one side and Senator Bayh and even Hatch and the ACLU and the National Association of Retarded Citizens and groups like that, and the Justice Department on the other side, and prisoners on their side.

DANIEL: Is this something that is pressing right now? POLGAR: Yes, it is pressing right now. It's up for mark-up in Judiciary Committee Tuesday, October 30, and they sort of discussed it briefly today. It's not really what the committee does that is going to be the question; their problem is that our position right now is that he's quite determined to filibuster. If they want to avoid the filibuster, they are going to have to make concessions. And they have made some already; I'n not going to knock it. We've actually, I shouldn't say it because I've been sort of organizing it, but a very nice strategy of hitting them with successive waves of demands. And it really isn't this very last point that Senator Morgan is jumping in. Now, even though I've been intimately involved in every set of negotiations up to now, I've only been involved behind the scenes. The Senator has not taken any public positions on anything, and now we are coming in, with concessions having already been made, and saying, listen, we like them and they help the bill, but you didn't negotiate those with us and none of those apply to us. We want this and this and that, and this is where we are willing to give. They're a little unhappy, but there isn't much they can do.

DANIEL: So I take it you've learned how to use strategy effectively? POLGAR: Quite a bit. We've been helped. If it were just Senator Morgan against this bill, we wouldn't have a leg to stand on. We've been helped a lot. Bayh had to make some concessions to get the votes to get the bill out of subcommittee. That was a big help. The rest of our concessions will come from peer pressure, basically peer pressure in the Senate being what it is, one always takes into account the demands of one or two or three Senators who have concerns unless they are Senators who are just way out on the ideological fringe on either side, who are always out there and always making trouble. Then you just ignore those people.

You get somebody who tends to be accommodating and tends to be reasonable will all of a sudden take a hard line position on an issue which is what the Senator has done here. The peer pressure is to accommodate and avoid a filibuster, so that's what is happening here, or so we hope. We get that kind of peer pressure, and they're going to have to have to accommodate us. I don't know how many votes we will get.

This is a bill that you can be accused of voting for child beating and tying people up in straight jackets for nine years, starvation, and so forth if you vote against this bill, you are voting for all those things. That's going to make it hard for us to get votes if we have a fight on the floor. We are sort of reduced to this kind of negotiation; if we had the votes we wouldn't be negotiating.

DANIEL: It's interesting how people will come to him on this issue and that they would expect him to come to them on other issues. POLGAR: Well, that of course is the basic rationale behind the entire committee system. Now, Morgan is not on the Judiciary Committee; on the other hand, Morgan is an ex-state attorney general, used to be president of the National Association of Attorney Generals, and they are of course the main lobbying organization that is lobbying against the bill. And, of course, the senator was offered a seat on the Judiciary Committee several years ago--free. I don't know if you knew that. In other words, under Senate rules you have a certain number of seats on certain types of committees; you have important committees and less important committees, special committees. There are a certain number of seats on each. The Judiciary Committee is an important major committee; it an A committee. I think it was at the beginning of '77, and they were worried that they did not have enough southerners on the committee, southern Democrats, and he was offered a committee seat, on the Judiciary Committee, without having it being charged to his committee seats. He turned it down, and he told me that it was probably the dumbest thing that he has done since he has been in the Senate.

DANIEL: If it's offered again, he'll take it?

POLGAR: Yes, but they're not going to offer it again, for now Kennedy's chairman. So Kennedy will not want to get somebody like Morgan, who while he is anti-trust oriented so he would be very

helpful there, on civil rights issues and constitutional issues, well, not so much on civil rights issues but on constitutional issues, Morgan could be, from Kennedy's point of view, quite a pain. Back in '77 Eastland who was chairman, and Eastland was trying to get some more people who saw things his way on the committee. He went and talked to Byrd, and Byrd agreed (Bob Byrd), to go along with something like that. I wish Morgan had taken it; everybody on the staff wishes that he had taken it. But he didn't do it.

DANIEL: That's his thing.

POLGAR: That's right. He knows anti-trust. Kennedy is a famous member of Congress regarding anti-trust law, but Morgan from his trial experience and all, knows anti-trust law a lot better than Kennedy. Kennedy shakes and moves the committee in terms of getting things done, but in terms of actual knowledge in the mind about the subject area, Morgan knows a lot more. On that stuff, he would be a big help to Kennedy.

DANIEL: Have you had any other battles that are memorable?

POLGAR: Well, the Department of Education was a fascinating battle. It was signed into law last week. We lost. Well, what happened there was this was an issue that has been sitting around for a hundred years, literally a hundred years. In fact, Congress created a Department of Education in 1867 or 1868, and it lasted for one year, and then they decided that they had made a mistake and repealed it.

Well, this has been sitting around ever since. The NEA has been pushing it ever since then. They were not called the NEA then; there was another name. But it was the same organiza-

tion, and they were pushing it then, and they have been pushing it ever since. Well, then about 1963 or so and Ribicoff comes into the Senate, and he's committed to it. He's been quietly pushing it for sixteen years, getting commitments, co-sponsors, all very quietly, out of the public eye. A few years ago he was made chairman of the committee that handles it; that helped him a lot. Well, what they would do is that they would come out and they would say, now this is a bill that will educate the poor people of the country. Education deserves a separate department. Create a separate department and it will solve all these peoblems, put programs in one place and there will be greater efficiency, reduce bureaucracy, and everybody will be happy. So vote for this. Well, this sounds pretty good. In fact, Morgan told the North Carolina branch of the NEA in 1974 that he was for it. Then in 1978 the issue started getting serious; it looked like it might actually pass.

So he started to look at it, and the more he looked at it the less he liked it. So he started to fight it. For a while we really felt like we were all by ourselves. Literally, there was nobody who was against it, especially in the Senate, and just nobody who would come out against it. Well, we did find a couple back in '78 who would actually come out and say they were against it, Jack Schmidt from New Mexico, Pat Moynihan from New York. What we did was, we knew the House wasn't going to, talking about strategy and coordination, I started talking to the American Federation of Teachers, which is the second largest teacher's organization in the country, which was against it. They said they had a lot of allies in the House committee, but they wouldn't

be able to hold it up long. The only way they could hold it up in the House was if it got delayed in the Senate so long that it would be caught at the end of the session and never get out. It was an election year, and they were determined to get out (for recess) three or four weeks in advance of the election, so the guys could go home and campaign.

We were literally counting days. How many days can you hold it up in the House? They gave us a target, and we shot for that target. One little delay after another we tried to hold up the bill. Well, we got it tied up with the energy thing. And whether Indians should be in the bill. We told Stevens, we convinced Stevens, that he should hold off the vote until after the consideration of natural gas. So he did. No problem. We promised him some votes on his amendment to get him to hold it up.

That was two weeks right there, by the board, gone. And Stevens would not let the bill come up, because he wasn't ready to go with his amendment. Then we lost a couple more days because of the civil service reform conference report. This was blind luck; we had nothing to do with it. This was the same committee, Ribicoff's committee, Ribicoff's bill, his little baby, just like the Department of Education. So Ribicoff had to be there; he couldn't be on the floor to bring up education. So that got us a few more days. And little things like that and what not here

and there. Then we used the Ethics Committee as an excuse a couple of times, because two of the three prime opponents, Jack Schmitt and Morgan, were on the Ethics Committee. Then it was Ed Brooke; they were too busy with Ed Brooke. So they couldn't bring up the Education bill, so that got us another day or so.

By then we had just about reached that deadline. Then they were going to pass it the day before the deadline, but we forced it over one night; that's easy enough.

So it got over to the House, on the House floor. The opponents over in the House promptly, the AFT people, got some of their people, their labor allies, to go on the floor and do a House version of a filibuster. Well, the House rules are much tighter than in the Senate, so you can't do filibusters. What you can do is tie up everything. You can't do a selective filibuster, but you can tie up everything and basically threaten that no bills will pass unless you get your concession, that that bill will not be brought up. That's what they did. They just said, we don't care, we are not going to let that education bill be brought up. So they blackmailed the leadership into not letting the bill pass. That was '78.

Well, we spent the winter looking for a way. There was no doubt that in '78 there were votes in the House to pass the bill easily; they were there in the Senate. In '79 the battle really got hot. There was never any doubt that the bill was going to sail through the Senate. Again, we started trying to delay the bill long enough not so much to keep the bill from getting to

the House so they could do what they did in '78, because it was going to take two years. You can't tie up anything for two years in the House, too much time. But to give the opponents in the House time to build up support for their position. Well, we did a lot of things. We kept the bill from getting out of the Senate until April, which was about two months after the attempt to get it out. So it was slowed down a little. Meanwhile, we were really working to do something. We almost tore apart the National School Board Association, which had endorsed the bill. We got some of the state school board associations, who were members of the national association, and there was a huge fight in the National School Board Association over whether or not this bill should pass at the national convention, which was late April last year.

We lost, but we didn't lose by too much. It's too bad.

If we had won that fight, then we would have been in good shape.

It was almost a classic case of the fight starting in Congress and going out instead of starting outside Congress and going in.

We really worked on the higher education people. We turned a lot of higher education groups around. They either stayed out, or refused to endorse it. We got several of them to change their views, and several more stayed neutral. They stayed neutral because of the White House. And we really worked on the Indians. We used the argument that you would probably get your schools out this term but next term the schools would go in.

DANIEL: Why would they want their schools out?

POLGAR: It was almost a classic case of bureaucratic inertia, because they knew the bureaucratic system as it existed and they were afraid to change it. Everybody including the Indians agreed that the Bureau of Indian Affairs was doing a miserable job with Indian schools, absolutely a terrible job, criminal. But they didn't want them moved. They were afraid that if they got taken out of their own bureaucracy they would be rolled in with other stuff and special attention, though special attention was terrible, would sooner or later wither away. I think they're wrong. I think that if they were smart they would get themselves out, but we were against the bill so if they wanted to stay out we would help them.

In fact, I should backtrack here. We almost killed the bill on the Senate floor. We offered an amendment that missed by seven votes passing; if it had passed, that bill would have been in trouble.

The White House has a reorganization power; within certain limitations they can reorganize the federal governmental agencies. The procedure is that they draw up the reorganization order and send it up to Congress and if neither house acts in sixty days, the reorganization plan is good. The purpose of that is to allow the President more flexibility in reorganizing than you would have if you had to get a law passed.

Morgan offered an amendment to the Education Department Bill that said that the reorganization act did not apply to the Education

Department, that you could not take anything out of the Education Department or put anything into the Education Department unless it got legislation passed by Congress. What we argued there was that there was no reason for the President to have the reorganization act authority. Congress had gone through this whole education plan, fought bitterly over every program whether it should be in our out, and said, we've made our decision, and that was it, that there was no reason for the Preisdent to have the ability to override our decision with the reorganization act. Now, I grant you, you always have the chance to override the plan, but with the reorganization act, the opponents of the plan have the burden of doing all the work. They are going to have to convince all the people that the White House is wrong. What we would have done was to force the White House to get legislation which would mean that the White House would have to convince one house or both houses that a change was needed, which meant, which of course shifts the work. It's a lot easier for us to prevent a transfer that the White House wants than it is for us to overturn a decision to transfer which is going to go into effect if nobody does anything.

The other side of the argument was the amendment was completely unprecedented. It was the first time that any department or agency had been exempted from the reorganization act, which was sort of true. Right now we got back to the point. There are all these things the White House and committee chairmen

sponsored for the Education Department Bill wanted in the Department which the majority of the Congress did not. And why give these guys a chance to scheme to overturn the decision that a majority of the Congress had made? We offered the amendment and we only lost by seven votes. And it looked like we had it. There was talk that the White House would not sign a bill with that kind of provision in it, because they very badly want some of the stuff that we took out of the bill, and I think that if Carter gets reelected, and waits till the dust is settled, then especially with the Indians and Head Start Program, will be prime targets to go straight into the Education Department. And at that point we would probably support him. Because if you're going to have an Education Department, you ought to make it as broad as possible and give it as broad a focus as possible.

It was an interesting battle. It looked like we had it, but they had some votes, some people to vote with them on the committee, and some votes shifted and we lost by seven votes.

DANIEL: What were Morgan's ideas on the issue of the Education Department?

POLGAR: He felt that to decentralize the decision-making for education policy, that you are inevitably centralizing power.

And centralizing power for education was something that he was unalterably opposed to. One way of looking at it is federal control of schools is an anathema which every politician is against,

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INTERVIEW

TOM POLGAR

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