

PART III: The landmark smoking ban that profoundly changed California culture: A blow-by-blow account of a fierce legislative battle, and Pete Wilson weighs in.

TF: But this local Lung Association person went after Lockyer and Lockyer went nuts. And I was home, because I think it was when Kate was born, and I was on paternity leave for a week or two. And but I heard what was said, and I knew that this would be it if I couldn't fix it with Lockyer, the bill was dead. I mean he would take it personally and I called him and said this happened, I had nothing to do with it, and to prove that to you I am going to remove the Lung Association as a sponsor of the bill. They will not... I can't stop them from speaking out on it, but they're... I don't want to have any association with the Lung Association because of that. I mean it was a...

TF: I didn't like doing it and Tony (Najera) wasn't very happy. And it wasn't Tony, Tony didn't do it. Tony is a gentleman. It was just an untimely stupid overreaction by somebody that didn't understand how politics worked in Sacramento, or how Bill Lockyer worked. So he calmed down or professed to calm down. But I still never trusted that he would be on board, and he never verbally committed his vote to me. And I was constantly... I had a dog-eared vote tally in both houses. And I was working on that from very early on to know who we had and who we didn't. And I could never put a mark, check mark next to his name one way or the other.

TF: So we come back in '94, and I don't remember what, other than boosting our support group and more fully engaging at the grassroots level in districts where there were members that we were concerned about and ongoing press. And we kept churning that as much as possible, and getting editorials. Kathy and I went around, I think we visited a lot of editorial boards and I got most of them to endorse and publicly. And I think in '94 maybe I was starting to tell people, I think we have a good shot in the governor's office.

DM: And how did you know that? So, Governor Wilson.

TF: Governor Wilson.

DM: Republican, but a moderate.

TF: But a moderate. And he had... He had wanted to run for president in '92, I think.

DM: Well, he ran in '96.

TF: He ran in '96, that's when he ran? I'm not sure what his calculation was, but he was a moderate, at core he was a moderate. He certainly had to move to the right and did on immigration to try to satisfy that wing of his party. But he had, in '93, he signed AB 2601, the gay rights bill. And through that I got to know some of the people better in his office. One of whom was Maureen Higgins, who I think either she was his chief legislative secretary or assistant legislative secretary. But she was a fairly senior staff person. And we were on a personal level, we had mutual friends, and I don't recall if I reached out to her, or she reached out

to me.

TF: But we started having conversations. She never...I don't think she ever was able to make a commitment for the governor, obviously. But the message was that the governor was open to it. And I figured why would I even get that message if he wasn't inclined, I mean why would they make that sort of a commitment? I don't remember what if any amendments we took in the Senate. I didn't want to take amendments in the Senate, because I didn't want to have to come back on concurrence in the Assembly. But I think we took some to fortify Maureen's work with the governor.

TF: And got it out of Senate Judiciary. Lockyer voted for it. I'm sure he had pleasure putting me through the ringer, and not telling me how he was going to vote, but he voted for it. Goes to the Senate floor and we, as I said, we had at least two Republicans. I don't remember what the numbers were in the Senate at that time, but I think there was some breathing room. Democrats maybe had, I don't know, 23, 17, something like that. I just don't remember. So I probably with the two Republicans, I think I was able to lose four Democrats. And I'm, I know I had to, I lost Henry Mello and I had great problems with him. He was trying to stop the bill. He was, I think he was probably on, he was, I don't know if he, maybe he was on Senate Judiciary, I don't remember, but he was impossible. And there were a couple others.

TF: I just don't remember who, maybe Boatwright, was an opponent. Anyway, it was touch and go. And I can still remember Kathy Leonard and I are sitting in the back of the Senate chamber, and we thought we had 21 or 22, but you don't know. And it's going on and on, and we just get it to a vote, get it to a vote. I mean the lobbyists are calling out senators. And it just, it was this torture, wanting to get the vote called. And Hayden gets up and starts speaking for the bill. Why is he doing that? That doesn't help Tom. It hurts us and some other on our side gets up. But then I think, I think Marian jockeyed it on the Senate floor, I think.

DM: Marian Bergeson.

TF: Yeah. And, I think we had two or three votes to spare, it passes off the Senate floor, but then the test is coming back to the Assembly, because the Assembly had to concur in the amendments taken in the Senate. And one graveyard of legislation had always been that Willie would send a bill that he didn't like anymore, or never liked, back to a policy committee before it could come back to the Assembly floor late in the session when the policy committees weren't scheduled to meet. And it was just a way of killing a bill. And that's what I was afraid that he would do.

TF: And so in anticipation of that, I know we made a big push, with editorial boards so that that couldn't happen so quietly. And I went to Willie and, I said, 'Willie, I know you've, you voted against this bill in the Assembly and you don't like it. But it just cannot go back. It can, if you're going to send it to a committee, it's gotta be to Labor and with my authority to be able to set a hearing. But it can't go to GO. It's going to create...' and he said, 'Don't worry. I know you have the votes. I'm not going to do anything to stop it.'

DM: This was a meeting in the speaker's office there off the floor, or do you remember where?

TF: I don't remember where it was. I don't ... maybe it was just a chat on the floor. I don't think it was, a meeting or an appointment, but I just, I don't remember exactly. Kathy might, I just don't remember that. And then so I immediately brought it up for concurrence when I knew Willie was not going to pull any stunt.

DM: Though he voted against the bill.

TF: Yeah, I'm sure he did. But at that point, I think, I'm sure we had more votes on concurrence than we had the first go around. Because there wasn't any cover, members could say that they voted for Curtis's bill and voted against my bill, because mine went too far. But when Curtis's bill was gone, they had, it really, it was a black and white choice.

DM: Right, right. Well, so we're sitting here in your office in Santa Monica, and there's a display of the bill getting signed by Governor Wilson. And you're looking over his shoulder to make sure he does it. And I see Kathy Leonard in that photo as well. So, he signs the bill. Your work here is done. Right?

TF: Well, my work was pretty done, but the effort to, preserve what we had done had just begun. Because of the initiative the tobacco industry had qualified.

DM: So that was Proposition 188 of 1994. And so is a pretty big initiative here. There's, the "three strikes and you're out initiative," Prop. 184, I believe it was, and there was Proping 187, which was the initiative to prohibit any public taxpayer money going for anything having to do with undocumented immigrants, including kids in school or people in nursing homes. Those got a lot of attention. And then there was Prop 188, which was an initiative sponsored by the tobacco industry, which basically would've codified the original Curtis Tucker bill.

TF: Correct.

DM: And undone ... AB 13 .

TF: If it had only undone Prop. 13

DM: Yeah... AB 13. So did you get involved in that campaign?

TF: I wasn't that involved.

DM: The campaign to kill 188.

TF: Right, right. In part, I think, I was running a campaign for a judge, because I was leaving the Legislature. So I had that going on. And the campaign, and I was happy to help the campaign. No campaign was in part being led by folks that had been part of the Americans for Nonsmokers' Rights coalition, and they didn't like me.

DM: Right.

TF: They didn't... And they were of a view that AB 13 was what spawned Prop. 188. That it pushed... First they were saying that my bill would risk preemption, and then they were opposing it because they said it, they were criticizing it, because they said it went too far and it provoked the tobacco industry to pursue Prop. 188 .

DM: And so initial polling showed 188 was going to pass.

TF: Yeah.

DM: And then it got more and more attention, and ultimately got creamed at the ballot. But for a while there it was, it looked like it was going to win, and it ended up losing 30 percent to 70 percent, or something like that. You won your race for judge, and you probably recall Philip Morris spending a little money to block your election.

TF: I did. I got a chuckle out of that. That a tobacco company, a national tobacco company, cared about a Los Angeles superior court race, but it wasn't hard to know why they did. It was just out of pique, I'm sure.

DM: Right, and you ended up winning that and you served 15 years as judge of the Superior Court...

TF: That's right.

DM: ... in Los Angeles County. But then November of the weekend before election day, November, Philip Morris spent \$125,000 on a mailer, or mailings, that targeted one of your allies, Betty Karnette, down in Long Beach, an Assemblywoman from Long Beach, and she lost to a Republican named Steve Kuykendall, which became the 41st seat for Republicans. So Republicans ended up winning the Assembly that year, and probably because of AB 13. What do you think of that?

TF: Irony of ironies, well, it's really a shame for Betty, who was a salt to the earth...

DM: School teacher.

TF: Yeah. Good person and in politics, too, for pure reasons. So it was a shame that someone that decent would be defeated. If we held off trying to enact important legislation for fear that it would provoke our opponents, and lead to their resting majority control, we would be pretty stymied in our democracy. I think if you have the ability to accomplish something, or if the stars are aligned to make it possible to accomplish something, I think you have to go for it. And there was no way of knowing, in 1993 or 1994, that Philip Morris would fund a sneak attack on a vulnerable district that was not high on the list of vulnerable Democratic districts. I think that's what caught us, the Democrats by surprise, I think. I mean there were some other seats that went Republican that were expected to be more at risk. So, I regret that, but I certainly wouldn't go back and hold off on pushing to enact one of the strongest public health protections, and strongest anti-smoking laws enacted at that time at least, anywhere in the country. And my bet is that Betty Karnette would say the same thing.

DM: Well, she ended up coming back and serving in the...

TF: In the state Senate.

DM: In the Senate. So looking back, what do you see, the significance of AB 13 as being today? You're shocked if you go into a restaurant in another state and people are smoking right? What do you think the significance of it is?

TF: Well, I think it undoubtedly saved a lot of lives of mostly workers. I'm sure some members of the public who were in restaurants or other, or workplaces, offices but primarily workers who had no choice but to inhale the carcinogens in secondhand smoke if their workplace permitted it, as most did. Or if their workplace had you know no smoking zone, which really was from my understanding of ASHRAE, meaningless. So I think that's the most important benefit. I think it undoubtedly helped, and then it added to the national wave of anti-smoking legislation and in local jurisdictions, states. And ...

DM: Well, it was really at the forefront, wasn't it? I mean, Utah was ahead of California, right? I'm not sure any other state was. Was it?

TF: Right? No, not that I'm aware of. And so, I mean how do you count the, the ripples that that pebble launched? And I think it's a -- I don't want to overstate it -- but it's a David and Goliath story of how the less funded side can beat a very powerful special interest when stars align. I mean, there were certainly events out of our control that were critical. The EPA report in particular, but there were others, too ... And a strategy, you know it can be strategic and know how to work the system that exists. And a little bit of luck goes a long way, too.

DM: Yeah. Well, and tenacity. One of the issues I believe one of the reasons why the restaurant association became supportive was that there was that a waitress who had become ill, got a worker's comp claim approved because she had claimed exposure to secondhand smoke. So perhaps the law was changing, and society was changing. Still it wasn't an easy, an easy fight, and it does seem to me that it changed how we live, right? I mean...

TF: Right. In California, we take it for granted now. And people my daughter's age have never ... I mean that was sort of a personal reason that protect her from ever having to inhale someone else's smoke. And it's really, it's been the case since she was a baby when it took effect and her generation and even the rest of us ... I mean, we don't think about it unless we travel elsewhere. And even in the country, there are restrictions even in tobacco. I mean, I think there's restrictions enacted in Virginia and Kentucky, not 100 percent bans, but they're moving in the right direction. It's when you go abroad that you notice it.

DM: Right, right. Yeah. Okay. So what else? You got anything, John?

JH: Yeah, it's one thing you mentioned before, I don't know if it was on camera though, about the open elevator shaft and... [Laughter]

DM: Oh, yeah.

DM: Well, so Dick Floyd was a colorful legislator, colorful guy. Very, very old school, kind of tough guy, represented South of here, Garden Grove, I think was, that's...

TF: Lakewood.

DM: Yeah, Lakewood, you're right.

TF: Hawthorne, maybe.

DM: Hawthorne sounds right. Torrance, maybe.

TF: Lynwood. Yeah.

DM: He was never supportive of this bill. He did, on the other hand, I must say, he was the author of the bill that required motorcyclists wore helmets. Right.

TF: Right. I always wondered how much money he got from the helmet manufacturers, but [laughter] for a good cause.

DM: Yeah. [laughter]

TF: That was good legislation.

DM: Okay. Anyway, so what was your interaction with him?

TF: He was often a no vote on at least the more controversial bills that I authored. He came from a more conservative district. I understood that. But there was an open seat, I think for the state Senate, and he ran for it against a couple other Assembly members. All of whose districts had some overlap with his state senate district. And along with the political group that I worked closely with, Henry Waxman, Howard Berman, Burt Margolin and others, we all endorsed one of his opponents. And which I think came as a surprise to him because I believe that he had voted for, or was aligned with someone who had voted for, Howard Berman for speaker back in a speakership fight in 1980. And so he was very angry [chuckle], to put it mildly, at Burt, Barbara Friedman, another member of our group who was in the Assembly, and me. And I recall reading a quote in the paper in which he said something to the effect that if I were Margolin, Friedman or Friedman, I wouldn't go standing near an open elevator shaft. I think he thought that was funny. It wasn't. I didn't take it as a threat, but it was a pretty foul way to express one's displeasure with people that you had worked with, even aligned with, on certain issues.

DM: Yes.

TF: But I think it was not out of character for someone who liked to use colorful language and had a temper and liked to be a tough guy. Bully was his persona.

DM: Well, it was a high stakes fight. And you butted heads with some tough interests.

TF: Right and, true. But most of them fought by the rules, either the actual rules or the norms, not all of which would be in anyone's book of good behavior. But I don't recall that there was nothing like how the Napkin Deal got enacted in 1988 or whenever it was, when all of the normal rules were bypassed and legislation that immunized harm, immunized companies that caused harm to consumers, was passed. Nothing like that happened. So and it could have, I suppose, and maybe the tobacco industry wanted that. But the speaker never tried that. And I'll give you a postscript: In 1996, Willie was running for mayor of San Francisco.

DM: '95, yeah.

TF: '95. It was '95. Yeah. He remained speaker for, he kept the speakership for a while with Republican votes, and then he handed it off to Doris Allen. In any case, he was running for mayor. And he called me and said, "I'm getting beat up by the anti-smoking people. Can you say something in my behalf?" I don't remember exactly what I said. I said, Well, I was thinking, I certainly can't say you were a supporter. But I said, "I can say something to the effect that when push came to shove and AB came back to the Assembly for a vote, you allowed that vote to go through knowing that it would pass." Something to that effect. He said, "Oh, thank you very much." I don't know if he used it.

TF: And I don't know what I probably said something a little more punchy and succinct than that. And I haven't seen him many times since I left the Assembly, but he's always been a gentleman and polite, which is his nature. Invited him to speak before, we did an annual conference for the juvenile court, and all the, not just the judges, but all the lawyers that were involved and all the community groups that were part of the process. And he came and spoke. He gave a great speech as he always did. And I invited him to speak to the judicial council once about the Sacramento scene, and he was happy to pontificate and to the chief justice and others, but that's about it. I haven't...

DM: Do you think he thought the speakership was at stake over this vote, over this bill?

TF: Or that he would lose the majority?

DM: Yes.

TF: I've never thought about that. I would imagine if he thought that the Democrats, that it would cost the Democrats the majority. He... I don't know what he would've done, but he might not have been so willing to let AB 13 pass on concurrence. I don't know.

TF: That's why I said I think it came as a surprise that we lost the majority. And it was a... I think a lot of it had to do with 187 being on the ballot, and brought a lot of right wing Republicans out to vote. And...

DM: Well, '94 was a Republican wave.

TF: Pete Wilson. I mean Kathleen Brown's campaign had imploded, and Pete Wilson was on his way to a big victory. It was a skewed Republican electorate. So I would think that in the summer of '94, it did not appear even to someone like Willie that the majority was in grave jeopardy. He is a savvy guy, but he's an arrogant guy and I'm sure he assumed that he would keep the majority, or that he could keep the speakership, which he did. And I don't remember what happened. What did Doris Allen, something happened with her...

DM: She got recalled.

TF: That. Okay. [Laughter], then something did happen with her.

DM: Right. Yeah.

TF: Yeah. I forgot that.

DM: Yeah.

TF: And that's how he lost the speakership.

DM: Well, he...

TF: Because...

DM: He lost the speakership...in '94, he held it for a few days, but then he ran for mayor, and he was running for mayor in '95.

TF: But he didn't run as speaker?

DM: No, she became...

TF: She was still speaker?

DM: She had become a speaker.

TF: So, first he held onto it for a few days with Republican votes, and then that wasn't sustainable. And then he was the puppeteer of Doris Allen, and she was recalled. Okay. Well.

DM: Yes. Okay.

TF: He had... [Laughter]

DM: Yeah. Well, that was quite a story too, for another day. Well, Assemblyman-Judge, thank you very much for spending this time on behalf of Open California and the California State Library. Thank you so much.

TF: Well, it was a pleasure and I thoroughly enjoyed remembering good old days that were

exciting and formative.

DM: Indeed. Alright. Very good. Got it?

TF: Good. Alright. Thanks guys.

DM: Alright.

JH: Thank you.

DM: Yes, good times.

