

Donald Mitchell oral histories, Archives and Special Collections, Consortium Library, University of Alaska Anchorage. Frank Bracken interview, 1992 September 10. Transcript completed by Andrea Atkins.
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FRANK BRACKEN September 10, 1992

DON MITCHELL: And today is September 10th, 1992. And I'm in the office of Deputy Secretary of the Interior, Frank Bracken, who, in the Nixon administration was legislative counsel to both Secretary Hickel and then later, when Secretary Hickel departed under somewhat clouded circumstances, Secretary Morton. And I guess perhaps the best way to start, since at some point, hopefully, these tapes will be available to folks long after we're not around, maybe a very brief biography of how you got to be in the Department in 1969, just in terms of setting that record.

MR. BRACKEN: Oh, okay. Well, I guess -- let's see. I was practicing law out in Indiana, and some friends of mine had been down in Miami for the -- for the convention, the Republican convention, and were talking to me about being one of the advance men in that 1968 campaign. So I agreed to go out to a seminar in New York that John Ehrlichman was putting on for a couple of days on how you do advance work and what you have to do as an advance man, which -- which I did and I -- and I enjoy. And I said, at the time, I would be happy to do it and help. But I couldn't be gone for the whole time just traveling around the country. So I ended up advancing a number of the surrogate candidates trips, one of whom was Wally Hickel, he was governor of Alaska, and got to know him during the campaign. And then when he became secretary, then I came out and was legislative counsel in the department through his term and stayed on when Roger Morton was secretary.

DON MITCHELL: Okay. Well, now --

MR. BRACKEN: Through the first term of the next administration.

DON MITCHELL: Right. Now -- now, I've talked with now Governor Hickel about all this.

MR. BRACKEN: Right.

DON MITCHELL: And -- and he indicated to me that obviously the first thing that happened in '69 with Native Land Claims was -- there was the thing called the Federal Field Committee, and they had done a lot of work in Alaska.

MR. BRACKEN: Yeah.

DON MITCHELL: And -- and they had recommendations that Senator Jackson supported. And as a drafting service, you folks had put together a bill for Senator Jackson. And -- and in April of '69, the department went up -- Governor Hickel and yourself and I guess -- who was the solicitor in those days? Malecha?

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MR. BRACKEN: Mitch -- Mitch Malecha.

DON MITCHELL: Malecha, right.

MR. BRACKEN: Who is still alive out in Salt Lake City.

DON MITCHELL: Well, you folks went up and testified on what the administration position was. And it was different from -- from the Jackson approach in a couple of respects. The most important was that Jackson had wanted to give Alaska Natives only about 100 million, and Governor Hickel, or then Secretary Hickel, testified on behalf of the administration that you folks thought that 500 million was -- was a fair sum.

MR. BRACKEN: Now, are you talking about the cash settlement?

DON MITCHELL: Right. The cash side of the settlement. Not the -- not the land --

MR. BRACKEN: Not the land.

DON MITCHELL: -- at this point. And what Wally had told was that in April of '69, in terms of developing that position, that he had actually met with -- with the President about this. And apparently there had been a fight with OMB about what, obviously, the administration position would be. Do you recall that? I have not been able to find, other than Wally's recollection, any paper trail that there was or --

MR. BRACKEN: Yeah. I don't -- I don't remember that. I guess -- the best -- I mean, as far as sort of my recollection of where we were, I think that -- that from the very beginning, we -- we had sort of the philosophical concept that aboriginal title, use and occupancy, was -- was recognized. And that the Natives, through their ancestral history, had -- had hunted and set traplines and so on, zig-zagged around over most of the state. That's why when the state started selecting -- Secretary Hutto at that time then withdrew the state from further selection.

DON MITCHELL: Right.

MR. BRACKEN: And I know Wally, in his confirmation hearings, had to commit to Senator Jackson that he would continue the withdrawal either until the Native Claims issue was settled or until that Congress expired, whichever occurred first.

DON MITCHELL: Right.

MR. BRACKEN: So at that point, we -- we tried to put together some legislation that recognized their aboriginal title. So that rather than setting up a reservation system -- which is what we did here in the Lower 48, which, you know, maybe hasn't worked as well as some had thought -- we

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would not set up any more reservations, but -- but the tribes or the villages would get title to the land, which they were entitled, plus a cash settlement. So the concept was that they would get land and cash as settlement for their aboriginal claims. Then at that point, the -- the freeze would be lifted, they would have a selection process, and move ahead in the state, develop legislation for Natives and so on.

DON MITCHELL: Right. Now -- now --

MR. BRACKEN: So there was an original bill that we put together and submitted to Congress during -- during, you know, Hickel's administration here in the department.

DON MITCHELL: Right. That was in -- that was in the summer of '69, and I was actually going to ask you about that next. And that is, were there -- do you recall, were there tensions inside of OMB? I mean, did you have to slug it out with OMB on the development of that bill? Or do you --

MR. BRACKEN: I don't really think so.

DON MITCHELL: -- (indiscernible) it was not particularly acrimonious?

MR. BRACKEN: I mean, I don't -- I don't -- you know, I don't remember that we had a lot of major battles over there. I mean, I think they recognize that -- that, you know, aboriginal title is something that courts had -- plus Congress -- let me just back up. Congress, I think before Alaska became a state, recognized aboriginal title.

DON MITCHELL: Right.

MR. BRACKEN: And said, "Someday we'll have to settle this." And the state entered the Statehood Act and their right to select, what was it, 103 million acres.

DON MITCHELL: Right.

MR. BRACKEN: But -- but in -- in their selection rights, I think it may have provided that they would not select lands over which the Natives had title. Which, ultimately, the Natives claimed was the whole state. So that's why the state was withdrawn from further state selection.

DON MITCHELL: So then basically, there was a sort of consensus --

MR. BRACKEN: Oh, I think there was a consensus. Yeah. I mean, when you talked to Lynn Garmen (phonetic), he certainly was -- I haven't talked to Lynn Garmen for 20 years. But he was -- he was very much a part of that over there. And I would say, yeah. I don't know that there was any major -- but then, you know --

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DON MITCHELL: Okay.

MR. BRACKEN: I would have known about that.

DON MITCHELL: Well -- well, that is -- obviously, you -- you end up sending up the administration bill.

MR. BRACKEN: Yeah.

DON MITCHELL: That -- that summer of '69 and -- and first there is a -- a Senate markup in late '69 and early '70. And then bill eventually goes to the Senate floor in July of '70. Were you handling the -- the sort of day-to-day context for the Department with -- with the Senate and (indiscernible)?

MR. BRACKEN: Well, yeah. We were, as legislative counsel. But then we also had another office in the Department, which was sort of our Congressional Affairs Office. So we were a group of lawyers that were drafting and, you know, working on the subsidy part of things. And we had the Congressional Affairs Office who actually were up there on the Hill.

DON MITCHELL: They were the people up there dividing the --

MR. BRACKEN: Yeah. They were the people --

DON MITCHELL: -- committee member.

MR. BRACKEN: Right.

DON MITCHELL: And I'm sure babysitting the issue in the hall --

MR. BRACKEN: Yeah.

DON MITCHELL: -- and stuff, and that sort of thing.

MR. BRACKEN: And if we got into a markup or something, then we had some people up, plus some others from -- Harrison Loesch was the Assistant Secretary who -- and he sat in Montrose, Colorado. But he was the -- sort of the policy guy in the Department that had the BIA. And the commissioner at that time was Louis Bruce, who is now dead.

DON MITCHELL: Right. Right. Well, how about the bill actually passes the Senate that summer. But of course, it dies in the Aspinall committee.

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MR. BRACKEN: Yeah.

DON MITCHELL: Had you had dealings with -- with Chairman Aspinall and Lou Ziegler and those people in the past? What were your assessment of -- do you have any recollections of their attitudes about this whole thing?

MR. BRACKEN: Oh, no. Actually, I guess I -- I -- you know, I -- I remember dealing with Wayne Aspinall and Ziegler and John Saylor, who was the ranking --

DON MITCHELL: Republican.

MR. BRACKEN: I'd have to say that the -- that the bill we put up there -- of course, it was less than what the second bill was and what finally was passed.

DON MITCHELL: Right.

MR. BRACKEN: But -- but even our bill was -- was a pretty good chunk of change in real estate for Pennsylvania and Colorado folks to accept for, what, 60,000?

DON MITCHELL: Right. About 65 in those days.

MR. BRACKEN: Yeah. Yeah.

DON MITCHELL: Well, and they certainly -- they certainly resisted it. Well, that actually does bring us to actually the most important part of -- of the Administration's involvement in all this. And that is sort of the rethinking of the Administration position in early '71 that lead to the -- the 40 million acres.

MR. BRACKEN: Yeah. Now, before that happened, it's sort of interesting. I remember -- because Congress was about ready to go out of business, and we didn't have the land bill passed. So under -- under (undiscernible) committee with Jackson, the freeze would -- would lift there. And I remember going up the day -- the day before Thanksgiving. And we had an agreement here that we would continue the freeze, even though Congress was probably not going to pass that bill and that Congress was going to expire. And then I remember coming down and talking to Wally at that point and saying that, you know, "Okay. You know, we work it out with Senator Jackson's staff to continue the freeze." And then I left and took my family and drove to Williamsburg for Thanksgiving. And he went over to see the President, and I heard on the radio as we were going around Richmond that he had been fired.

DON MITCHELL: So it was all the same day?

MR. BRACKEN: It was all the same day.

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DON MITCHELL: Really? Well, I have -- that's -- did that come to a surprise to you, just as aside?

MR. BRACKEN: Well --

DON MITCHELL: Did you see that coming?

MR. BRACKEN: We sort -- I mean, there were a number of things that were happening that -- that were getting sort of further and further apart on different -- not on this issue, but on different issues that -- that, I guess it really wasn't a surprise to anybody at that point. You know, I did run into Ehrlichman down there at the (undiscernible) Inn a couple days later. So anyway --

DON MITCHELL: Did --

MR. BRACKEN: -- sent Fred Malek over here while I was in Williamsburg, and they hired six more people.

DON MITCHELL: Yeah. I heard there was sort of a house -- house cleaning after --

MR. BRACKEN: There were --

DON MITCHELL: -- Wally was asked to leave. Well, the next thing that happens, of course, is - is Secretary Morgan is -- becomes secretary.

MR. BRACKEN: Right.

DON MITCHELL: And did he have -- I mean, obviously one of the benefits of Wally Hickel, with respect to this issue, was that he knew all about it, having been in Alaska.

MR. BRACKEN: Yeah. Right.

DON MITCHELL: And -- and the rest of it was. Do you recall what -- at least when he came into the project, what -- what Secretary Morgan's view was?

MR. BRACKEN: I -- well, when -- when Morgan and -- came into the Department, I remember briefing him on a number of issues. In fact, he came to my office that was just down the hall here from where we are now. And he came down with some of his folks, and we sat and went over a number of legislative issues, one of which was this, which was at that point, in my opinion, the most important issue. And he was -- you know, he was aware of it, because he had been on the Hill as a Congressman. So he certainly was aware of it. And -- and so we talked about the rationale of the settlement, not setting up reservations but giving clear title, cash, and giving

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them selection rights and so on, the township in (indiscernible) was located and (indiscernible) townships for that -- that framework.

DON MITCHELL: Did -- one of the things, obviously, that happened while you guys were doing that, of course, is that there is actually -- the Native community is making their own roads over at the White House with Bobby Kilberg and Brad Patterson. And -- and they eventually get involved in this. Was -- was that unusual? Was -- was that kind of White House interest in a particular department project that they had in this particular one -- were they always doing that? Or was this --

MR. BRACKEN: You mean other groups going over to the White House?

DON MITCHELL: No. No. The White House coming back to you -- I mean, normally, this would be as it had been all the way up until that time. A -- in terms of the policy evolution. It would have been totally a Department of the Interior show. I cannot really find that there were people in the White House telling Stewart Udall what to do about this, and all of a sudden --

MR. BRACKEN: You know, the White House -- I mean, the White House was very interested in -- in -- in this issue and in some other Indian issues. There was another Indian issue --

DON MITCHELL: Right.

MR. BRACKEN: There was another Indian issue, the town's (indiscernible).

DON MITCHELL: Right. Right.

MR. BRACKEN: Which they got very involved in. And -- and -- I would -- I would say that -- that through Brad Patterson and Lynn Garmen and Bobbie Kilberg, I mean, they were very supportive of -- of, you know, trying -- trying to work and solve some of these Indian issues. So for -- for the American -- what was it, Alaskan Federation of Natives and some of those people --

DON MITCHELL: Right.

MR. BRACKEN: -- to be talking to that group over there. I mean, I -- I can't sit here and say I know some other situation. But I mean, I wouldn't say that was that unusual.

DON MITCHELL: Yeah.

MR. BRACKEN: I think it was supportive of what we were trying to do, actually.

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DON MITCHELL: Right. Well, one of the things that -- that actually brought the issue to a head, as I understand that -- well, I know that there was a hearing on the -- sort of the whole issue starting off in the new Congress in mid-February of '69. And that Kil- -- Bobbie Kilberg has told me, and others have told me, that there were meetings prior to that with -- with Secretary Morton about sort of keeping the Department neutral while all this was getting worked out. And that Kilberg and Patterson had met with Morton, and I think Arthur Goldberg had come in on behalf of Alaska Natives and met with the Secretary. But -- I'm --

MR. BRACKEN: I remember, he did come over once, yeah. John Whittaker was over there, too, working for Ehrlichman. John was involved. So there was high, low, yeah. I mean, I was in a meeting in Ehrlichman's office right after Morton came in on -- on this issue. And -- so there was high-level interest over there. No question about it.

DON MITCHELL: Well, actually, that's -- that's what, ultimately, I was going to ask you about. And that is the critical point for the Administration. Seems that there was a meeting in -- on March 11th that was over in Ehrlichman's office that, I guess, the Secretary was at, and George Schultz when he running OMB was there, and a bunch of people. And this was a meeting, at least, that Kilberg and Patterson tell me is when -- when Ehrlichman, on behalf of the President, sort of announced that we're going -- we're going to up our land --

MR. BRACKEN: Yeah.

DON MITCHELL: -- acreage to 40 million. And do you recall -- I can't tell from the paper trail whether -- whether you were at that meeting.

MR. BRACKEN: Well, I think I was, because I remember -- and I don't remember who all was there. And I guess I don't remember that George Schultz was there, but he could have been. But I do remember meeting in Ehrlichman's office. And do remember Ehrlichman coming up with a 40 million number. So I mean, I remember that. I don't remember who else was in the meeting.

DON MITCHELL: Okay. Do -- do you remember whether or not that was sort of out of the blue? Or did the Department -- I mean, the Department's previous bill had been far below --

MR. BRACKEN: What was it, 20?

DON MITCHELL: Oh, it was -- I think it was a little less. I think it was about 15.

MR. BRACKEN: Oh, okay.

DON MITCHELL: And so this was, like, a significant policy change for --

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<https://archives.consortiumlibrary.org/collections/specialcollections/hmc-1099/>

MR. BRACKEN: As I -- yeah. Well, it was sort of out of the blue for me. Now, I don't know if it was out of the blue for Morton or, you know -- or Bobbie or whatever. But -- but I -- you know, it's hard for me to think back. But I do remember the meeting. And it seems to me that even in an -- even in John's coming out, it seems to me that he did say something about we're going to double -- you know, we're going to double it to 40 million or something.

DON MITCHELL: Right. But you don't -- you don't -- do you recall whether or not -- afterwards, whether Secretary Morton was -- was, you know, angry or uncaring?

MR. BRACKEN: No.

DON MITCHELL: I mean, you don't recall what his position was?

MR. BRACKEN: No. I'd say he supported that. I mean, I don't think there was any problem at all.

DON MITCHELL: Okay.

MR. BRACKEN: Absolutely no -- you know, I mean, we didn't -- I didn't have any meeting, and I -- and I met with him quite a bit. I mean, he was, you know, an easy guy to meet with and talk to and everything. And I don't remember ever hearing him say a negative thing on the approach or the settlement, you know, that we were putting or anything on that Native Claims issue.

DON MITCHELL: Well, no. He did actually testify in support of --

MR. BRACKEN: Support, very much.

DON MITCHELL: -- the President's, you know, position.

MR. BRACKEN: Right. You know, as I -- I mean, this is -- you could -- when we had the Administration bill up there, which was, say, 15 -- wherever we were, 15 to 20 -- where was Jackson? He was up --

DON MITCHELL: He was below you.

MR. BRACKEN: Was he below us?

DON MITCHELL: Well, it's sort of complicated. Basically --

MR. BRACKEN: Okay.

DON MITCHELL: Because a lot of it has to do with which land. I mean --

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<https://archives.consortiumlibrary.org/collections/specialcollections/hmc-1099/>

MR. BRACKEN: Yeah. Okay.

DON MITCHELL: -- some land is more valuable than others. And so Jackson was -- was below you in acreage, but he was sort of above you in terms of the potential economic value --

MR. BRACKEN: Yeah, okay.

DON MITCHELL: -- of the land that he wanted to give.

MR. BRACKEN: Yeah.

DON MITCHELL: So it gets sort of confusing as to who had a better -- who offered the better package.

MR. BRACKEN: Okay.

DON MITCHELL: So I mean, I --

MR. BRACKEN: Well, I know -- I mean, as you know, our proposal was -- was for the -- you know, under the selection process, the township in which the village was located, cornering (undiscernible) and so on. And then to the extent the villages were in a currently withdrawn area, then they would get service and then in lieu rights outside.

DON MITCHELL: Right. Right.

MR. BRACKEN: I remember Charlie Edwardson from the North Artic Slope Native Association thought the best thing for them to do was succeed.

DON MITCHELL: Right. Right.

MR. BRACKEN: And then sue for a piece. Because they were there in pit four, where they felt they should have some mineral rights.

DON MITCHELL: Right. Charlie was sort of the leading member --

MR. BRACKEN: Charlie, is he dead now?

DON MITCHELL: Oh, Charlie's still alive.

MR. BRACKEN: Still alive.

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DON MITCHELL: Yeah. And he hasn't really changed much since (undiscernible) --

MR. BRACKEN: I haven't seen him for 20 years. I never --

DON MITCHELL: Actually, I -- I -- last time -- you know, we both live in Alaska, and I haven't seen him in a couple years. And I bumped into him on M Street last --

MR. BRACKEN: Is that right? I wouldn't -- Morey Thompson was here when Wally was here.

DON MITCHELL: Right.

MR. BRACKEN: I haven't seen Morey either.

DON MITCHELL: Oh, I see Morey all the time.

MR. BRACKEN: Tanana or something.

DON MITCHELL: Yeah. He's in --

MR. BRACKEN: Tanana --

DON MITCHELL: Actually, he's in Fairbanks these days. Well, actually, the other guy about that is -- is obviously Ted Stevens, who --

MR. BRACKEN: Yeah. Right. Right.

DON MITCHELL: Was he -- do you recall, was -- was -- was Ted sort of actively in a (undiscernible) down here when -- in terms of sort of keeping you guys rolling in those days?

MR. BRACKEN: Well, I can't really -- I don't know. I don't really -- I mean, we were pretty well going on our own. When Wally was here, obviously, we were moving along pretty well on our own. And then -- and then after Raj came. I mean, there wasn't anybody around here that was dragging their feet on this thing or -- or trying to pull it off course or anything.

DON MITCHELL: So you don't -- you don't recall Stevens -- I know Stevens was -- was -- both because you told me and Kilberg and Patterson had indicated to me, you know, that he was sort of really down there during the White House part of all this, sort of making sure they -- they did the right thing, as he viewed the right thing. So he was a very hands-on participant --

MR. BRACKEN: Yeah.

DON MITCHELL: -- in terms of their activities. But you don't recall that kind of --

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<https://archives.consortiumlibrary.org/collections/specialcollections/hmc-1099/>

MR. BRACKEN: I'm trying to think who his staff guy was at that time.

DON MITCHELL: Oh, it was John Katz.

MR. BRACKEN: Katz, okay.

DON MITCHELL: It's another governor of Alaska's council here in town.

MR. BRACKEN: Well, I mean, I knew Ted, and I knew him from when -- you know, when Wally was here as Secretary and all. He -- he didn't come down here and spend time in my office and so on. But --

DON MITCHELL: Okay.

MR. BRACKEN: -- he didn't have to worry about our keeping going.

DON MITCHELL: Okay. And then I guess the last thing and -- and -- which is sort of a -- a -- maybe more of a hands-on Hill thing. And that was, I was trying to -- to assess what you think the -- the role that the Administration's bill played in terms of -- of forcing Aspinall and Jackson into a 40 million acre position. I mean, obviously what happened, as I understand, is that -- is particularly with Aspinall, that with the exception of John Saylor, who is contractable to the end, who is sort of led by Sam Steiger, the Republican members of the Committee who obviously wanted to support the President's position, sort of combined with Lloyd Meeds and the local Democrats to sort of gang up on -- on the Chairman, who really was not particularly enthusiastic about the President's or any other, you know, generous position --

MR. BRACKEN: No. No.

DON MITCHELL: Did you have any dealings with Steiger or any of those people?

MR. BRACKEN: Well, yeah. And I remember going up there. And I've got --

DON MITCHELL: Right.

MR. BRACKEN: -- I did -- I do remember going up and meeting with Sam Steiger and, you know, (indiscernible) and Aspinall. I mean, we really worked hard trying to -- the thing that we did not support, as I remember, the whole land, the D-2 process.

DON MITCHELL: Right.

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<https://archives.consortiumlibrary.org/collections/specialcollections/hmc-1099/>

MR. BRACKEN: And the whole land planning thing. I mean, that was another issue going along to get a land planning program in Alaska, and then they coupled it with Native Claims.

DON MITCHELL: Right. Well, that's the first occurrence of the environmental community in this whole --

MR. BRACKEN: Yeah. Yeah.

DON MITCHELL: -- in this whole --

MR. BRACKEN: And we just said, look, we want to settle this Native Claims thing. Let's get that done. And then if we want to get into land planning, that's another issue.

DON MITCHELL: Yeah.

MR. BRACKEN: They couple them and there'll be war.

DON MITCHELL: Right.

MR. BRACKEN: But we worked -- yeah. We worked over on the House side, and with the staff and the Steiger and Aspinall. I think we were going up (indiscernible).

DON MITCHELL: Okay. Well, I certainly appreciate it.

MR. BRACKEN: And Dunbar was the person -- I think she is dead now, too. But was Saylor's sort of administrative -- well, she was his everything. And so I worked a lot with her.

DON MITCHELL: Also, is -- I assume that -- that Lou Ziegler is dead. Do you know?

MR. BRACKEN: Boy, I don't know.

DON MITCHELL: Just nobody in town --

MR. BRACKEN: I don't really know. I don't really -- do you know Jerry Verkler?

DON MITCHELL: Well, I know -- I don't know him.

MR. BRACKEN: (Indiscernible).

DON MITCHELL: (Indiscernible) -- you might --

MR. BRACKEN: Yeah. He was --

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<https://archives.consortiumlibrary.org/collections/specialcollections/hmc-1099/>

DON MITCHELL: He was over in the Senate.

MR. BRACKEN: -- yeah. He might know.

DON MITCHELL: Is he in town?

MR. BRACKEN: Yeah, yeah.

DON MITCHELL: Verkler?

MR. BRACKEN: Yeah. Jerry is. He's with -- in fact, you can ask Doris.

DON MITCHELL: Okay.

MR. BRACKEN: She's probably got his current (indiscernible) Association or some thing.

DON MITCHELL: Okay. I will do that.

MR. BRACKEN: (Indiscernible). Is Don here? Okay. Because Don knows who -- my deputy spent years up on the Hill. He knew a lot of these people. But I don't know --

DON MITCHELL: Okay.

MR. BRACKEN: -- what happened, whether he's alive or not.

DON MITCHELL: Well, I -- that's a good lead on Verkler.

MR. BRACKEN: See if you can find out.

DON MITCHELL: Well, great. Thanks. Sure appreciate it.
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