

ENVIRONMENTAL DATA GOVERNANCE INITIATIVE

**ETM SBU 008**

Transcript of an Interview

Conducted by

Christopher Sellers

(With Subsequent Corrections and Additions)

INTERVIEWEE: Celeste Monforton, Dr.PH, MPH

INTERVIEWER: Christopher Sellers

DATE: January 10, 2017

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**ETM-SBU-008**

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**<T: 10 min>**

INTERVIEWER: May I ask—the first couple questions are just about your basic background. We're trying to get a sense of things, in order to shape the other questions. first of all, what is your age and your racial and ethnic identification and your gender.

INTERVIEWEE: Okay. So I am female, 54 years old, and white.

INTERVIEWER: And what was your formal education, and with years, for your degrees.

INTERVIEWEE: Sure. I got my Bachelor's degree in 1990, and immediately after that is when I moved to Washington, D.C. for my job at OSHA. I got a Master's of Public Health in 2004 and a Doctorate of Public Health in 2008.

INTERVIEWER: Alright, so if I understood that right, you went right from your Bachelor's degree to work for OSHA—is that right?

INTERVIEWEE: Yes, correct. Yeah, I was an older student when I got my Bachelor's degree, so I was living in the Detroit area when I got my Bachelor's degree.

INTERVIEWER: And could you tell me a little bit about how, then, you got the job at OSHA, and what you expected—what were your expectations going into that job?

INTERVIEWEE: Yeah. So my undergraduate degree was in Liberal Studies. I wasn't studying liberals—

INTERVIEWER: [Laughter]

INTERVIEWEE: [Laughter] a liberal arts education, and I was very much interested in health policy. Also very interested in politics, so I knew that I wanted to move to Washington, D.C., and I was interested in working for a federal agency, and I just sent a cover letter and résumé to pretty much any agency in Washington, D.C. that had the word health in its name. So I wasn't really picky, I didn't really know anything about OSHA other than, you know, what it stood for—what OSHA stood for. And I guess I was very lucky, my résumé happened to land on the desk of a woman who actually had a couple of job openings in her office, which was in OSHA's Directorate of Policy. And so, you know, they called me and I went for an interview and they actually had a couple of positions open for entry level policy analysts. And I was in the Office—it was Directorate of Policy in the Office of Congressional Affairs.

INTERVIEWER: So that was a division of the—well, part of the Policy Directorate?

INTERVIEWEE: Right, exactly. I think—I don't know, I think there were four of us in that Division of Congressional Affairs and the Policy Office itself had individuals who did regulatory analysis for rule making, there were some individuals who did inter-agency activities. So it was kind of a hodgepodge of individuals who all were supporting policy decisions that were going to be made by the Assistant Secretary.

INTERVIEWER: The Assistant Secretary being the Head of OSHA, is that right?

INTERVIEWEE: The Head of OSHA, right—the Head of OSHA. So we were a more career office. There weren't any political appointees in our office, so you know, we would interpret what we thought the Assistant Secretary's position should be, consistent with OSHA's kind of mission, but also taking into account what the—you know, who the President was and who the Secretary of Labor was.

<T: 20 min>

And when I first worked at OSHA, it was under the first Bush administration. You know, the end of 1990 and 1991. So, you know more business friendly, but actually in retrospect, much more worker friendly than one would expect—you know, if we compared it to today. In trying to think about what a Republican administration, you know, would've been like. We had, Elizabeth Dole was the Secretary of Labor, and we had a really excellent Assistant Secretary for OSHA who was very well respected and—anyway. So, our Office of Congressional Affairs, we spent a lot of time preparing the Assistant Secretary—his name was Jerry Scannell [Gerard F. "Jerry" Scannell]—for Congressional screens. At the time, Congress was controlled, the House and Senate, by Democrats, and it was a Republican administration. And so there were many, many oversight hearings, probably at least two per month.

INTERVIEWER: Wow.

INTERVIEWEE: Sometimes many more than that, and you know, compare that to the situation that currently happens at OSHA, you know, over the last few years under the Obama administration—OSHA's Assistant Secretary might have been called to Congress once.

INTERVIEWER: Once?

INTERVIEWEE: Over a whole year.

INTERVIEWER: The whole year?

INTERVIEWEE: Yeah, when the Democrats controlled Congress and it worked. The Republican President and this Jerry Scannell, I mean, it was like two, three, four oversight hearings a month. So, for me, as a career—you know, a very low level career OSHA person, I was a GS-7. We were constantly scrambling to prepare this Secretary for these hearings and so for me, I would go and talk to the different technical experts in OSHA, try to translate that technical information into something that could be translated from technical into plain language. So I did learn a lot about a whole lot of different OSHA topics [...].

INTERVIEWER: Excuse me, you are kind of breaking up [...]

INTERVIEWEE: So can you hear me better now?

INTERVIEWER: Yes, yes.

INTERVIEWEE: Okay. So it was the type of job, for me, I was, you know, this low level OSHA person, but I would have to go and speak to the technical experts in the agency on all of these different topics and take that technical information, translate it into, you know, like a one-page brief with the plain language

explanation of the issue, and that's how we would prepare a briefing book and brief the Assistant Secretary on those issues.

We'd come up with questions we thought he might get asked by the members of Congress. [. . .]

INTERVIEWER: You are breaking up again.

INTERVIEWEE: So, that was really how I came to really respect the importance of the OSHA law and the people who worked at OSHA [. . .]

INTERVIEWER: We keep missing your words. [. . .]

INTERVIEWER: Well, it's pretty clear right at the moment. Okay. Yeah, I think we're good now. So, could you just, now that we've sort of, we've gotten a sense of the start of your career at OSHA. Could you just give us a sketch of how long you were there and the different positions that you may have occupied along the way?

INTERVIEWEE: Yeah, absolutely. So, I started my job in January of 1991. So I was there for a couple years of the Bush administration, and I was a GS-7 Program Analyst, or Policy Analyst. And then I was at OSHA for five years. I was interested in doing something different at the agency. I'd worked in that Congressional Affairs Office for five years, and I was kind of wanting to get into a little bit more of the heart of the agency's work. The situation was, I was very good at what I did, and so my boss didn't really want to have me moved to a different job. [Laughter]

So, I had the opportunity—I had been involved in some inter-agency work, and I met the Deputy Assistant Secretary for MSHA, the Mine Safety and Health Administration. Her name was Andrea Hricko<sup>1</sup>, and we kind of hit it off. I think I had mentioned to her that I was interested in expanding my knowledge on worker health and safety. And she said, "Well, why don't you come over to work at MSHA?" And so they posted a job and I applied for it, and I got it. And so I ended up over at MSHA—

INTERVIEWER: Around 1995?

INTERVIEWEE: That would've been the end—it was December, 1995. Yeah, December, 1995. And maybe about two months after I went to MSHA and I was, you know, assigned to one of the, I think it was the Policy Office there at MSHA, I was asked to come to work in the Assistant Secretary's Office on a special assignment to assist the Assistant Secretary. We'd had a really bad—MSHA had had a bad year with a lot of fatalities the previous year, and so he was setting up a little task force or something like that. Anyway, I went to work in the Assistant Secretary's Office as a Special Assistant to the Assistant Secretary, and I never left. I ended up staying in that position for the

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<sup>1</sup> Andrea M. Hricko, Deputy Assistant Secretary, U.S. Department of Labor, Mine Safety and Health Administration (MSHA), 1994 – 1997.

remaining part of the Clinton administration, and then one year of the George W. Bush administration.

INTERVIEWER: Okay.

**<T: 30 min>**

INTERVIEWEE: So that Special Assistant job is like a confidential assistant, a policy advisor, sometimes it's called the Chief-of-Staff. It's kind of a whatever help, advice that the Assistant Secretary needs. That was—you know, I worked on a variety of different issues when I was there in that office.

INTERVIEWER: So you would go and do the digging and the research or also talking with the other people in the agency, the experts, that kind of thing, or—

INTERVIEWEE: Yeah, representing the Assistant Secretary. So, you know, if there's—you know, we were working a lot on regulations to protect workers from black lung. I think all of us knew very much what the Assistant Secretary's position, what he wanted to accomplish, kind of his timeline for accomplishing things. And I would then work really closely with the staff and try to facilitate that, try to keep people on task, making sure that we were moving ahead with what the Assistant Secretary wanted. You know, there would be horrible mine disasters and fatalities, and so, thinking with the other top staff about what the agency might be able to do to address those issues. So, I was considered part of the senior staff, and someone who, my role was to really try to make sure that we were working to be consistent with the Assistant Secretary's policy opinions and focused on the things that he thought were most important.

INTERVIEWER: Does that mean you were a political appointee, or were you more a career person?

INTERVIEWEE: I was still a career person. MSHA is an agency that did not have a lot of political appointees. I think it was because people view mine safety as a real area of expertise, and I'm not sure there's a lot of political appointees who were wanting to be plopped from the White House into an agency that deals with mining disasters and something—you know, they'd have to be held accountable.

INTERVIEWER: Oh, yeah.

INTERVIEWEE: So, it wasn't—you know, I think when I was there, there were two political appointees—the Assistant Secretary and the Deputy Assistant Secretary. And so I was—I think there were a lot of staff people, there were some staff people who thought I was a political appointee because I worked so closely with the Assistant Secretary, but I actually was a career employee. And then that, in an odd kind of way, when the Bush administration came in and I was still that person as the special assistant who was a career employee, that was something that I think the Bush administration people thought was kind of odd. You know, "Who is this person who is a holdover from the other guy, but she's not a political appointee, she hasn't left, you know, so we're kind of

stuck with her? And what do we do with her, because obviously, she is, you know, one of the other people, you know?" [Laughter]

INTERVIEWER: So you had that feeling, that you were treated as kind of a, from the—

INTERVIEWEE: Right, yeah, and I was actually, but you know, it was like, they didn't view me as a career person. A career person is someone who is to be able to work under whatever administration is in place. You know, you have a particular skillset, and you should be able to apply it whether you're working for a Democratic administration or a Republican administration. But I think, given that I had worked so closely with the Clinton administration—the Assistant Secretary's name was Davitt McAteer—I think that there were people, maybe even those on the outside in the mining industry who were like, "You can't trust her, you know, she worked so close with Davitt."<sup>2</sup> But I was there at the agency for one year under the Bush administration, still in my same office that had the adjoining door to the Assistant Secretary's office.

INTERVIEWER: Ah—so you were right next door.

INTERVIEWEE: Right next door. It was kind of odd, because previously, you know, if Davitt was having a meeting, you know, he would open the door and say, "Get in here." You know, he said it in a nice way. But when the new person came in, I would hear these meetings going on, but I never had that head poke out the door thing, you know, "Could you come in here?" So it just got to be really odd, and was the reason that I wasn't really being given any work to do.

INTERVIEWER: Oh, you weren't? Okay. That was the other part of the—

INTERVIEWEE: [Laughter] Yeah, so for me, it's like, I can't be collecting this really generous salary and not doing any substantive work. And so that lasted for about a year, and I said, I think I called David Rosner and I said, "You know what? I think I need to go back to school, [Laughter] and maybe work on a Doctorate of Public Health." I didn't even have a Master's at that time, but—and so I talked with David Rosner, and that's kind of how I ended up leaving the government and going in working on my, in my graduate studies.

INTERVIEWER: So that was your decision to do that? It was based on—

INTERVIEWEE: Yep. That was my decision. That was my decision.

INTERVIEWER: And you didn't get any sense that they had kind of nudged you—I mean, they had not shunted a lot of work your way, but they hadn't tried to nudge you out?

INTERVIEWEE: No, no. And I think there were people who thought that had happened. You know, I've had, early on, you know, I'd have press people trying to dig up dirt on the Bush administration and then there were rumors that that's what happened, but that wasn't what happened. It was my own decision.

INTERVIEWER: Okay, that's interesting. Could we just go back to the OSHA part?

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<sup>2</sup> Davitt McAteer, assistant secretary for the Mine Safety and Health Administration from 1993 to 2000 under President Bill Clinton.

INTERVIEWEE: Oh, absolutely, yeah.

INTERVIEWER: Yeah. You had mentioned that there were just two political appointees at the Mine Safety Administration?

INTERVIEWEE: Yeah.

INTERVIEWER: What about OSHA? How many—I'm trying to get a clearer sense of how far down the political appointees went. And so how many were there at OSHA, do you remember?

INTERVIEWEE: So, you know, I have different recollections because they would kinda come and go, but you would have the Assistant Secretary, you would have a Deputy Assistant Secretary. From time to time you would have that Directorate of Policy, was a political appointee. There was a political appointee who was like, it would come with different names and different titles, but there was often someone who was, like, supposed to be looking out for small businesses—small businesses interests. And then there were other political appointees—there might have been, like, three or four who were just special assistants. And, you know, sometimes they would really be like the liaison to the White House. They may have been the liaison to the, there's a special office in the White House for personnel decisions. It's not like the career, it's not the Office of Personnel Management, but it was like the White House Office of Personnel, maybe, it was called? So that was another kind of a liaison to the White House. So, I kind of remember, in the—so I have to think about it, like, in the Clinton administration, there would probably be, at any typical time, maybe like six or seven. So not a huge difference between MSHA and OSHA, but you know, like, two or three at MSHA versus six, seven, or eight at OSHA.

INTERVIEWER: Okay. Let's see. So, let me just, now that we're back at OSHA, you were there—how, in the Bush administration, when you first came on, what was your sense about how science or that kind of scientific information or scientists fit into the work of the agency?

INTERVIEWEE: So, when I first arrived at OSHA, agents had finished up quite a few different regulatory initiatives. There was a rule making going on assessments. There was a rule making going on blood borne pathogens, and then a couple, like, in the works on other chemicals—butadiene and methylene chloride. There were a lot of rule makings going on when I first went to OSHA in the early '90s. And my sense was, that our Assistant Secretary had so much respect for the scientists in the agency. He really deferred to them and their expertise.

**<T: 40 min>**

I mean, I just saw him, show just in meetings and other interactions, a real deference to them. And that may have been his personality, but you know, that was my observation. And another observation was that, within the Labor Department itself, there are other agencies that, and offices that can affect OSHA doing its work. So there was an Office of, it was called the Assistant Secretary of Policy, and in the first Bush administration, one of the women who worked in that office—I don't think she was the Assistant Secretary of



Policy, but was like, maybe second in command—was a woman named Ginni Thomas [Virginia “Ginni” Lamp Thomas], who is actually Clarence Thomas’ wife.

INTERVIEWER: Oh!

INTERVIEWEE: [Laughter] And I remember her in meetings when we were, when we, OSHA, were nearing completion of either a proposed regulation or a final regulation, and you know, I would have the privilege of being in the meeting as our Assistant Secretary was presenting that information to these other officials within the Labor Department to get their kind of signoff on them, on these big decisions. You would have other political appointees in the Labor Department really asking uninformed questions about, like, why you need to do this? You know, why do you—you know, just questions about those science issues. Like, “Why do we need to protect people over 40 years? Most people don’t work around a hazard for 40 years.” You know, really questioning things that—questioning things about the science that they obviously didn’t, weren’t skilled in the science, [Laughter] they didn’t have any science training.

INTERVIEWER: Right.

INTERVIEWEE: So that was my experience in the Bush administration, that you know, the Assistant Secretary and his staff were very, really respected the science and what the scientists’ decisions were and recommendations were. But it was other political appointees within the Labor Department and within the White House. So you’d have this office of, the Office of Management and Budget, and the Office of Information and Regulatory Affairs where you would have economists raising questions, sowing doubt about the decisions that OSHA was trying to make, or the decisions that OSHA wanted to move forward with in the form of a new regulation. And that’s where those, that’s where I saw those obstacles being placed, and the process was always very opaque. The staff—and some of the, when I was there at OSHA, again, I was a young tyke. Not necessarily young, but a junior staff person there, but I would be—you know, I’d overhear conversations and things like that and the staff and the managers there in the office, the office directors, they would, you know, I can kind of picture this as it’s going on, where they would talk about, you know, an OSHA rule is over at the “black hole,” and they would be deferring to the Office of Management and Budget.

And they would know, they would have information that some industry representatives were meeting at the Office of Management and Budget about an OSHA regulation, a proposed or final regulation, and they would be meeting with them in groups. And then OMB would send back comments to OSHA as if they were their own, but they were actually, you know, comments and feedback that they were getting from the industry. And then the OMB Office was, like, representing these comments as their own. And people in OSHA knew, you know, this wasn’t Economist Smith making these assertions about, you know, a risk assessment, it was some informed person from an industry group that was interacting with the agency. So, at that time, it was very—the staff and agency knew all this stuff was going on, but there wasn’t any way to, there was no documentation, there was no disclosure of those

meetings. If you could just imagine this, there's no disclosure to the staff people in the agency, there's certainly no disclosure to the public.

INTERVIEWER: Right, right. It was through the OMB that a lot of that was happening?

INTERVIEWEE: Yes, yes.

INTERVIEWER: And the industry didn't try to go to the Assistant Secretary at all, or?

INTERVIEWEE: Yeah. Well, at OSHA, the Assistant Secretary's office was, like, on the third floor and we were—or they were on the second floor and we were on the third floor. [Laughter] I don't know what happened. But you know, I can say that there were—I don't know for sure. It seems like, you know, what I was hearing were these meetings were taking place at OMB and that the, if there was a meeting and the Assistant Secretary was in it, he was there at OMB, called to OMB, or his surrogate— called to OMB. But OMB could be privy or, you know, involved in these conversations. So it was kind of this, you know, the sense I got was, it was OMB and the industry against the Assistant Secretary in OMB's office.

INTERVIEWER: Ah, okay.

INTERVIEWEE: You know, kind of on OMB's turf. So that was kind of my—it was very interesting. The longer I was there at OSHA during this two-year period, it very much seemed like it was OSHA against the White House.

INTERVIEWER: Was it increasingly like that, or you kind of became more aware of that, or—

INTERVIEWEE: I think I became more aware of it, and it was, depending on the time period when some of these regulations were being worked on, you know, as we get towards the end of an administration, there's more and more pressure to complete these regulations. And so there's this sense of urgency within the staff, and I think also within the Assistant Secretary, who had a particular interest in these regulations and wanted to have these regulations finalized. And so he also had an interest in getting these things done, and yet, you know, had a White House that was not supportive of that.

INTERVIEWER: And we're talking mostly, it sounds like, about the rule makings and the new rules that they were coming up with?

INTERVIEWEE: Yes, exactly.

INTERVIEWER: And were there other issues, for instance, like enforcement inspectorates or other kinds of issues where you think there was, were you witnessing this kind of conflict?

INTERVIEWEE: To me, it seemed more like, that this had to do with rule making activities, but there was a little bit—I mean, it seemed to me there was a hands off when it came to OSHA trying to deal with enforcement work. So there were a number of examples of what we would call really big enforcement cases where, you know, there may have been multiple fatalities or some other really egregious behavior by an employer or by a company, and OSHA would—OSHA and the Solicitor's Office at Labor would have some very aggressive penalties, at that time million dollar penalties. And I'm sure those had to be cleared by the White House, but it seemed to me like the agency had much more, maybe much less oversight for those types of actions than they did for rule makings.

And oftentimes, you know, they were kind of, they were celebrated. You know, a big citation for some horrific incident, you know, was something that the agency would take pride in, or the Assistant Secretary would take pride in that, issues news release. And then would also, when possible, engage in some type of settlement agreement with the companies to try to get something above and beyond just mere compliance with existing regulations, something like a corporate-wide settlement agreement.

**<T: 50 min>**

There were settlement agreements. There were settlement agreements with respect, a number of them with respect to ergonomics.

INTERVIEWER: Oh, yeah. That was—

INTERVIEWEE: Musculoskeletal hazards, and they would have these corporate wide settlement agreements with, like, major beef companies and Sara Lee food manufacturing. One was Samsonite, Ford Motor Company, General Motors—these were all these huge corporate-wide settlement agreements where these companies were agreeing to fix musculoskeletal hazards at all of their facilities. And so those were during the Bush administration and, you know, I did not hear of examples where there was a lot of big negotiation going on between the White House and OSHA about those. They may have gone on, but they weren't ones I would hear about, but I did definitely hear about the ones for rule making, which I guess I've surmised that to mean that those kind of negotiations or those kind of discussions and oversight went on for the rule making activities, but weren't necessarily going on for these enforcement activities.

INTERVIEWER: So the settlements were—I mean, ergonomics was not a place where they did a lot of rule making in this period like they did the settlements, which are kind of company, I don't know, did they fine people for ergonomics issues in that time period?

INTERVIEWEE: So, they did have some citations under the general duty clause for ergonomic problems. They were really catching employers in under-reporting of these types of injuries. And for, you know, in some creative or very smart way, they were then compelling these companies to implement ergonomic improvements in addition to fixing their record keeping problems. And I think some of that, I mean, you have to attribute a lot of that to, these corporate-wide settlement agreements occurred in companies where there were unions. And so this negotiation was not just between OSHA and the company, but also the union was a party to that, and the unions were really instrumental, I imagine, in securing those type of ergonomic improvements as part of the settlement agreement. So this is all before OSHA made any steps to move forward with the ergonomic regulation.

INTERVIEWER: Right, right. They were dealing with it in this way and sort of—

INTERVIEWEE: Yes, exactly. And it was actually during the first Bush administration under Secretary of Labor Elizabeth Dole that, ergonomic problems in meat packing plants was something that she really took on in a very high profile way. And

the agency put out what I referred to as the meat packing guidelines, which were specifically about ergonomic hazards. And they're the ones that are still on the books and they're the ones that, in the work that I do now, that we still are trying to—you know, we still hold up to companies and say, "Look! This is from 1993! This is what you should be doing!" [Laughter]

INTERVIEWER: Also, you've kept with that particular issue in your later work.

INTERVIEWEE: Yes, yes, yes.

INTERVIEWER: Cool. Okay, just to round out the Bush I period, and then we get to that first transition with Clinton, the Clinton years, I wanted to ask also about the—so you've been talking a lot about political influences versus speaking to the science and the expertise within the agency and so on. But what about Congress? What kind of influence, political influence, do you think Congress was—I mean, you were in the Office of Congressional Affairs, so I'm sure you saw that up close.

INTERVIEWEE: Yeah. Oh, my gosh. [Laughter] So, for those two years, and then Congress was controlled by the Democrats, and it kind of—it went back and forth. Like, even when the Clinton administration came in, it might have been the first term of Clinton, maybe all the House and Senate were all Democrats and then the two years after that it slipped back. Newt Gingrich, you know, had his Contract with America and all that. So it was kind of fluctuating over those years, but my recollection is, in those first two years, there were a lot of these oversight hearings on issues on ergonomics, on refineries that were exploding, blood borne pathogens, record keeping—I mean, there were a number of different topics that were of interest to members of Congress. And the office that I worked in, in addition to preparing the Assistant Secretary for these hearings, our office was responsible for responding to all of the Congressional letters that came into the agency. And there were hundreds of them. [Laughter]

And members of Congress would receive letters from constituents, who would be complaining about an OSHA regulation, complaining about OSHA enforcement, complaining about something they heard about OSHA. And you know, they would then forward those letters to us and we would respond back to the member of Congress who would then forward that OSHA response back to their constituents.

But there were a couple of times where there was, we were just inundated with letters that really can tie an agency up in knots, and you—particularly for the political appointees, when they see hundreds, thousands of letters on this particular topic, I think it, rightfully so, makes them very nervous. It makes them even more nervous when those members of Congress are in positions where they can control OSHA's purse strings or put, you know, call OSHA up for a hearing or make OSHA's life miserable by threatening to put on an appropriations rider or, you know, cut OSHA's budget in some way. And whether those things actually will happen, it's more the fear of them happening, and I think that for the Assistant Secretary and then the political appointees under the Assistant Secretary who are always trying to look out for the Assistant Secretary, they don't like to hear from their bosses. You know, you don't want to get a call from the Secretary of Labor saying, "What

in the world are you OSHA people doing and, “Why am I getting a call from, you know, Senator Metzenbaum or Senator Harkin?” You know, whoever, you know some Republican says, “Why am I getting all these calls? Why is the Secretary of Labor getting all these calls about some decision that OSHA’s doing?” And worse yet, what if the Secretary of Labor gets some call from the White House saying, “What in the world is OSHA doing?”

So, the more of those letters and phone calls that the agency gets, the more and more nervous. The more senior—you know, the senior people, the decision makers in the agency get. And so, you know, if the Assistant Secretary is upset about something, those senior people who are running those offices hear that from their boss and they start to get nervous. And it creates this situation where some of those office directors start to kinda self-censure what they do. Because they are then in the situation previously where they've been smacked down for something that their staff did or didn't do, and they're kind of—they kind of, hunker down might be too strong a word, but some of them tended to do that more than others. Just very, very reticent to do anything that might be perceived as being out of line. And there were situations OSHA, one of the big rules that OSHA worked on early in the time that I was there was a rule on blood borne pathogens, and this would've been the time period when I would go to the dentist and you would go to the dentist—I mean, dentists didn't wear gloves, they didn't wear masks. There was no concern about being exposed to blood or other [Cross talk].

INTERVIEWER: And this was also right after the AIDS epidemic had taken off and so forth, yeah.

INTERVIEWEE: Yes, exactly. This was like early 1990s.

**<T: 60 min>**

And OSHA was moving forward with a rule making to protect any workers who were exposed to bodily fluids, and the Dentists of America were just out of control in terms of opposing this OSHA rule making, you know? That this was somehow very, you know, a threat to their independence and their expertise and, “How dare you tell me what I need to do to protect my dental hygienists?” And there were members of Congress who were accusing OSHA of killing the tooth fairy because the dentists, the dentists weren't gonna be able to give the little child their tooth back because now it was hazardous waste, and—you know, kids aren't gonna go to dentists because the dentist has to wear a mask. I mean, you name it. It was just out of control. [Laughter]

And so when those kind of things go on, and that is, the agency feels like it can't get its work done because it's just always trying to dispel these rumors, and no matter how the agency explains things, you have members of Congress who are trying to align themselves with their constituents who are saying, you know, “OSHA's doing these bad things.” And you have, you know, the typical anti-regulatory crowd on Capitol Hill. So no matter what explanation the agency gets, no matter how strong the science is and how

practical the measures are to protect people, just the mere fact that OSHA wants to do something that's telling an employer how to do it is, you know, is going to be subject to criticism.

So sometimes you're in this no-win situation, but you are consumed by trying to set the record straight and having discussions about, "Wow, are we"—you start to kind of believe the rhetoric. Like, "Are we, is this really out of line for us to do this?" And so it kinda takes over what the agency is doing, at least in the Washington, D.C. headquarters. I don't know how much it actually affects the offices around the country that have the inspectors going out and doing their work, doing their inspections. You know, that, concerns about inspections in dental offices happened after the rule came out.

But there was another rule-making in the same time period. EPA had designated environmental tobacco smoke as a potential carcinogen, or EPA, you know, was moving towards some indoor air quality rules. But I think it was, EPA had designated environmental tobacco smoke as a carcinogen. And so OSHA kind of logically started thinking about, "Well, if it's a carcinogen and people are exposed to it in their workplace, we need to do something to protect people." And so there was a proposal that OSHA had on indoor air quality. And, within that, it was going to deal with all different types of ventilation issues and good air in buildings and all that. But part of it was to ban smoking in buildings, and that was another one that just—like, the shit just hit the fan when that came out. [Laughter]

INTERVIEWER: Wow.

INTERVIEWEE: And, you know, every smoker's rights group, you know—that was one where the agency, I mean, really, the building was taken over with the number of letters that were coming into the agency. Not just from members of Congress, but from every smoker's rights group. And some really horrible—this is where, you know, I maybe was a bit naïve, but very horrible letters sent in with feces inside the envelopes, sent in with all kinds of cigarette butts—very ugly kind of things. And, you know, ultimately the agency decided not to move forward with that. It was such, just a big, so much of a hullabaloo that it was, again, taking over the agency distracting from all the other things that the agency needed, you know, to work on and, you know, ultimately, the states ended up—building owners and managers ended up taking up the mantle of banning smoking in buildings and it, you know, kind of the cascade of activities happened so OSHA didn't need to go down that path. But at the time, those things weren't happening, and OSHA felt a responsibility, given the science, to take on that particular issue.

INTERVIEWER: Was that in the Bush I administration or was that in the Clinton administration that they started, that they began to float that idea?

INTERVIEWEE: I think it might have been—I think there had been a preliminary, maybe they called it a Request for Information or Advance Notice of Rule Making in the Bush administration, but then I think it was, it kind of moved to that next step in the Clinton administration. And Chris, if there's any of these specific rule makings and you want clarification on the dates of when these things, you know, the different stages, I have that pretty much at my fingertips. Unfortunately, I don't have it at the tip of my brain, but I do have a document

that I can pretty much pull up and give you those dates if that's important to you or for you to reconcile what I'm saying with what other people are saying in your interviews in terms of things that happened during these time periods.

INTERVIEWER: Right. Well, that'll probably be down the line some place, but I appreciate that. That's great to hear. Now, in terms of the transition, then, from Bush I to Clinton, what was your experience of that transition? How did that change your work?

INTERVIEWEE: Yeah. So, you know, it was a really exciting time when President Clinton was elected, and I think that both the House and the Senate were all Democratic at that time with that election. I think it was kind of a sweep, if I'm remembering correctly?

But anyway, it was very exciting, and my experiences in the agency were that most of the employees in OSHA were Democrats. They very much believed in an activist government agency, that there was a role for government in rules and laws to protect working people. So there was quite a bit of excitement about the Clinton people coming in, and you know, very quickly after the election, you start putting briefing documents together to get these new people up to speed on all the things. And there's a lot of pride in the agency.

I think there was a sense—you know, even though I very much liked the Assistant Secretary, we knew that he was, under the Bush administration was constrained in what he wanted to do, and there were lots of rule makings kind of in the pipeline that we didn't finish.

So there was a great expectation that, you know, now there's gonna be an administration that's gonna be supportive of that, you know, all the work that we've done that our, that the previous administration was, ran into these obstacles. We're gonna be able to move forward on those, and so quite a bit of excitement about that. And—I'm trying to think.

My recollection is that Secretary Reich, Secretary Robert Reich was very quickly was confirmed<sup>3</sup>. I mean, I remember him maybe already on the, you know, already confirmed and all that in January or February? And that there were, immediately, briefings that were going on with him to kinda get him up to speed on what all the different agencies were doing. And, you know, appearing for confirmation hearings and all of that.

And then, of course, you're always wondering, "Well, who is gonna be the new head of OSHA? What kind of person will he be? You know, who else is he going to bring in?" And the person who was nominated and confirmed was a gentleman named Joe Deer, who had run the OSHA program in Washington State. It's one of the states that runs its own OSHA program, so someone who is very talented and knowledgeable.

**<T: 70 min>**

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<sup>3</sup> U.S. Labor secretary Robert Reich 1993-1997, appointed by President Bill Clinton.

And then there were, kind of my recollection is, there was—I don't know how to describe it. Kind of a—maybe because it started with the Vice President—there were all these initiatives on having good government that, like, somehow the government we had before wasn't good or effective. There was a name for this.

INTERVIEWER: Reinventing?

INTERVIEWEE: Oh, my God—that was it! I couldn't think of the name. I couldn't think of the name! [Laughter] Yes, we were going to be reinventing government. And so it was interesting for me because, as I said, all this excitement about, wow, we've got all these rule makings and, you know, we've got enforcement, we've got all these things that our staff people are expert at and we're ready to get moving on this. And all of a sudden, we had to, like, focus on all this reinventing. [Laughter] And, you know, for like two years, we were doing briefing papers on, like, what's a better way to do an inspection, and what if you didn't do—you know, you went and did an inspection, but you didn't issue any citations to start with, that you let people fix the problem and then maybe if you did a second inspection, they'd get citations.

You know, all of these, I wouldn't say kooky ideas, but like, let's think outside the box and reinvent how OSHA does its work and so, you know, a lot of effort put together on making fancy brochures and things. [Laughter]

There were these little cards, I think I might have just thrown mine away last year. It was like this little card that was like a laminated business card that was like, "Reinventing Government." I think it had, like, a hammer on the front, and then on the back it was like, "The four principles of reinventing government." And I kinda remember, and there was so much kind of spent on all of that stuff, the reinventing government stuff and competing. You know, let's have better ideas than some Department of Transportation agency—you know, just like, a lot of minutiae stuff going on in reinventing government that, one, it didn't get reinvented, and two, things that the agency could've actually worked on didn't get worked on. And then we had Newt Gingrich come in two years later, and it was, you know, the Contract with America and, to the extent that OSHA moved forward, and I don't want to suggest that it was at a standstill while we were reinventing government, but it wasn't the floodgates of activity that I think the staff thought was going to happen, you know?

And then it's like, "Oh, okay, now we're under the Newt Gingrich thing and all hell is going to break loose," and they introduced bills to merge MSHA and OSHA and get rid of NIOSH and, you know, all this other stuff.

INTERVIEWER: So they did that. I mean, I obviously know that happened, but that was 1994, the new Republican Congress.

INTERVIEWEE: Yeah, right.

INTERVIEWER: IT changed things for OSHA.

INTERVIEWEE: Oh, my God—oh, my God. It was like, save the agency! I mean, it was—oh, my gosh, just, there were not only the, it was Cass Ballenger was the member of Congress who had this legislation to really change the whole



structure of OSHA.<sup>4</sup> There were all these other bills in Congress on what they called regulatory reform. Some of them still exist today, and I'm sure there, you know, even up until this past election members of Congress were pushing these, but they didn't have a chance to move forward because we had President Obama. But I have no doubt these same bills that we saw in the 1994-time-period are going to be resurrected again. You know, all these different requirements for risk assessment and calculation of cost and calculating not just direct cost, but indirect costs and indirect indirect costs. Alternative analyses and, you know—oh my gosh, all of this, so much analysis, we call it paralysis by analysis. And, you know, and for every one rule, you get rid of two, and—

INTERVIEWER: Yeah. I think we passed that in that same period.

INTERVIEWEE: Yeah, so I mean, all of that kind of stuff was going on in that time period when it was the “Contract with America.”<sup>5</sup> And so that just puts a halt on everything that the agency is doing. We don't want to—if you are, your agency is already in the bull's eye and people are firing those arrows at it, you don't want to do anything that is going to draw additional attention to the agency. So, you know, not even a peep about some other kind of regulation that the agency wants to work on. There was one—many of these kind of things happened, but one that comes to mind immediately is, there was maybe a complaint filed or a letter sent by a worker or someone who asked OSHA a really legitimate question. “You know, if I work at home and there's some type of hazard there,” or, “I work in someone's home and there's hazards, can OSHA cite that employer?” Or, “If I'm working at home and there's hazards, do I need to correct those hazards?”

And the individual who answered that letter, I think, was very well meaning and basically said, “Yes, you need to have a workplace free of recognized hazards.” And it just got out in the press and, again, very well meaning, but just the way it was interpreted and it was, you know, “OSHA's going to be inspecting houses now.”

INTERVIEWER: Okay. Uh oh.

INTERVIEWEE: So when you already have, you know, all this attention on OSHA and getting rid of NIOSH and just the whole thing, and then you have one unfortunate letter like that, that gets out, it just is—you know, people in the agency just are mortified about what's happening.

INTERVIEWER: So what do they do? I mean, one of the things it sounds like you're saying is, they don't propose any new regulation or any new rule making procedure.

INTERVIEWEE: Right, right.

INTERVIEWER: So what—so that kinda goes on hold. What else, just in terms of how what you do day to day at the agency changes because of that kind of pressure?

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<sup>4</sup> Cass Ballenger, representative for the 10th congressional district of North Carolina from 1986—2004.

<sup>5</sup> “Contract with America” was document signed on September 27, 1994, by members of the Republican minority, led by Newt Gingrich, which outlined legislation including tax cuts, budgets items, etc.

INTERVIEWEE: Yeah. So that's a really interesting question because, even when the agency is not actively working on rules, you still have individuals in those offices. You know, at one point, maybe not too long ago, you know, OSHA had 80 people working in its Standards Office. I mean, that's like—you know, like, four or five years ago. I don't know what the exact number is now. But I mean, there's a lot of people—I mean relatively speaking, for OSHA—a lot of people assigned to that office. And so if you're not working on, you know, from the public's perspective, you're not actively working on rules, you're not proposing rules, you're not giving hearings on rules—you still have people in those offices, and they're doing something. I don't know what all of them do, but you know, there's always—you know, let's say it's chemical acts, and that's one of the rules that you're working on. And you know that the agency in the next six months or a year is not going to be working on that rule actively. But there are still new studies that are coming out on it. You know, you're keeping up with the literature. You are thinking about other types of alternatives, if we were to move forward with the regulation, what would it look like, you know, that type of thing. So, those individuals might be called on to help put together maybe a guidance document. So we're not going to do a regulation, but maybe we want to put together at least some information for employers who want to maybe do the right thing even if there's not a regulation. And so if you have a staff person who's really expert on that particular chemical hazard, maybe they would assist with something like that. So you still have those individuals there. It's not like they're laid off because you're not working on things. So, you know, try to figure out—

INTERVIEWER: A shift to a more advisory kind of guidance role as opposed to a rule making, is that—

INTERVIEWEE: Right, right. Yeah, I would say so. And then when regulations are issued, there is a couple year period of time where it's being implemented, there may be a phase-in period for different provisions of a rule.

**<T: 80 min>**

There are all these kind of intricacies that emerge so when an inspector is out there and they're using this new regulation to do an inspection, let's just say asbestos for example, and they're looking at this and they're looking at the regulation and they're not quite sure whether the situation they're seeing in the workplace is a violation of this regulation. And so there's kind of this back and forth that has to go on where, they've got this regulation, but how does it work practically?

INTERVIEWER: Right.

INTERVIEWEE: You know, in a real world setting? So, for that couple of year period, maybe even longer for something, a really complicated regulation—those individuals who wrote the regulation are very actively involved in helping the inspectors do their work that meets the intent of the regulation. So lots of, like, letters of interpretation, you know, guidance to the field.

So, I think that there's always—there's always work to be done by those individuals in the Standards Office that even if they're not working on a new regulation, there's, you know, other things for them to do like, you know, answering letters from companies who want to know that they're doing is complying with the rule. And, you know, my experience in OSHA was that, in any office, there are individuals, a small number of individuals who do a bulk of the work. And, no matter what it is that's a priority, they're the individuals that are called on. They're the ones that have a proven track record of getting things done, and so unfortunately, they're the ones who are always called on to get things done. [Laughter]

INTERVIEWER: Alright, okay.

INTERVIEWEE: You have a fair number of other individuals who—again, in my opinion—never were given enough to do, and hadn't developed a track record of getting things done, so they are not given things to do. And so, this might sound terrible, but I mean, wasted human capital in some of those offices, and that Office of Standards at OSHA was one where I saw that as a particular problem. You know, I haven't been in that agency for many years, so I don't know if that problem was taken care of, but a lot of people with not enough to do and a few people with way too much to do.

INTERVIEWER: So, you're talking about, this is your observation from when you were there, not sort of looking back as a sort of function observer, but—

INTERVIEWEE: No, that was my experience when I was there. It was the kind of thing like, "Oh, we're working on this reg. Who's working on that?" And it'll be like, "You know, Suzy Jones," and it's like, "Oh, my gosh, she's workin' on that also?" [Laughter] And then you'd look and you'd go like, "What does that guy work on?" It was like, "I don't really know." [Laughter]

And I remember a particular example where this one person who was very involved in a lot of different rule makings, she would have, like, all of these, a zillion letters stacked up on her desk that people needed her to look at because she was really the expert. And it may have been these letters from members of Congress, it may have been from individual employers.

And, you know, when something kind of, when a rule got put on the back burner, you know, she said, "Well, I can finally get to these letters, you know, now." [Laughter] And then we were, like, saying to her, you know—and I think that situation still occurs, because I'll get letters from OSHA and it'll be, you know, I'll get a letter in December and it'll be like, "Thank you for your letter from March." You know what I mean? It just takes—so, for the individuals who are expert at these things, you may have things sit for months and months and months because they're the expert on it and you're not going to get a response to your letter because they just are so busy doing other things, while at the same time, I would observe other people there just, you know, they'd be reading the paper in their office. But we're kind of off the track of the transition. [Laughter]

INTERVIEWER: Yeah. Well, let me just ask you about, one other thing I wanted to ask about OSHA in that time period is about the union. Was there an active union in that time? Did they—and were you a part of it? Among OSHA workers?

INTERVIEWEE: - like the AFGE?

INTERVIEWER: Yeah.

INTERVIEWEE: Yeah, the AFGE—American Federation of Government Employees. I think it's Local 12. I was not actively involved in it. I knew who our shop steward was. I knew the issues that the union was working on. It seemed like every couple of years they were negotiating a new contract. That seemed to be—like, in a very short period of time, they were always re-negotiating contracts, so that seemed to be what took up the, you know, what I would hear of what the union was working on. The union was very active in negotiating, when I was there at OSHA, what we called “comp-time.” And so you would—you never would get paid overtime, but if you worked, instead of a 40-hour work week, you worked 42 hours, those 2 hours would be kind of in a bank. And so, if you accumulated eight hours, you were able to take a day off.

INTERVIEWER: Ah, okay.

INTERVIEWEE: And so, and then they also negotiated in the contract flex-time. So if you decided that you wanted to work 4 days a week for 10 hours and take 1 day off a week, you know, you could do that. So that was under the kind of umbrella of making a model workplace, being more responsive to employees' needs to have more time with their families or whatever. So that was a big initiative that I recall, you know, in my early years there at OSHA that the union worked on.

And then I would also hear about employees who were going through a grievance process. Like, they felt like maybe they had applied for a job that they—a promotion and they didn't get it and so there would be a lot of kind of ugly conversations about, you know, “Well, that boss is a jerk” or, “That employee is lazy.” You know, you'd get these—people would be in these camps, you were either for this employee or against this employee. And those were kind of my recollections of the things that the union worked on—the flex-time and the comp-time, or they were working on grievances. Well, it seemed like they would go on for many years.

INTERVIEWER: The grievance process? A particular grievance?

INTERVIEWEE: Yeah, the grievance process, yeah, because it would—I think there were appeals and, there were kind of like a few people in the agency. It was kind of like—and I wasn't involved in this, but I'd hear some of the more senior people kind of joking about, “Oh, my God, is that grievance still going on?” There were, like, a handful of people that it seemed like it maybe became their life work to be involved in these grievance proceedings.

But my kind of, my experience, and I guess with the cohort of people that I kind of hung around with, my co-workers, I mean, we knew the union was there and that it served an important function in, you know, securing these kind of model workplace things for us. But I didn't know anyone who was actively involved in the union, unless they had a problem like a grievance, and then they would get very involved in it. But I didn't—like, I didn't know of people that would regularly go to their meetings or ran for office.

I know much more about unions now than I did when I first went to work for OSHA, when I went to the agency and did my employee orientation. Like, I

don't remember even hearing anything about the union or what, how I might be involved with the union or what the role of the union is for me as a new employee of the Labor Department. So it's kind of something that I knew went on in the background, but other than that, I was not—I wasn't familiar with the union.

INTERVIEWER: Yeah. That doesn't sound like it was very prominent in your experience when you were at OSHA.

INTERVIEWEE: No, no.

INTERVIEWER: Yeah, okay. Well, let me see. I just wanted to ask you one more transition question about, particularly about the transition to Bush II. And I don't—you know, I think it would be a whole other set of questions to go into the Mine Safety agency and so on.

**<T: 90 min>**

And, you know, we're already running pretty low, and there are a couple of other questions that I want to get to at the end. So, just a question about your more general impressions about the switch from the Clinton administration to the Bush 2 administration—I know you were just there for a year and it didn't, it sounds like, impact your work other than to cut back your work. But any other impressions about how an effective workplace safety agency works?

INTERVIEWEE: Well, my recollection is that—this was at the Mine Safety Health Administration—is that they did bring in a couple of political appointees very quickly, and they were individuals who had worked for mining companies. And these were individuals that I had interacted with in my position, so I kind of knew their point-of-view on things, and it was definitely from the employer point-of-view.

They also had opinions about science issues and rule makings that we had engaged in and, you know, which I obviously didn't agree with. So I kind of already knew from where these individuals were coming from and the kind of policies that they would be advocating.

My sense from the other staff members there at MSHA was, they, too, were concerned about having a mining industry, such a heavy presence in what we called the Assistant Secretary's office by the mining industry officials. It was, you know, the kind of situation where we had worked very hard in putting in some new regulations, particularly on health hazards, and you know, there was certainly a concern about how those might be rolled back.

And I think for the staff—and I'll put myself in that same category—when you do, you really get invested in these projects, particularly for rule makings, and so much time and you know, we were trying to get some rules out at the very end of the Clinton administration and missed deadlines because it just got too close to the end of the—he actually put out two rules on January 20th or January 19th.

INTERVIEWER: Oh, wow.

INTERVIEWEE: [Laughter] You know, and there had been people who had been sequestered in hotel rooms trying to get these things done, just so they wouldn't be bothered or anything. And when you have that kind of personal investment and then knowing that these individuals—because I think we all thought Gore was going to win, right? [Laughter]

INTERVIEWER: Right, yeah.

INTERVIEWEE: You know, and then that whole thing happened with the Supreme Court and, just very—very traumatic kind of thing. And then knowing that, you know, these individuals came in and they were very opposed to those regulations and you were working on them, it's just very unsettling for the staff.

But I, you know, I always had been extremely impressed by the career staff who know that is kind of what they signed up for, you know? That they have a particular commitment to the mission of the agency and, you know, but they work for different administrations who have different approaches to how the agency will be run and the priorities of the agency, and individuals who are career employees accept that as, "This is kind of what I signed up for." And so, even though personally they may be, you know, having a lot of uncertainty about what this means, that does not stop them from going to work every day and trying to do the best job they can do with whatever instructions they receive from their bosses. I think that it's these early months into the administration, I think, in my experience, were the most difficult because you don't have those new people in place. You don't—you know, you're hearing all kinds of rumors about what this administration might mean or do, but you don't have any clear directions. You can't—you're kind of in limbo.

Because even the acting individuals—you know, the acting Assistant Secretary who's not a political appointee is, you know, also doesn't have clear direction. They may have just been told, you know, "Don't hire anyone. Don't issue any regulations. If there's any big case, let us know about it—you cannot make any decisions." And so everybody's kind of in limbo, because that person doesn't have the instructions, and that person can't give the instructions down the chain.

And so it's—it can be a very unsettling period of time. Because there are people who want—you know, they go to work, they're supposed to show up for work, but they don't really know what they're supposed to be doing.

INTERVIEWER: Yeah, okay.

INTERVIEWEE: Do we just keep doing what we were doing under the last people, or should we do this, do we not do that? And the tendency is, if you were going to ask your boss, you know, "So I got this letter, you know, that I want to answer from Joe Employer, but you know, should I write the answer that I would've written under David Michaels, you know, the former head of OSHA, or do I write something that I think might be what the new Assistant Secretary wants?" [Laughter] And it's like—you know what? Let's just hold off before we do anything. You know what I mean? So it's just like a holding pattern.

INTERVIEWER: So how—okay, so that's interesting, yeah. That gives us a good sense of what it was like to be in such an agency at such a moment.

INTERVIEWEE: Well, I even remember that when the Obama administration came in and there was almost a year long period before David Michaels was confirmed.<sup>6</sup> And so there was a political appointee who was there as the acting Assistant Secretary, Jordan Barab, and he was a political appointee and someone that we all know and, you know, he knew David Michaels, before David Michaels got there. But I remember a number of occasions where those of us on the outside would be, “So, Jordan, are you going to do this, are you going to do that?” You know, things that we thought were priorities that, you know, the agency should just get moving on that, and it was kinda like, “Well, David’s not here yet.” And so there was—and whether, you know, that was what he was told to say or whether it was what he felt, or that these are decisions that have to be made by the person that’s been confirmed—you know, I don’t know what the dynamic was? But there was definitely this sense, like, “Until he is here as the confirmed Assistant Secretary, we can’t make those kind of decisions.” So there was that holding period for like a year.

INTERVIEWER: Huh. That’s a long time.

INTERVIEWEE: And not to suggest that nothing happened during that period, you know, I don’t want to suggest that. But I think big decisions or even things that maybe were not that big a deal, but would’ve been big—which were potentially really important to kind of the outside stakeholders, unions, and workers, I think there was a sense that if it was the least bit political or could somehow seem partisan in some way, OSHA wasn’t going to do it until there was that confirmed Assistant Secretary. They want to give him a chance to put his stamp on things and not have some other person who’s not confirmed by the Senate be making those kind of decisions. So David was there for one year and then, you know, the House turned to Republicans. So it was like, he had one year before things changed.

INTERVIEWER: Well, what is your, just generally your, as an OSHA observer, and also as someone who worked at earlier versions of OSHA, what’s your take on what happened at OSHA in the Obama administration? Do you have any general observations about—

INTERVIEWEE: Well, I think we had a similar experience to what I saw early at my first Bush administration experience. Where you had a really decent, experienced person who understood health and safety, wanting to get things done, working to get things done.

**<T: 100 min>**

And then encountered obstacles both within the Labor Department, you know, either the Assistant Secretary for Policy or the Secretary’s office concerned about, you know, “Is OSHA being too heavy-handed on regulation?” And then certainly, with the Office of Management and Budget, there was a rule making on respirable crystalline silica that OSHA had worked on was something like, you know, something the agency wanted to

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<sup>6</sup> OSHA Administrator, David Michaels served from December 2009 to January 10, 2017.

do for the last, like, 30 years. And it was at the Office of Management and Budget for more than two years. Two years!

INTERVIEWER: Wow. Yeah.

INTERVIEWEE: So, you know, for me, that—nothing bad happened during the Bush administration in terms of OMB interference. [Laughter]

INTERVIEWER: The first Bush, you mean?

INTERVIEWEE: The first Bush, yeah. So, I mean, it was just really, I mean, just unbelievable. I think that David Michaels and OSHA worked very hard to use the enforcement tools that the agency has—you know, kind of seeing, recognizing the difficulties of getting regulations out. Both within the agency itself, you know, the work that it takes in the agency, but then through the Department of Labor and through the White House, in a White House that was not particularly interested in regulating. I think there was enough, there was a fair—how do I want to say this? A point of view in the White House very reticent about regulating workplaces—you know, kind of buying into this “regulations is job killers” kind of point of view.

INTERVIEWER: Okay. Uh huh.

INTERVIEWEE: So I think, you know, with that, recognizing that, I think David Michaels tried to make the most of his time there by focusing on enforcement and, you know, really identifying the particular industries that needed more enforcement attention, trying to be more diligent in issuing strong penalties, you know, something really simple is for, my experience was that you would often see OSHA penalties for a fatality case that would be, you know, \$3,000.00, \$4,000.00, although the maximum penalty for a serious violation was 7,000.00, but they would—even in a fatality case, they would give these deductions for, you know, history and good faith and all this kind of stuff. And, you know, I think with some urging from people on the outside including myself, it was like—you know what? Your penalties are so low anyway, why don't you just make a blanket policy that, if it's a fatality, we're not going to be giving anybody discounts. And so, without any fanfare, I don't think there was even a memo to the staff or anything, I—you know, I now observe, when you look at these fatality cases, they just pretty much automatically are \$7,000.00.

INTERVIEWER: Wow.

INTERVIEWEE: And, you know, just things like that. There's probably dozens of things like that, that some of us will never know, but that had an influence over the way the agency operated, and in those individual cases with the employers and the workers, whether those will—you know, they aren't regulations, they're just policies and practices to the extent that they are kept in place under the new administration. You know, whether there's any staying power with them, you know, will be a different matter.

INTERVIEWER: That's what we hope to be able to follow a little bit, yeah. Okay. So—just some wrap up questions. How important would you say presidential transitions have been in shaping OSHA's work?

INTERVIEWEE: You mean, like, the transition teams that come in, or—



INTERVIEWER: Yes. Well, I think the changes of administration, I guess. That would be what we're really getting at.

INTERVIEWEE: Like, whether changing from one administration to the next really makes, really influences the agency and how it works?

INTERVIEWER: That's right, yeah. Yeah, how the agency works, what the agency can do. And does do.

INTERVIEWEE: You know, I sent an e-mail to one of my students, a former student, who now works at OSHA. She's feeling very—she's, you know, a junior person there. She's feeling very unsettled about what—she's never been through a transition. She's feeling very unsettled about what this all means for her. And kind of, you know, my e-mail back to her was, "If the inspectors that are out in the field who are the bulk of the OSHA employees, they're still getting up every morning, you know, getting their assignments, going and doing inspections, identifying hazards, talking to workers. You know, when fatalities occur, they're out there doing those investigations. And so that work of the agency is going continue." And my experience has been, until those inspectors and their bosses that are out in those dozens and dozens of offices across the country, until they get some direction from the OSHA Assistant Secretary or whoever's in charge to do things differently, to not inspect this, to not cite that—until they get something in writing, they will continue to do the work that they have been doing.

And other thing is that it's not that easy to just change the way things are done. When OSHA wants to just change some procedure, you know, when OSHA says, one of the things the Obama administration said was, you know, "A representative of a worker can be a pastor, can be a community leader. It doesn't just have to be a union rep, it can be someone that a worker feels comfortable sharing information with and telling them, you know, 'You can share that with OSHA.'" That isn't just something that David Michaels gets on a conference call and tells the inspectors that. It gets put in this long document with all these instructions and what this means, so. [Laughter]

And so, until there's something like that, you know, the ways the inspectors do their work, it just doesn't happen, you know, changes in the snap of a finger. And even then, those memos like the one I was describing with who represents the worker—even when those things happen, it's not like the next day, everybody starts following that. You know, there are still examples now, that might have been out for three years—there's still examples now where we're hearing it doesn't happen, it's not working, you know? [Laughter] So it's hard to change the behavior of all of those different inspectors out there.

So, I think, for me, I try to remember that OSHA is not just what is that building in Washington, D.C. with the Assistant Secretary, you know, it's more than 1,000 inspectors that are in workplaces, you know, across the country doing that work and talking with workers. So that's a harder ship to move, you know, unless Congress cuts OSHA's budget in half and you get rid of half of those inspectors, or you make really tough decisions about where you're going to do inspections or where you're not going to do inspections.

You know, I think that the Obama administration was not particularly aggressive in issuing new regulations, so you know, I don't—we're not going to lose much if—I don't want, that's probably not the right way to say it.  
[Laughter]

INTERVIEWER: I kind of see where you're going, but.

INTERVIEWEE: You know, but I mean, if we had two House standards in the Obama administration and we had one in the Bush administration, you know, is it going to make that much difference if we have zero?

INTERVIEWER: Is that true, that it's just two and one?

INTERVIEWEE: Yeah, two and one. On health hazards. There were other things—you know, there were other things that the Obama administration put out on reporting of amputation, you know, things like that are really significant and important regulations that OSHA puts out, so I don't want to minimize those.

But, you know, I think that more of the tone of what the Assistant Secretary is going to do, you know, "As we get into this, we're going to do be more cooperative. We're going to help employers, we're not going to be the new sheriff in town"—you know, it's all just the semantics of how the agency describes its work. But, you know, and the head of OSHA could do something really draconian.

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There's no requirement in the statute for OSHA to do inspections. It's authorized to do inspections, it's—you know, when it submits a budget to Congress, it says, you know, "With this, we're gonna have so many inspectors, we're gonna do this many inspections." But if, you know, Mr. Trump says, "I don't want you to do inspections, I want you to just be out there, you know, helping people know how to comply"—I mean, you could have a situation where that happens, and that's certainly, then, you know, that changes the whole ball game.

INTERVIEWER: Right, right.

INTERVIEWEE: But I don't know if that's what he will do. I don't think any of us know what he'll do, and I don't think he knows from one minute to the next what he's going to do. [Laughter] You know? I mean, I guess one could discuss whether his assertions about caring about working people and people not being left behind and all that—I mean, one could interpret that as him wanting to have a good OSHA that protects people from hazards. So I don't know, I can't speculate.

But you know, some of it could just be, is it—the Bush people came in after Clinton, you know, and they used the term "compliance assistance" and not being as, you know, heavy handed with enforcement. But if you look at the numbers, like, numbers of inspections and numbers of regulations they put out, and numbers of where they have these cooperative agreements or alliances with employers—I mean, there's not really much difference between the Bush and the Obama administration. So, you know, it could just be kind of

the same activities, just with a different language that's used with them. So it'll be really interesting to see.

INTERVIEWER: Yeah.

INTERVIEWEE: I mean, this guy is a—I mean, I don't think we can predict, you know, I think we could predict what we thought Bush was going to do. I mean, it was pretty easy to predict. When we had past experiences with Republicans, we could predict. But I mean, I don't know with Trump.

INTERVIEWER: Yeah, yeah, yeah. Well, I guess that's part of the interest in this whole study. [Laughter] Unpredictable. Well, let me ask you this, because you know, you're mostly talking about actual transitions, but we also want to use space for people to speculate a little and to tap people's ideals about what this agency could be and do. So, my question is—what changes in the agency do you feel might improve it? What it does, what it's supposed to do, make it healthier or more fully functioning?

INTERVIEWEE: Oh, boy.

INTERVIEWER: Yeah, a big question, but I'm sure you have a lot of thoughts, but what sort of stands out just on initial thought about that?

INTERVIEWEE: Yeah, so I guess it depends on what kind of budget it has. If it has the same amount of money, and basically, you'll keep the same staffing. You know, numbers of inspectors that you have and you staff in the different regulatory offices, I guess two things come to mind. One is, I really do believe that OSHA the agency, setting aside what happens in the White House and what happens in Congress in terms of rule-making, but I do really believe that there is a more efficient way for OSHA to develop regulations. Assistant David Michaels has repeated it many times, and I think really believes in his heart, and is obviously more informed than me because he was running the agency—really believes and says, you know, “It takes 10 years to do a regulation, to do a single regulation, and that's why OSHA, that's why we don't get very many regulations, because it takes a really long time.”

And I just, you know, knowing what the process involves and my own experience observing how, when I was there, that the Office of Standards operates, I just don't believe it needs to take 10 years to do a regulation.

And my experience is informed by, when OSHA has a court deadline or a Congressional deadline, it can do it much quicker. But I think it is this—this is the, they think that that's true and so it takes them that long to do things.

INTERVIEWER: Right. It's a little bit of a self-fulfilling prophecy.

INTERVIEWEE: Yes, exactly. Exactly. And I agree, it can't do 20 regulations all at the same time, but I do think that one every four years is just not—there's just got to be a better way. [Laughter] And I have some, you know, others and myself, we had some ideas about how that can happen.

I think David Michaels was certainly aware of those privy to that information, and when he was there in the agency, you know, he obviously didn't, doesn't agree with that opinion or couldn't make that happen, but that's one thing. I just think that there's got to be a different way to do things.

And then the other is, with respect to enforcement, I think that there's a real missed opportunity for OSHA when there are fatalities or serious injury cases, to use these incidents—maybe not all of them, but some of them for real prevention purposes. Right now, these fatalities, I guess I would say, they're not fatality investigations. They're post-fatality inspections. And the purpose of them is, currently, is to determine whether there were any standards that were violated. And those are standards violated when the inspector goes there to the workplace and they're doing an inspection, they're asking about the circumstances which led to the individual's death and they're also potentially looking at other hazards in the workplace and writing those up for violations.

But they're not conducting an investigation to really get to the root of why this occurred. So, for example, you have a worker that is pulled into a machine and killed because there wasn't a guard on the machine. And so OSHA will write a citation and they'll say, you know, "Didn't have a guard on the machine, \$5,000.00 penalty." But there is no information that's provided to the public, and I don't even know if it's something that's ascertained by OSHA, to ask the question about why wasn't the guard on the machine.

And—you know, and when you do investigations and you ask those kind of questions, and you ask multiple people, you'll get different answers. You'll get an answer maybe from a supervisor that says you know, "Well, I always told John to put that on there, but he was always taking it off, because he said he couldn't do his job." And then you ask someone else and they say, "Well, you know, John took it off because he was under a lot of pressure to get out 20 widgets a day, and when the guard was on, he could only get out 15." And so what's wrong with the machine that, you know, is preventing him from meeting those quotas? Are those quotas realistic?

INTERVIEWER: Right. To step back a little bit, yeah.

INTERVIEWEE: Yeah, exactly. You know, we keep writing citations for workers getting chewed up in machines, but it's really not about—the end result of the inspection shouldn't just be, you know, "Here was another worker who got chewed up in the machine because the guard wasn't on." We should be asking the question of, like, "Why is it that these guards are not on this machine?" You know, and you have that for all different kinds of fatalities. And to take a dozen of those, a dozen fatalities every year—pick one town or region or something where you're going to do your fatality, where you're truly going to do a fatality investigation. We're going to learn something from that, that we can share with workers and employers everywhere, and really change the conversation from, "They violated a standard" to, "Here's the reason the guy was killed." Because we're not really, we haven't really—and I'll quote my former boss at MSHA, Davitt McAteer. He said, "You haven't made up any new ways to kill workers."

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They die the same way, you know? They either get chewed up in the machines, they get run over by equipment, they get burned—you know, things like that. But we haven't gotten to the point of asking, you know, "Why are these things still happening?" And I think we would, I think that that really pushes you down the Bernie Sanders path of, you know, companies are greedy, they cut corners. It's very easy to blame the dead person. They're not there to defend themselves any more. And, you know, I think that after 40 years of OSHA doing fatality inspections the same way, to do some type of pilot project where there would be a commitment by the agency to have the right type of investigators who really are interested in exploring these kind of questions and let's, you know, try to learn something from the fatalities that occur.

INTERVIEWER: Yeah, okay. That's nice. That's a great idea. Cool. So, you may have some more thoughts on that, in which case, it might be ways, new ideas that might improve what OSHA does. That might be the occasion for some kind of public statement, I think—a little bit, anyway.

INTERVIEWEE: Yeah, yeah, maybe. Yeah.

INTERVIEWER: Let me just ask—okay, so that's, I'll leave that for right now? I mean, usually when we get onto two hours, people are maxing out. So let me just ask you final questions about the current transition. We talked, you've referred repeatedly back to how the past we've been talking about may be foreshadowing what we're going to see, or not. Any parts of the agency, its activities, that you feel you haven't talked about but that's most vulnerable, that's being either called into question or curbed?

INTERVIEWEE: I think that I am concerned about the—there's a very small grants program, I think it's about \$10,000,000.00. It's called the Susan Harwood Grants Program, and these are grants that are given to unions, workers' centers, also employer groups to do worker health and safety training. And the Obama administration was very deliberate in ensuring that unions and non-traditional worker organizations were recipients of those funds, and they really have been very instrumental in pulling in groups of workers who previously would never have had an opportunity to receive health and safety training because they weren't members of unions.

And I think that I am concerned about, one, whether that \$10,000,000.00—it's such a small amount of money, but whether that will be preserved, you know, or shifted to compliance assistance for employers. If there will be people in the administration who think that that is, funding these worker organizations is subversive. [Laughter]

You know? Like that. So I think that, for me, is an immediate concern because the administration will be putting their budget together and that will be a very easy one for them to just, you know, either strike out completely or change the criteria for who is eligible for those grants.

INTERVIEWER: Huh. Okay, great. Other parts of OSHA that, having been a long-time observer, that you think would be—

INTERVIEWEE: Hmm. Little tweaky things, just things that took a long time for OSHA, but they finally started putting some data up on their website. They started putting, at lunch time with no fanfare, but they put information, the one-line piece of information about worker fatalities they've investigated. So they have the date, they'll have the worker's name, the company. And so that's been really helpful for advocates to use in Workers' Memorial Day activities, and I could very easily see that coming off the website. It's something that OSHA was maybe updating only three times a year, so it's not super current, but—so OSHA hasn't been that great about really institutionalizing it and getting it up timely.

But that would be something—it's just been in the last couple years they've done that. That would be something that would be sorely missed. And then they also have data on their website about particular inspections and settlement agreements. So some of that transparency and that data, that really has helped advocates in their work. I'm a little afraid that that might disappear.

INTERVIEWER: Yeah. Well, actually, my next question was about the data collection or public dissemination. You hopped right onto that. So, let's see. The data on fatalities that's not public, the data on—

INTERVIEWEE: The data on inspections. Very recently, OSHA put out a regulation that required employers to report amputations and hospitalizations, and they have—they've been putting that up maybe every quarter. That could very easily disappear. And there is a new regulation which, OSHA has not become fully effective, that OSHA indicated in its rule making that it intended to post this data online. And it's very much written as part of the rule making that posting this online would compel companies to have better safety programs, it provides information to workers, you could look and see, maybe a company you're thinking about working for, you can go and look and see, "Wow, they've had, like, really bad injuries. I'm not going to go work there." You know, kind of this whole, there's a term that's used, like, in behavioral economics like "nudge" or something.

Anyway, it was all written with that kind of lingo. It was very intentional to put this information online, and that part of the regulation has not taken effect yet, and so I could very much see that, because it's in this limbo period where it hasn't taken effect yet, I could see something like that just not even going forward as planned under the new administration.

INTERVIEWER: Right.

INTERVIEWEE: And then the other thing—and this goes back to the OMB piece. As I had indicated when I was first at OSHA, these things would go to OMB, and we didn't even know what was going on. During the second Bush administration, there was a head of ALIRA that decided it was really important for people to know, for the public to know who's meeting at OMB, when they're meeting, what materials are provided. And so he put up, he has a website—ALIRA has a website where they post stuff, and that was, that continued during the Bush administration and then the Obama administration has continued that, and it has, you know, for now has been going on for like 10 years of that data—so,

really important for us to know the industry groups that are meeting at the White House on regulations.

And so I feel like it's something that has become just normal operating procedures, but—you know, that would be really, that would be something that would be really disappointing to see if that, if they took that off of the White House website.

INTERVIEWER: Yeah, that's very interesting.

INTERVIEWEE: It was kind of like, you'd see that the Chamber of Commerce met on an EPA rule 20 times and Sierra Club, like, once, but at least you knew that the EPA went 20 times and the Sierra Club went once. You know, it just shows you the power differential—but at least we knew that. And, you know, it just goes into this black hole otherwise. So I would miss that, if that is gone.

INTERVIEWER: Oh, yeah. So, any further thoughts on anything that you think that I haven't asked that you'd like, you think I should know about?

INTERVIEWEE: Um, I don't think so. I don't know, you've asked me a lot of great questions. I hope that a little bit of what I've shared is helpful. [Laughter]

INTERVIEWER: No, this is great—this has been great.

INTERVIEWEE: I try to get off—I get on tangents sometimes, so. No, I think that I have done as much of a brain dump as I can.

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[. . .]

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[END OF INTERVIEW]