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Dealing with Legislation—A Trade Association View

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Moderator: AMY C. VIENER
Panelists: LYNN D. DUDLEY†
JANICE GREGORY‡
Recorder: AMY C. VIENER

Summary: Representatives from the Association of Private Pension and Welfare Plans and the ERISA Industry Committee discuss their role and involvement in the legislative process. This session provides tips on how actuaries can have a greater influence in areas that impact their profession.

Ms. Amy C. Viener: I'm thrilled to be here to introduce two of our profession's advocates. They're not actuaries. They work for organizations in Washington D.C., and they're going to give us some interesting perspectives on what they do and how we can all help to get laws that work to everyone's advantage.

Lynn Dudley is vice president of Retirement Policy for the Association of Private Pension and Welfare Plans (APPWP). The organization was established in 1991, and Lynn's been in charge of staffing and directing the legislative and regulatory policies. The organization represents Fortune 500 companies, plan sponsors, and service providers.

Since 1994, Janice Gregory has directed legislative activities on behalf of ERISA Industry Committee (ERIC), the ERISA Industry Committee, an association of 130

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†Ms. Dudley, not a member of the sponsoring organizations, is Vice President of Retirement Policy for APPWP in Washington, D.C.

‡Ms. Gregory, not a member of the sponsoring organizations, is Vice President of ERISA Industry Committee in Washington, D.C.

major companies, all of which maintain comprehensive pension, health and welfare benefit plans for their employees and together provide health coverage to approximately 25 million individuals. She's also a well-known author. Her most famous book, the critically acclaimed *When Elvis Died*, chronicles the media reaction to the death of Elvis Presley and examines the southern music groups of the Presley phenomenon.

Ms. Janice Gregory: We can always look at the actual probabilities that Elvis will appear during our session. That was our way of getting outside of Washington, where real people live as opposed to the people who live inside the beltway, who are another breed. That's what we're going to talk about—those strange operations that take place inside the beltway. I'm sure you have all heard the famous saying that there are two things you should never ever watch being made: sausage and legislation.

First, let me welcome you brave souls who came out to watch legislation being made. Lynn and I will try to make this a heart-healthy breakfast and leave you with some idea that the mixed-up, scrambled process called "Passing a Law" is not really so distasteful after all. But I will begin by saying it is difficult, and we will try to give you some ways to look at making it not quite so difficult and a little more in the realm of possibility.

While this session is built for people who have no prior legislative experience, which is probably most of the country, let's check just a couple of basics. First, we're going to focus on the national legislature, the Congress, but many of the things that we are talking about can apply to a state legislature, or even to a city council; the same types of techniques and approaches will work there.

Second, while a basic knowledge of the legislative apparatus that you will be dealing with is important—for example, is there a House and a Senate? Or is it like the Nebraska legislature; a unicameral setup with only one legislative House? You should get some sort of basic knowledge of the body that you're going to be working with before you go to work on it.

But don't get hung up there. In fact, don't worry about all those Civics books with those little charts you see about how a bill becomes law. What we will do is show you some road maps that are more helpful than those old-fashioned charts. No matter how much you know about the basic chart, how you actually operate is determined by the character of that particular body. The only people who know that are the people who work there, the legislators. You need to get yourself in a position where the legislators are your guide and work with them.

I'm going to focus on how an idea might actually get into law. Then Lynn will talk about all those bad ideas that other people have and you want to stop from getting into law. She will talk also about what we call the fine art of compromise. Then we will give you a chance for some audience participation. We're going to ask one of you to become a lobbyist for a little while so you can see how it might work in practice.

Let's begin with how to get your idea into law. You're talking to a client, or maybe you're in the shower and you're struck with an idea. Maybe you're thinking, I could sell a lot more defined-benefit plans if I just didn't have to follow so many rules. Or maybe your company has just put you on a team to figure out why sales of defined-benefits plans have been so slow, and you've come up with a long list of things that seem to get in the way. Or maybe it's more specific. Maybe it's the 150% of current liability funding cap that makes it difficult for me to persuade people to set up a defined-benefits plan. That limit is a bad rule. It makes you delay the funding too long for anyone's use.

What are you going to do with your idea? You could complain in a cocktail conversation that the crazy government doesn't know what it's doing. I'm sure nobody here has ever engaged in a conversation like that. But you don't need simply to complain; you can do something. In fact, you've already begun to articulate the idea and answer the question, "What is the problem?" At this point, it's important to understand the more specific you can be about the problem, the better your chances of being able to do something about it.

Now, Lynn and I are going to be talking in terms of pensions because that's what we do, and we will key in on the one idea I've already mentioned, the 150% of current liability funding cap. I'll be using that as an example, but whatever area that you're working in, the more specific you are, the better your chances. No one can act on the simple idea that there ought to be more defined-benefit pension plans. OK. Now what? It has to be something specific. You have to get it down to something that people can act on.

The next thing you want to do is determine how you want to solve your problem. What is the solution? Once again, be as specific as you can. Remember that session I talked about when you're in your company trying to figure out why defined-benefit plan sales were down? Well, maybe I want the following ideas in the law in order to increase the attractiveness of such plans. Or maybe I don't want to repeal the 150% of current liability funding limit. Again, being specific is the key.

Now that you have your idea and a proposed solution, it's time to do some old-fashioned homework. Many an idealist with the answer falls flat here. They go running off and can't figure out why they can't get anywhere. All of you are brilliant, but even the most brilliant have one point of view, their own. And our country is made up of many, many points of view. That's what the legislative process is all about. It's all those different points of view coming together. So as a lobbyist-in-training, you're about to learn all these other points of view.

Your homework begins with some basic research. Am I changing current law? In the case of eliminating the 150% of current liability funding limit, I am. Well, why is this nonsense in the law? This is a limit that's widely viewed as bad pension policy. Why is it there? Everything that's in the law was put there because somebody at some time thought it was a good idea. If you don't figure that out at the beginning, at some point down the road, somebody's going to pop up with that same idea. Gee, wasn't that put in the law, too? Or wasn't that put in the law to stop something horrible?

Talk to people. Look up the 150% of current liability funding cap. You might need to get some help to figure out where to look, but basically you can find it in the Internal Revenue Code (IRC), which comes with a little list at the back of each section that says when different provisions were put in the law. You can go to a law library and review the committee on Finance, U.S. Senate, Omnibus Budget Reconciliation Act (OBRA) of 1987 modifying the full-funding limit in Section 4551 of the bill and Section 412 of the IRC. These are reasons for change.

Why was this thing put in here? I quote: "The defined-benefit plan should be funded in such a manner as to provide benefit security for participants. An employer should not be entitled, however, to make excessive contributions to a defined-benefit pension plan to fund liabilities that it has not yet incurred. Such use of a defined-benefit plan is equivalent to a tax-free savings account for future liabilities and is inconsistent generally with the treatment of unaccrued liabilities under the code."

"An overall cap on an employer's deductions for plan contributions is appropriate in the case of over-funded plans. A proper balance between the competing concerns described above; the competing concerns being benefit security and a tax treatment that is consistent with the treatment of unapproved liabilities under the code. A proper balance between the competing concerns described above is achieved by limited deductible contributions to a defined-benefit pension plan to the extent that the contributions cause plan assets to exceed 150% of current liabilities, i.e., generally accrued liabilities."

You have some idea of where this came from. From talking to people, you'll probably also find out that it raised a whole lot of revenue. You'll notice it's in a reconciliation bill, a budget bill. That should always make you suspicious that it's probably in there to raise money. Now you're beginning to get an idea of where this thing came from and how it got into the law.

Conversely, maybe you're creating a new law. You may have come up with an idea to sell more defined-benefit plans. Why hasn't somebody thought of something that's so obvious before? Chances are, they have. Find out who they are and use them. Did they come at the wrong time? It might have been a good idea back then. It might be a good idea today. That happens frequently in the legislative process. Did they make mistakes that you could avoid? Are they still around? Because if they are, they're a possible ally toward a team bill. Talk to people. Try your idea out. Try it on your colleagues. Try it on knowledgeable people, which may or may not coincide with yourself. Try it out on effective groups and weigh their feedback.

If you haven't been able to be specific about the solution to your problem before, now you should be in a position to do so. Remember the key. You must be specific about what you want. Maybe you found out your idea wasn't so hot after all. You started talking to people and raised huge concerns and ramifications that never occurred to you. Alas, your idea won't work. Maybe you'll have another idea. Or maybe somewhere in your research or in talking with someone, you come up with a different way to skin the cat. That's OK. You're moving. If you have a different solution, you should test its viability by doing some more research, and talking to more people.

Now you finally have something. It's been researched. It's embedded among knowledgeable people. Next you have to get ready to actually approach the legislators. At this point, believe it or not, you need documentation. I know this is the modern age and you can use E-mail and other means of communication, but if you happen to run into your member of Congress at a gathering down in your district you will need a piece of paper. That's still the way it works. You must have documentation, and after that, you will need somebody to read your paper, but we'll get to that in a minute.

In preparing your documentation, three basic rules apply. One, be brief. Limit your documentation to one page if you can possibly manage it. Two, write in plain English. Try not to use buzz words. If you use them, include a phrase that explains very briefly what they mean. Three, assume that the people who are reading your piece of paper have zero knowledge of what you're talking about.

Let's suppose you want to eliminate the 150% of current liability funding cap. Some people will know this as well as you do, but most of the people who will read your piece of paper won't know much about pensions. Maybe they know there's an IRA or a 401(k) out there, but not much beyond that. They have no idea of the difference between an IRA, a 401(k), and a defined-benefit plan. They've never thought about the differences. And they have absolutely no idea what a current liability is. They've never heard of that before. The concept is not there. Assume nothing.

If you're talking with people, it's always a good idea to ask them, "Where do you want me to start?" If you're talking to somebody who's on a committee tax staff and who's been assigned pensions, even there you shouldn't assume prior knowledge. Maybe they were assigned to pensions last week. Always ask, "Where do you want me to start?" and begin from there.

We tried to follow the three rules that I just mentioned. For our issue brief, we used your coalition, The Coalition of Actuarial Professionals (CAP) and its efforts to get rid of the 150% of current liability funding cap. You'll notice that it talks about the problem. You notice that it talks about the solution. And you'll notice that it gives some arguments. Everything is in nice, short paragraphs and as close to plain English as possible, and it is all on one page. Also, you'll notice that down at the bottom, it has some place to call.

I can't tell you, in the 13 years I've worked on the Hill, how many pieces of paper I've received that had no phone number at the bottom if I had a question and needed to call someone for more information. People always forget that for some reason.

We have to sell our idea. Why do I have to sell my idea? Because there's only one thing that matters either in what I'm talking about or what Lynn's going to talk about in a few minutes. You must have the votes. This is a selling process. If you don't have the votes, it doesn't matter if you have an idea that will save western civilization. If you don't have the vote, it's not going anywhere. That's what this is all about. You've done your research phase. Now you're in your selling phase. So you have to think like that. I've got to sell this thing. Where are my allies? Am I in a relevant group that actually does lobby? Can I sell this to a group? Do I know a group who might be interested in this? If you do get a group together, do you hire someone to help you get your material in proper order? And what if you're alone? What if you don't have a group? That's OK. Don't despair. You should look around for groups and allies, but you can start off alone.

The next thing you need to do, whether you're with a group or by yourself, is pick somebody from the inside. You need an inside guide. You need to get somebody in a position to act. Here committee jurisdictions are important. Let's suppose you want to pass the amendment that eliminates the 150% of current liability funding cap. If your own House member is on the Agricultural and Foreign Affairs Committees, he or she will not be your strongest advocate unless that House member is willing to go to the chairperson of the relevant committees and push your amendment. Don't give up on your House member, but if your House member isn't a strong advocate, you might want to look at your senators. Look around and see who represents you that is in the best position inside the organization to get something done. If you have a House member on the Ways and Means Committee, or a senator on the Finance Committee, you have a big advance start on getting your idea passed. However, do not ever give up on your local representative. You need to work with your local representative even if they're on the Agriculture and Foreign Affairs committees. If they're willing to go out and do it, they can help you.

We passed a bill at the end of 1985 that did not go through the normal pension committees in Congress, which are the Tax Committee and the Labor Committee. It went through the Judiciary Committee, and it was a bill that was sponsored by somebody who was not on the Judiciary Committee, but was willing to go and work with the chairperson of the Judiciary Committee and get the bill passed. This was what was called the Source Tax Legislature—legislation that prohibited states from taxing retirement income out of qualified plans.

At this point, you do want to talk to some people. You want to figure out who would be a good candidate to be in a position to do something about this. Don't ignore the administration if you have a way to talk to whomever is on the executive side, for instance the pensionary or the people in the Labor Department and the Treasury Department. It may be other departments. The administration is always looking for ideas. You may be able to talk to some people in that cabinet branch in that department. Never ignore that side of the equation because there's nothing better than having your idea come up as part of a presidential package. It can happen.

If you don't get any interest there, keep rolling. You will try to pick your best sponsor, but you want to keep rolling. Sometimes people who you take for granted will take your idea and run with it; that's what you really want. You want somebody on the inside to say, "I will take ownership of this idea, I'm going to run with it." That's what you need when you want to get something passed.

Now you will explain your proposal to these people. The three rules we had in writing the paper apply here. Be brief, speak in English, and assume nothing. Always go in with those three ideas so that the person understands what it is you're talking about.

Two other things apply here, though, when you're actually recruiting your sponsor. Listen to the questions. The questions will reveal those other points of view. They'll tell you where you're not being clear. They may make you aware of a side effect. Maybe it's something you want to ignore. Maybe it's something you want to think about.

Listen to the questions. There are no dumb questions. These are the questions that everybody else in the legislatures will be asking. So when you listen to those questions and begin to formulate responses to them, you will be a much better lobbyist.

Once you have someone's interest in your idea, make sure you tell both sides. This, for your sponsor, is the most important critical rule. If you can help it, you never want your sponsor to be surprised. If you know objections are going to be brought up—for example, if you know that your idea is going to send the American Association of Retired Persons (AARP) around the bend—tell your potential sponsor beforehand. You need to tell them that up front. They should know where they're going to get into trouble and where they need to look for or expect opposition. You can also tell them why you think they ought to ignore that opposition. You don't need to be shy about that, but you need to tell them where the opposition is going to come from. You will have learned that in your earlier research.

Now you have your sponsor. Next you need to watch your relevant players. Where's the administration? If you're coming from inside the Congress, where's the administration going to be? If you're coming from the administration's side, where are the relevant people in Congress going to be? This is called getting votes, which I refer to as shoe leather. You have your sponsor, now you're going out and getting other people to go with your sponsor. Get the votes. That's what this is all about. You get the votes, you win. You don't get enough votes, you don't win, period; that's it. Get the votes out, whether by mail, phones, or E-mail. What kind of tactics do you use? Follow your sponsor's lead.

Once you have a sponsor, your job changes from one of pure selling to one of selling support. If your sponsor says it's a bad idea to hold a press conference, don't. If your sponsor says, it's a good idea to hold a press conference, do. If your sponsor says you need mail, produce it. Your legislator's job is to pass bills. Let

them do their job and work with them. Once you get your sponsors, you're really rolling down the track.

Finally, keep your focus. Stay in there for the long haul. We passed a provision in 1996 to change the definition of a leased employee that my group had initiated seven years earlier. It got vetoed four times because it was in budget bills that were already vetoed not because the provision was controversial, but because it took that long. That's not actually that unusual. It can take a while to get 535 offices, plus an administration, comfortable with an idea.

To stop something is one thing, and Lynn's going to get into that, but to actually get something passed, there has to be a high comfort level. You have to get a majority of people who are very comfortable with it. Don't give up. Don't be rigid. Decide which complications can be ignored. Don't let every little thing divert you.

But in the case of our leased-employee provision, for example, the provision that was key to writing regulations was rewritten every year of those seven years. There were changes made. We were constantly dealing with new things that came up the more people thought about it. Listen to alternatives. This is the art of the possible, understanding what the competing forces will allow. Finally, it's OK to take half a loaf. This year, we passed a partial repeal of 150% of the current liability funding limit. We're getting there. And then, of course, after the provision is passed, there's always more fun called the technical corrections for all of the small things that didn't get noticed in the drafting and in the haste to get legislation passed.

Now that's taking an idea from the shower to the law book. Lynn's going to talk to you now about stopping one.

Ms. Lynn D. Dudley: The passage of time is inevitable, and the passage of bad bills by Congress is inevitable. I'm here to talk to you briefly about what you can do to stop bad bills. We do, in fact, stop more bad bills than you are aware of because we stop them before they ever make it to the media or the trade publications. There are actually opportunities to stop bad bills even before they get started.

I know that there are many, many times that all of us who have worked with pension laws professionally have sat down and tried to decipher something that has been passed by Congress only to find ourselves saying, "I would never have done this. What is wrong with these people? Who is in charge up there? Do these people not consult anybody? What is their problem?" That's happened probably to every one of us who's ever dealt with pension law. And it's Janice's and my job to keep those down to a minimum. We can't promise you that we'll stop them all, but

we try to keep them down to a minimum, as do other representatives from business groups.

What I thought I'd do is talk to you briefly about the process that we go through. The first thing you must do is identify that you have a bad bill, preferably before it's too far along in the process. Generally speaking, we do get that information right when it's introduced. It's picked up by trade publications and the BNA Tax Reporter. It's picked up by people we know on the Hill who will call and alert us.

Janice and I stay in fairly close contact with those people on the Hill. The next thing we do is contact the bill sponsors. We find out where they're coming from and their concerns. An example of what we've currently been working on are some of the pension equity issues—the spousal consent rules, default QDROs, and the required 66 and two-thirds joint and survivor annuity. These are all ideas that are passed on to us. We call them and ask, "What are you thinking about? Where is this coming from?" Everything that we will say to ourselves when they pass this bill, we will try to say to them now. We try to understand their goal. That's our approach.

The next thing you must do is figure out which congressional committees are involved. Nine times out of ten, you have the Ways and Means that's on the House side, the Senate Finance Committee, and the two Labor Committees. Nine times out of ten, they're in some way involved. Although, as Janice pointed out to you, sometimes bills come out of nowhere. In fact, there is currently one in the judiciary, and it relates to whether or not you can remove an ERISA case to federal court. That is fundamental for most people who practice in the pension area. We rely on the ability to remove to federal court because we find that state court judges are not as familiar with ERISA, and they're certainly not as familiar with the concept of preemption, which is fairly important to us.

We find that these bills pop up even in nontraditional committees, so you have to find out which committees are involved. How do you do that? Find out from the bill sponsors. Find out from each other. Find out from calling the clerk on either the House or the Senate side. Find out where it's been referred.

The other thing that you need to do in this process is find out if one of the committees is generating this bill. Whose idea is it? Did it come up from the staff level at the committee? Is it a staff-driven bill? What about the administration? President Clinton has been very active on pension issues. Is it an agency that's generating this bill? Is it the PBGC? Is it Department of Labor (DOL)? Is it Treasury? Who's idea? Is it the actuaries at the Treasury Department? Where's it

coming from? Once you find out who is on top of it, who's driving the bill, then you go to them and find out what their goal is.

The next thing that you do is keep your eye on that bill. You have to check on the status of that bill every day. You have to find out whether it's moving. You have to have your moles in the system. You have to contact the organizations that you're involved in. Call your Congressperson. Call one of us. Nine times out of ten, we will know where that bill is, or we can call each other and find out where it is, which we often do. A lot of information is shared. Keep your eye on where that bill is, where it's headed, what its schedule is, and how much time you have. How much time you have to kill a bill is really important. Sometimes you have very little time and you have to go full force. Other times, you have time to get back to the committees and give them some suggestions and feedback.

Next, check the jurisdiction. Maybe there's something in that bill that would tell you that there are more committees either in the Senate or the House, which have jurisdiction that the bill hasn't been referred to, that you can contact so that they can assert jurisdiction to slow the bill down. That's something you can do.

I cannot stress the importance of rounding up the posse. As we always say to each other, there's safety in numbers. This was never more true than in the Mertens case. I don't know how many of you remember the Mertens case a few years ago, where they tried to extend fiduciary liability to service providers who were working on plans.

This is a situation where many times bad bills are generated because there's a case out there. Bad facts make bad law. We all know that. But many times when those bad facts are presented in the media, it's very hard even for your friends on the Hill to help you. It is very difficult to vote against extending fiduciary liability. It sounds bad.

What you need is many people up there saying it's bad and why it's bad. The only way to do that is to network with your business groups or other interest groups. Many times we have very nontraditional alliances. We've aligned with unions. We've aligned with state and local government groups. We've aligned with women's groups. We've aligned with any number of other interest groups that are not necessarily business or professional organizations.

This is the most important part. You cannot yell at these people. You want to call them up and give them a piece of your mind. You can do it, but it won't stop the bill.

Janice said this in her talk earlier. It is critical. Keep it simple. On a one-page sheet with bullet points, outline to them what is wrong with what they're doing. You cannot tell them in a 15-page dissertation why the valuation method they're using is wrong. They won't read it, number one. They're very busy. They don't have time. Number two, it's too complicated for them. Most of the staffers are not familiar with the issue.

Keep it very brief, simple, and direct. You want to give them data and examples. Provide the facts. If they tell you that they need to extend fiduciary liability because of all these terrible things that will happen to individuals, and look at this terrible case in front of us where this awful thing happened to this person, you need to tell them why that is an isolated case, why that doesn't happen, what the checks are in the system, and what extending the fiduciary liability to the service providers would mean to those service providers, those plans, and those other participants. You need to do that on one page. I can't stress enough the importance of keeping it simple.

This is the point at which you start to use the media, but use it very, very carefully. You can get caught up in a terrible ordeal where you're on television saying that reversions are good when what you really meant to say was that reversions can be good in certain situations. What happens in sound bites is they pick up only a piece of what you're saying, and you get quoted saying something that builds the case for the other side. So you need to be very judicious when you're attacking someone's proposal because many of the bad bills that are out there are generated not out of malice, but out of concern, and you need to address those concerns. So use the media very judiciously.

Another important piece of this is talking about the money. How much money does it raise? Does it possibly lose money? Is there a way that you can say this bad bill loses money? If there is possibly a way to prove that it loses money, joint tax committee is a good place to start to talk to them. They're the ones who generate the revenue estimate, and they are always glad to receive data that would tell them whether or not they're on track with estimating the revenue.

There's no definite way of estimating the revenue. They may estimate it on what they anticipate people will do. They may estimate it on what people are currently doing. There's not a tried-and-true method. But if you have facts or information that would change the estimate, you need to share those to the extent that it benefits your position. To the extent that it raises revenue, which frequently these bad proposals do, you need to either disprove how much it raises, or you need to at least show how it hurts the overall system. Joint tax is the place where you can do that.

The next thing you need to do is plan your strategy. There are two ways to stop this bill. You can stop it at committee level, or you can stop it at the full House or the Senate level. You can always hope for a veto, which sometimes we have done. Sometimes you know that it will be vetoed on into the process because it gets swooped up into a larger bill that you know will be vetoed. Stopping it at the committee level is your preference.

An example of when that's been done in the past is this joint survivor annuity provision requiring plans to provide a joint and survivor annuity option of 66 and two-thirds. That's something that, in general, plan sponsors do not want to put in their plan as a specific option, and so that's one we have lobbied at committee level. How have we done that? We've gone door to door. You go to each person on the committee. If you can go with a network or a group of people, that's preferable because it shows that you have consensus among professionals.

If you can't go as a group, you still can weigh in by faxing them a note, E-mailing them, calling them, but make contact with each person. You can copy a letter to your representative or senator to the other people on the committee list. How do you get committee lists? You can get them from just about any organization that you're a member of or you can call Congress and get a list from your congressman.

Sometimes we leverage committees. If we think we can't stop it on the House side, we put our attention on the Senate side and try to get the Senate side to weigh in with the people who they know on their counterpart committee on the House side, or at least start building that consensus on the Senate side and let the House go ahead and include it in their bill.

We then start working at the full House level. How do you do that? You send a massive set of letters, a whole mailing. You have to send letters to each representative. When nobody else is left in the office, you lug them up there and put them in the mail yourself because the importance is to get that one pager into their hands. Make it something that they'll see. We stamp it "Urgent," "Attention Pension Council" all the time. We make it stick out, and we get it up there and mass mail it.

Then you do follow-up. You call those people. If you're a trade organization, you start calling your members and you grass-root this bill. You call as many of the companies that you think might be impacted or are in the bill sponsors' or the applicable committee members' jurisdictions. You call them even if they're not your members. I'm sure many of you who are not even a member of ours have received a call from us. I don't care. If it impacts you, I'm going to call you and maybe somebody will weigh in, and we'll get a member out of it, too.

The process of trying to get companies and professionals to weigh in is really important. They are far more likely to believe someone calling from outside the beltway than to believe one of us because you can give them a real live example. So that's very, very important to them.

Finally, get the votes. You must have enough votes to stop the bill. You've got to count heads. Keep counting. Stay on them. Check on them.

When all else fails, cut a deal. It happens. Be prepared to prioritize. When I get a bill, I look through it, determine if it's bad, decide what we're going to do, send it out to my members, and get feedback on that bill. I can tell from their feedback which provisions are giving them the most heartburn, and those are the ones I focus on. I increasingly focus on them when we start losing the battle to kill the bill. When we start to focus on those adverse provisions, we get a list of priorities, things we must have.

All of you all remember the Retirement Protection Act (RPA) a few years ago. We had some serious priorities in that bill, didn't we, Janice? There were a few things in there that were "must-haves." We had to kill the General Agreement on Tariffs and Trade (GATT). That was the only thing that we could do. At that point, RPA was a very important part of GATT. It raised money. It was a very important piece. We knew we couldn't eliminate all the pieces that we wanted to kill, so we started prioritizing them.

Then what you do, once you have a list of priorities and must-haves—in that particular case, there were must-haves with respect to the mortality assumptions and the interest rate assumption—you then identify the negotiable points. Figure out where they'll give. There will always be some areas where they will give. Once you know where they will give, decide what you're going to do. Decide if you are just going to march in there and say, "I've had enough. Let's call a truce. Let's cut a deal. Here's what we propose." We arranged many of those meetings.

Prior to actually deciding what our strategy was in the RPA case, we had numerous, combined business agency Hill meetings where we felt each other out. Where are the negotiable points? If I were to offer you this, what would you give me on that? We had a number of those meetings, and we still do. We did that with respect to limited scope audit. We've done that with respect to a number of issues.

While you're in the process of doing that, you need to determine whether you will have a straightforward compromise or a hip-pocket compromise. Hip-pocket compromises are those that you do at the last minute when all else fails. Now that every effort you have made to kill the bill has failed, you are prepared to offer a

compromise at the last minute. We frequently have those prepared and in our hands. We call that the “Plan A, Plan B Approach.”

But you have to remember this. While you’re willing to compromise, you’re out there trying to kill the bill, too, which can be very disingenuous if you’re not very careful. You need to be very honest about what you’re doing. Tell your opponent, “I am going to try to kill this bill. But if you want to compromise with us, we’re willing to look at your proposals. Here are our priority items.” You then proceed to try to kill the bill. But if they offer you something, you pass that back. It’s just like a real estate deal. We’re obligated to pass on that offer to our members and let them make a judgment.

Let’s return to the compromise process. You’ve reached a deal. Either you’ve whipped out your hip-pocket, last-minute deal, or you have said straight on, here’s what we’re willing to do, and either the committee or the bill sponsor, whoever’s driving the bill, has agreed to it, and they are making appropriate modifications. Drafts of bills are coming back and forth. What you’re doing is riding herd. You are making sure that there’s nothing tricky in that process, or that some legislative language doesn’t get miswritten or misinterpreted.

That happened just recently when we passed the Taxpayer Relief Act, and a provision that would extend the elimination of 415(e) to the 403(b) plans, but only if the person elected to have 415 limits apply, which nobody does. The bill looks fine, but the legislative history unglues the bill or that particular provision. You have to watch for those glitches so you ride herd on them.

Watch for strays. Those are people who agree to things that you did not agree to. You must be very careful to watch for strays. We have to keep everybody on board and together. If somebody is losing it over Senator Boxer’s bill on diversification, you need to pull them back in. Find out the problem that’s causing them to get off the bandwagon because most of the time part of the compromise is that you’re not going to oppose the bill. And that’s big for people on the Hill because they’re looking for you to keep the other business groups from opposing the bill. And if you can’t do that, then what’s the point of their compromising? That, to them, is a very critical piece.

Finally, the pleasures of nonopposition. I can just hear Janice’s sigh when we reach that point because, we’ve done all that we can do to that bill. We tried everything. Diversification is a good example that just passed in the Taxpayer Relief Act: it’s so riddled with exceptions, it doesn’t do a whole lot. But it was at a point where we no longer had to oppose it.

The same is true with any number of provisions that I can point out to you over the years where they are better because we agreed to compromise. We made them as good as we could make them, and then we let them go because the opportunity cost of fighting the bills was so great with respect to other things that we were doing that it wasn't worth it.

Ms. Gregory: Why don't we take a few questions and then we'll come back.

From the Floor: Could you give an update of what's going on right now?

Ms. Gregory: Yes. Right now is an interesting time because it's at the very end of a session and so, quite frankly, in our area, we hope very little is going on right now. This is a very, very dangerous time now in any session because as Congress gets nearer to recess, things can pop up and move quickly.

The one bill that we know is moving is the IRS Restructuring bill, which is due to come up on the House floor. That almost definitely will happen. It will pass in the House. There's a lot of pressure on the Senate to take some action before they break. But the chairperson of the Senate Finance Committee, Senator William V. Roth, Jr. (R-DE), does not want to move yet.

There are some issues in that particular bill that do affect the administration of the governance of pension plans and how the employee plans office gets funded. The IRS was an area of concern. I think people are still thinking through whether the overall restructuring has any effect on what kind of rules you will get for pension plans in the future, whether you can get guidance when you need it, that kind of thing. We've been dealing with the funding problems, and we hope that there's a delay so people have a chance to think through what this means.

In terms of things that could pop up, the Senate is particularly bad because their rules are not quite as tight about what can be added to the bills. You could get Senator Charles E. Grassley (R-IA), who has his provisions about requiring benefit statements every year out of a defined-benefit plan, which most of my people quit doing years ago because they were time consuming, expensive, and useless. Senator Carol Moseley-Braun (D-IL) still has a concern about requiring spousal consent for all distributions out of 401(k) plans, but the way the bill is drafted, it winds up being much broader than that.

What are the other pop-ups that might come out there?

Ms. Viener: There's Grassley's model alternative dispute resolution (ADR).

Ms. Gregory: Yes, the model ADR. You have model alternative dispute resolution. You have the court removal bill, which is sitting over in the House judiciary. We're going to meet with them next week, and from what we hear that particular provision is not likely to move forward at this time.

Ms. Viener: That's a perfect example of trying to kill something at committee level because that's something that we killed once before at committee level, and we're doing it again. Oftentimes, bills that get killed are like cats, they have nine or more lives. They come back and we have to kill them again. The bill with a limited scope audit exception has been an example of that, the Federal Courts improvement. This 66 and two-thirds joint and survivor annuity is another example. It just keeps popping up.

Ms. Gregory: Another interesting example is a bill to prohibit the use of Social Security numbers without the individual's permission.

Ms. Viener: Right.

Ms. Gregory: Can you imagine trying to administer an employee benefit plan where you have to go out and get permission to use the Social Security number for all of the participants and their spouses and children, say, in a health plan? Now even two-year-olds have to have Social Security numbers. This was a privacy issue that came out of some problems on the Internet and so forth, and it came out of the Social Security subcommittee with no concept of what it would do.

Ms. Viener: That's another example of trying to kill something at the very beginning. That meeting is tomorrow. It's a business network meeting, and it's also an example of an alliance with a nontraditional group. It's the people who do payroll.

Ms. Gregory: So the pension people are getting together with the payroll people, and the health people are getting together with the payroll people. So we're going to talk about that. On the positive side, we did pass a second group of amendments in the Taxpayer Relief Act of 1997. The tax bill that passed earlier this year had a nice package of pension amendments that are generally viewed as being very favorable and helpful. This was largely because of Senator Robert Gramm (D-FL). Senator David H. Pryor (D-AR) had been the Democratic chief proponent of this type of bill in the past, but he had retired. Gramm took this issue head on, put a coalition together, fostered a bipartisan coalition, and got Republican senators to go with him. They put a package of amendments together and got it in the bill. That is a classic example of what can happen.

We expect most of the activity over the next couple of months to be getting next year's bills ready. There's a lot of appetite for another pension bill next year. Congress discovered that they like passing these bills.

Ms. Viener: They get a lot of publicity for them. It's a hot topic with the public now, the baby-boomers' retirement. You can't pick up a magazine that doesn't have an article about how to save for your retirement.

Ms. Gregory: Yes.

Ms. Viener: It's everywhere, and it's a popular topic.

Ms. Gregory: And nobody wants to do Social Security yet.

Ms. Viener: Yes, everybody is stalling and saying I have to do Social Security. There are a couple of bills that we haven't mentioned that I think are going to be seriously considered next year, one of which is called SAFE—Secure Assets For Employees or something like that.

Ms. Gregory: The acronym is more important.

Ms. Viener: Yes. The concept is already in five bills out there. It's a simplified defined-benefit plan and it's supposed to be the counterpart to SIMPLE—SAFE. The reason why you're likely to see something like it in the law is that just as SIMPLE drove pension simplification, SAFE can drive the next round. On Capital Hill small business is very much the king and queen of the day. Much of the legislation is geared toward making their life better and stimulating the growth of defined-benefit plans in small businesses. That kind of legislation picked up.

The other one is called PROSE, which is also intended to reach out to those people who are not already covered. The idea is to withhold money by payroll deduction, pass it through a clearinghouse and direct it into accounts for people. They are talking about adding SAFE to PROSE, so I think those are two you might want to keep your eye on.

From the Floor: The question I have relates to opposing a bill. Suppose you're lining up opposition to a bill. You encounter a congressperson or a senator who says, "Well, I'd be happy to oppose this bill, but I'm favoring it right now. I'm really neutral about favoring it right now because I have traded off with this other congressman who's going to support a pork-barrel thing in my district. I'm going to support this thing that he supports, and he's supporting something that I want in my district. Have you encountered that from time to time?"

Ms. Gregory: Usually not that bluntly, but you'll get it.

From the Floor: I want to keep it simple.

Ms. Gregory: Keep in touch, keep letting them know that you still don't like it, and keep looking for votes. Don't waste your time, but keep in touch. Let them know you're still there. Let them know you still care. But the key is getting a certain number of votes. You don't have to get every vote. You have to get one vote more than a majority.

Ms. Dudley: I'm with Janice on not wasting too much time. But if a company that was a major constituent of that particular congressman popped up in my brain, and I knew they didn't like that they opposed the bill that I was opposing, I'd give them a call to see if they would call their congressman to pork-barrel against something that hurt another company.

Ms. Gregory: But when you call that company, tell them.

Ms. Dudley: Tell them what the drill is. And they may bag out on you.

From the Floor: A couple of quick questions. Who started that 66 and two-thirds survivor benefit?

Ms. Dudley: Senator Carol Moseley-Braun (D-IL) was the very first person to come up with that. I know it was introduced by Gejdensen, but I can't remember who generated that on the House side. It came out of a concern that Social Security has the two-thirds survivor annuity, and that got picked up by those staffers that passed it on to Moseley-Braun's staffers. But the idea came up in the context of Social Security and in discussions that there was a 50%, and 100% options are typical in plans. If you had to find the guilty party, it would really be committee staff or Moseley-Braun's staff. It wasn't them personally, but it popped up in discussions of Social Security.

Ms. Gregory: It came out at a symposium in the late 1980s or early 1990s on women and pensions. One of the issues they were looking at was a straight fact of life, that most of the elderly poor tend to be women living alone. One of the things that this symposium was looking at was various ways to get more money to these women, and that was one idea that I remember being in that list. I also remember that there was an idea on which there was no agreement among the parties present. Somebody put the idea forward, but the business people and the plan people back then didn't like it. They still don't like it.

From the Floor: Are they just proposing that it be offered, or that the employer pick up some of the tab for providing the coverage?

Ms. Gregory: They are just proposing that it be offered, but it would mean that every plan would have to be amended to include this offering.

From the Floor: No. It would be a pain, but it would be much worse if they had to pay for it.

Ms. Gregory: The people representing small plans had concerns that because you had to offer this one, it would wind up being the only thing that was offered, and it might not be appropriate for your workforce because the smaller plan would just go with the stripped-down version.

From the Floor: I'm constantly amazed at the revenue estimates. You said that was the Joint Tax Committee. They estimate that if you change the 150 salary cap to something then this will do that to revenue. Do they have a huge database of pension plans and actuarial numbers?

Ms. Gregory: No, they don't, but they do have a revenue estimator and a very large computer.

From the Floor: And they have actuaries?

Ms. Gregory: Yes, they have actuaries.

Ms. Dudley: They do have actuaries and they do conduct research. But the reason why the estimates are so hard to peg is that they also factor in behavior.

Ms. Gregory: I think it has changed somewhat over the years. I know when we passed the 420 transfer provision, which allows you to transfer excess pension assets to pay for retiree health benefits in certain circumstances, that was actually a revenue raiser, and part of the key to getting it passed was showing that it was raising enough revenue to be attractive. Some of the actuaries in my organization went out and fashioned. We got a lot of data from the DOL, put together a data pack, and took it to the Joint Tax Committee. They didn't take our data just cold. They looked at it and reviewed it. It eventually doubled their revenue estimate, so they will listen when you bring hard data in. They won't listen to arguments. They will listen to data. That's what they deal with.

From the Floor: I'm in health care and what we find more and more is legislation by what one might call anecdotes, 48-hour maternity stays, whatever it may be.

And Lynn, you talked about it, how you fight something that solves one problem, but where arguing against it doesn't seem like it's fashionable. That Social Security number thing sounded similar to that. Somebody must have gotten hurt.

Ms. Dudley: Right. And Color Tile is—I shouldn't say the company's name, but that's how it was known around here. That case drove diversification, and it was in all the newspapers. It was a very narrow case. It hadn't been adjudicated. Interestingly enough, many times these cases haven't even gone through the court system, but because the press has seized on it, it is ripe for a congressperson to take it to the Hill and respond to concerns of their constituents back home. As they introduce a bill, you have to come up with just as many anecdotes the other way. You have to say, for example, in the case of maternity leave, exactly what business organizations try to do, showing that it's not necessary to mandate that. You try to counter it as best you can, and that's really all you can do. Giving them facts is about all that you can do.

Ms. Gregory: You can try that, but in a deal like that one, let's face it. In an organization like mine, my members are not going to go out there and write letters saying we want to kick women out of the hospital early. They're just not going to do it. That's part of where Lynn and I come in because we can go out there and say that. What you wind up doing is talking about the dangers of piecemeal approaches.

When that fails, you try to get the bill drafted in a way that it does minimal damage. You try to give people some outs. You try to give people some windows. But there are some issues.

When I worked on the Hill, they wanted to deny payment of Social Security benefits to prisoners. My boss, who was chairperson of the Social Security subcommittee, held forth that the Social Security rules did not care whether you were a nice person or not. If you worked your 40 quarters, you earned your Social Security benefits. We even brought the Supreme Court case out on Alger Hiss, where his federal pension was preserved by the Supreme Court. He basically held forth and refused to do this for eight months.

Walking to work one day, I saw the *New York Daily News* and the headline was, "Son of Sam Gets Social Security Disability Benefits." And I just exclaimed, "Oh, that's it! Gone!" and I was right. As a matter of fact, it was a correct determination because the Son of Sam was, indeed, disabled. This was probably a very correct determination by the New York Social Security Disability Agency, and he had worked. He had earned the benefits. When I walked in the hearing room, there were eight members standing around my boss and he looked at it, and finally he

said, "Well, it would be all right with me, if you could just satisfy the staff," and pointed at me. That was the day that Social Security disability benefits were denied!

From the Floor: This is a comment and a question. In the dark ten years ago, when OBRA 87 was passed, the revenue estimates for defined-benefit plans were made up at three o'clock in the morning. They may have had a fancy computer to justify it, but they were all made up. I dare say if anybody dug them out to see if they really collected the money, they would find out they didn't collect it. Now that's my opinion.

Ms. Gregory: I would use that now in terms of, for example, the 150% current liability that was in there.

From the Floor: Yes. It's the classic.

Ms. Gregory: You could go back and look at that estimate and use that in your arguments now to get rid of the rest of it.

Ms. Dudley: I do think the estimators have changed some over the past even since I arrived in Washington in the early 1990s. It is a more open process now. The Joint Committee wasn't as open to receiving visitors from the public even a few years ago. I think there's been a drive towards being more open with where they came up with the numbers. And there's been some recognition that on their part and everybody involved that the numbers are sometimes made up.

From the Floor: Do you believe there's any basis for the numbers when they cut the salary limit to \$150,000? That's more recent. That's within your time frame.

Ms. Dudley: Yes. I would say that one's really questionable. I'm not saying it doesn't happen. I'm just saying it's better than it used to be. That's one where I think that they may have miscalculated as well. There's always a political slide to the numbers game as well. But there also were some things in that 150 compensation question that they didn't understand. There were some conceptual things about projections that they did not understand. And I think that's fairly well-documented now.

From the Floor: I've raised these questions because you said in glowing words how they had these wonderful computers and databases, so I thought I'd bring up these issues so that everybody in the room wouldn't think that the Joint Committee staff knows what they are doing when it comes to defined-benefit plans.

Ms. Dudley: I think even they would say that they don't know what they're doing on some issues, and that they've actually asked for help.

Ms. Gregory: I think there is a change because I've actually gotten phone calls where they have requested data.

From the Floor: Actually, that's my question. I was wondering what these revenue estimators are using for resources to justify their behavior estimates because you said that they do incorporate behavioral responses.

Ms. Gregory: I don't know the technical names of their databases. Do you know what they use?

Ms. Dudley: I don't know the name of them, but we could probably ask them for you. But they do use some social behavior indicators.

Ms. Gregory: They'll just make it up.

Ms. Dudley: They figure out how many people took money out of the plans when they lowered this, and then they take that and they figure out it will probably be this; you know, they multiply it times this growth in the people that will have pension plans, and they get it that way.

From the Floor: So they're doing it off databases rather than asking for the opinions of experts?

Ms. Dudley: Right.

Ms. Gregory: That's right. But they do have specific databases that they use. I'm not a statistician, so I don't know all the names.