CONFLICT AND COMPROMISE

How Congress Makes the Law

Ronald D. Elving
The First Months of Life

In 1981, the year she became pregnant, Lillian Garland was in her early twenties and in her fifth year as a receptionist at the headquarters of the California Federal Savings and Loan Association in downtown Los Angeles. Her supervisor asked repeatedly about when the baby was due and when Garland could be back at work. The baby girl came in February 1982 by caesarean section. After two months of convalescence under doctor’s orders, Garland returned to her office to be told her job had been given to the woman she herself had trained as her temporary replacement.

Garland’s experience was anything but unprecedented. For most of the twentieth century, American women who worked outside the home still expected to quit when they had children. Typically, they were expected to leave work as soon as they were visibly pregnant. But in the 1980s nearly half the nation’s workforce was composed of women. And more than half the nation’s women were working outside the home. And most of those women were, or still expected to be, mothers.

Garland herself had not thought that having a baby would mean giving up her job—much less that her situation would soon entangle the state, the courts and the Congress and become a turning point in labor relations and national social policy. But after weeks of looking for another
job, Garland took her story to the state Department of Fair Employment and Housing. Lawyers there told her that her job at Cal Fed should have been waiting for her when she returned. They said her employer had broken a 1978 state law requiring companies to allow not just two but four months of leave for a temporary disability related to pregnancy or childbirth.

Garland’s was just one of three hundred complaints filed against employers under that state law in 1982, but it was the one on which California business chose to make its stand. Buttressed by the Merchants and Manufacturing Association and the California Chamber of Commerce, Cal Fed filed a federal lawsuit challenging the leave law and defending a company’s right to set its own personnel policies and benefits.

Among those taking a sudden, personal interest in Lillian Garland in mid-1982 was Howard Berman, a Democratic state legislator from the San Fernando Valley suburbs northwest of Los Angeles. Berman had quickly become a highly visible player in the state Assembly of the 1970s, becoming majority floor leader in his second term at the age of thirty-three. Among his achievements had been the 1978 law that created the four-month disability leave for new mothers. When Cal Fed filed its suit, Berman was running for Congress and touting his leave law in his campaign. Naturally, he told reporters and activists that he believed his state statute would hold up in court. But in case, Berman would add, he hoped to go to Washington and write the right-to-leave into federal law.

The outcome of Berman’s congressional race was not much in doubt. He was running in a newly drawn district with borders tailored expressly for him by Phil Burton, the San Francisco congressman who mapped out such districts for the whole state and then persuaded the Democratic legislature and governor to approve them. Burton liked Berman and took care of him, drawing in lots of Berman’s Assembly district and including two registered Democrats for every registered Republican. Berman won the seat with 60 percent of the November vote.

In the same month, coincidentally, Lillian Garland went back to work—at Cal Fed. Reporters asked if she was not weakening her case by doing so. “I need an income,” she shrugged, “and they’re an okay company to work for.” Meanwhile, the case that pitted her against her past and present employer was still pending before a federal judge in Los Angeles.

After arriving on Capitol Hill, Berman found that his energy and close ties to Burton could get him off to another fast start. He was installed on the Democratic Steering and Policy Committee, the executive board for the majority party (Democrats continued to dominate the House in the early 1980s, despite having lost the Senate and the White House). Steering and Policy assigned Democratic members to committees, often making or breaking careers in the process. Berman himself was given seats on Foreign Affairs and Judiciary (not especially glamorous but solidly middle-rank). He was interested in proposed revisions to the copyright law—a legislative briar patch with appeal for a lawyer whose district was home to the motion picture and recording industries.

Berman was three months into his second year in Washington when a ruling came down in the Cal Fed case. On March 21, 1984, Federal District Judge Manuel L. Real declared Cal Fed had been right: Berman’s leave law violated federal statutes (including the Civil Rights Act of 1964) requiring equal treatment of men and women in the workplace because men could not avail themselves of maternity leave.

Many women activists were outraged. Not only had Real denied Garland’s complaint and erased Berman’s law, he had done it citing landmark laws that the movement regarded as its own. It bordered on blasphemy. Some even read the decision as part of a right-wing offensive, assuming Real to be a Reagan appointee (he had been named to the bench in 1966 by Lyndon B. Johnson).

Busy as Berman had been, Real’s decision was about to make him busier. The clamor reaching him from the West Coast included the unmistakable voice of Maxine Waters, a state assemblywoman who had cosponsored his bill back in 1978. An aggressive advocate for African-Americans and for women as well, Waters told Berman she was on her way to Washington to get action. If the Pregnancy Discrimination Act was the problem, she said, it needed to be rewritten. If the Civil Rights Act was the problem, someone ought to rewrite that law, too.

Berman already knew what he wanted to do. He wanted to introduce a bill in Congress that would not only reverse Real but also secure the same rights for every woman in the country that he had tried to win for women in California. There had to be a way to require employers to grant leaves for new mothers—with job protection and benefits—without being impaled on any of the legal monuments to equality of civil rights.

But Berman also knew he needed help. It was the sort of delicate operation that demanded a specialist, someone who knew the intricacies of these particular laws and their legislative histories. He made some phone calls. One was to Donna Lenhoff at the Women’s Legal Defense Fund. Lenhoff, then just thirty-three, had the title of associate director for legal policy and programs at the fund and the connections Berman was looking for.

She had come to Washington with her new law degree from Penn in
1976, put in two years of antitrust practice at the Justice Department and then become the first staff lawyer hired by the fund. Almost before her file boxes were unpacked, she had plunged into the battle over pregnancy benefits that led to the Pregnancy Discrimination Act of 1978. In a rush she met the full cast of activists and advocates: labor attorneys, law school teachers, feminist firebrands and members of Congress. And after the law was on the books, she became unofficial convener of what she called “the PDA alumnae association.”

Lenhoff knew about Real’s decision before Berman called. For years she had wanted a chance to revisit the legal questions arising from pregnancy, maternity and parenting. But the elections of 1978 and 1980, especially Ronald Reagan’s ascension to the White House, had chilled the climate for feminist initiatives. It was a time for consolidating, defending laws passed earlier and applying them where possible. Lenhoff was just then working on a civil case against Ridgwell’s, a catering service fashionable among Reagan administration hostesses (it was alleged to be paying women employees a dollar less per hour than men).

She told Berman she would meet with him. Then she started making calls. One of the first was to Wendy Williams, a law professor at Georgetown Law Center who had promoted the equal-treatment thinking central to the pregnancy discrimination law. Another call was to Susan Deller Ross, also at Georgetown Law, who had written a brief on behalf of equal treatment in a maternity leave case in Montana the previous year. In minutes, the core of a legislative drafting committee would be in place.

Berman’s interest had brought these women lawyers together. But each of them was soon thinking the same thing: Berman did not need to be helped, he needed to be stopped. They saw the Californian rushing into an old and almost inevitable trap. Nearly a century earlier, states such as Wisconsin and Oregon had tried to outlaw exploitation of women workers. Some early feminists approved, others argued that limiting women’s work hours merely codified the double standard and discouraged the hiring of women. Why not limit everyone’s hours, instead?

In Williams’s mind, laws that distinguished between the sexes were—eventually, perhaps inevitably—turned around and used against women. She believed that “protective” laws, even those written with the best of intentions on behalf of pregnant women and new mothers, were no different. This argument had deep roots. After suffrage had been won in 1920, the women’s movement of that era split down the middle over the special-versus-equal conflict. Alice Paul, the National Woman’s Party leader, managed to have a simple Equal Rights Amendment introduced in Congress in 1923. The next day it was denounced by the leaders of seven major women’s rights organizations, including the League of Women Voters and the settlement-house movement of Jane Addams. They saw it as more important to seek special protection for the defenseless than to pursue utopian notions of gender neutrality. Congress looked at this schism, shrugged and went on to other subjects.

The same conflict had been the context for the Pregnancy Discrimination Act in 1978 and for the Montana case in 1983. Montana’s legislature had called for “reasonable leaves” for new mothers. A state court found this discriminatory, and when the case went to the Montana Supreme Court some women’s organizations defended special treatment. Others joined Georgetown’s Ross in upholding equal treatment. The League of Women Voters’ Montana chapter filed a brief on one side and its national board filed on the other (both were subsequently withdrawn).

Lenhoff was convinced that special treatment would prove a dead end for leave policies in the 1980s. But she did not want to be isolated as Paul had been, and she was resolved to cooperate with Berman and his West Coast colleagues. At the same time, however, she was just as resolved to talk them out of the special-treatment approach they seemed so determined to take.

Only a few days after Real’s Cal Fed decision Lenhoff went to see Berman for the first time. His office suite was located in the Longworth Building, the dingy middle child of the three House office buildings. Waiting for Lenhoff were the congressman and three women: a staff member, Assemblywoman Maxine Waters and Berman’s wife, Janis Schwartz. Lenhoff listened sympathetically while the Californians recalled how they had fought for their bill in Sacramento in 1978 (just as Lenhoff and her allies were fighting for the Pregnancy Discrimination Act in Washington). The California law had been enacted first, by a month. Waters, a woman of firm and insistent conviction, declared that someone in Congress simply had to “undo” Real’s decision.

When it was Lenhoff’s turn to talk, she said she understood how they all felt. Then she explained why she and her fellow feminist lawyers had chosen the route they had in 1978. Their principal target had been companies that offered benefits to employees who were injured or taken ill but denied those same benefits to women whose disability had to do with a pregnancy.

It had all begun, in a sense, with the Civil Rights Act of 1964. Although it is remembered primarily for banning racial discrimination, this milestone legislation also banned sex discrimination. It did so because a stratagem on the part of southern senators backfired. Hoping it would kill the
bill, the Dixiecrats had added sex to the legislative language. As it turned out, their effort came too late in the debate to make a difference. The bill passed, and the sex discrimination language passed with it.

Thereafter, the Equal Employment Opportunity Commission was tasked with writing enforcement rules under Title VII of the act. The commission equivocated for years over pregnancy benefits, reversing field more than once. All the while the number of women in the workforce was increasing dramatically. In 1972 the commission finally decided that companies had to treat pregnancy much like other temporary conditions.

That rule was upheld by the federal courts until 1976, when the U.S. Supreme Court abruptly set a new course. The justices ruled that denying temporary disability benefits for pregnancy and childbirth did not violate the 1964 act, after all. That decision, in the case of General Electric v. Gilbert, led directly to the passage of the Pregnancy Discrimination Act in 1978.

Lenhoff readily agreed that the 1978 law had not gone far enough. Companies with fewer than fifteen employees were exempt (a concession to the highly effective lobbying of the small-business community). And the law’s equal-treatment principle did nothing for those whose employers provided no employee benefits at all for either sex.

But how could those inadequacies best be remedied? Lenhoff argued that an attempt to amend the Pregnancy Discrimination Act would reopen the special-versus-equal debate and probably pry open the 1964 Civil Rights Act as well. Lenhoff reminded them how such legislative open-heart surgery could have unintended consequences. All kinds of changes might be made in the law, especially given the negotiations that would have to take place with the Republican majority in the Senate and the Reagan administration.

Moreover, Lenhoff argued, a law protecting maternity alone might not be the best policy. It might be protective, she said, but it would be the opposite of empowering. And in the long run, it could prove counterproductive for women.

As an alternative, Lenhoff said, Cal Fed should be fought through the appeals process (presumably to the U.S. Supreme Court), on the simple and obvious argument that Real had misread and misapplied Title VII. As the appeal progressed, publicity and interest generated by the case could be used to promote a new bill aimed not at maternity leaves alone but at a broad and ambitious array of employee rights all rooted in the principle of equal treatment.

Here Lenhoff reached the core of her argument. A leave bill had to be written so that all workers could benefit. Leaves would have to be justified on the basis of something more common than motherhood, or even parenthood. It had to be something anyone might face, such as a temporary disability or medical necessity within the family.

There would be no violation of the equal-treatment standards of 1964 and 1978 if all employees had the right to time off for temporary, non-work-related disabilities of their own and for family situations of a similar nature. Covered situations would include the care of sick children, as well as complications of pregnancy or childbirth.

Berman listened to the whole explanation as a lawyer, a legislator and a politician. And while he understood all the facets and nuances, he was struck by the practical challenge of legislating leaves—even unpaid ones—for such a wide range of temporary problems unrelated to work. He wondered how it could pass Congress and be signed by any president, let alone Ronald Reagan. Would it not be easier to do something federal for pregnancy only?

Easier, yes, for the short run, Lenhoff said. But it would be problem-atic in the long run because skimming off the motherhood component now would make it much harder to achieve a broadscale equal-treatment bill later on. Berman was impressed, but still skeptical. Show me something in writing, he said, and Lenhoff assured him she would.

Lenhoff returned to her office at the fund, which in those days was over the Second Story secondhand bookshop at 20th and P Streets near Dupont Circle. She sat down at her desk and began typing an outline for a rough draft.

Real’s decision was not the only impetus to action on family issues that spring on Capitol Hill. Democratic Congressman George Miller, an aggressive liberal from California’s Bay Area, had scheduled an April hearing on child care before the Select Committee on Children, Youth and Families, an ad hoc panel the Democratic leadership had created as an outlet for Miller’s restless interest in social issues.

It had been years since concerns affecting children and young families had enjoyed much currency in Congress. In the late 1970s, Senator Alan Cranston of California had held Senate hearings on day care centers, but without legislative effect. Since 1980 the agenda had been so dominated by taxes, budget cuts, foreign policy and the defense buildup that a hearing devoted to talk about babies seemed unimaginable.

Nonetheless, at 9:38 on the morning of April 4, Miller swung his chair
toward the audience in Room 2222 in the Rayburn Office Building. It was a smallish hearing room, more in keeping with the status of Miller’s newborn select committee than with his aspirations for it. But if it lacked the grand dais and oil paintings of the big committee rooms, its size enabled the audience of a hundred or more to create a standing-room-only sense of popular demand. Several of Miller’s colleagues had already joined him, but he scowled beneath his brush moustache at the empty seats to his left and right, each awaiting a missing member. Then he rapped his gavel, pulled his microphone close and opened a new front in his personal war against Ronald Reagan and the predominant politics of his time.

Broad-shouldered, blunt and impatient with disagreement, Miller was not one to understate his business. He immediately announced that the hearings to be held that day and around the country in future weeks would “raise the level of national debate” and “move public policy on child care from the 1950s to the 1980s.” Earnestly he added: “The care of millions of children is at stake.”

In an era of unabashed conservatism, Miller was an unreconstructed liberal. He believed government had not only a rightful role but a leading one. He made no apologies for the New Deal of the 1930s, the Great Society of the 1960s or the social reforms of the 1970s—some of which he had helped enact. Yet, having survived into the far different, free-market 1980s, the onetime high-school football star found himself almost constantly on defense.

Miller had come to public life naturally as the son of a longtime state legislator (for whom a Bay Area bridge was named) and as an undergraduate on the highly political campus of San Francisco State in the 1960s. He had run for the state Senate even before finishing law school at Berkeley, and he had been elected to Congress before he was thirty. As a freshman member in the “Watergate baby” class of 1974, he had helped depose senior committee chairmen and repeal antiquated caucus rules. But less than a decade later, still not forty, he had found his career and his causes becalmed. He persuaded Steering and Policy to give him a seat on the Budget Committee, where he could be part of the fiscal and philosophic fray. But he found the budget fight too often a rearguard action; and to be George Miller was to yearn for the vanguard.

Miller employed his powers of insistence to persuade the Democratic leadership to authorize an entirely new select committee on the problems of young people and families. Like the other, older select committees, this one would have no authority to generate legislation, amend it or bring it to the House floor for consideration. But it would have a half million dollars in budget and a mandate to delve into social problems from child care and nutrition to recreation and crime, making recommendations along the way. And it would fix the imprimitur of Congress on whatever probings and presentations might please its new chairman. The chairman, of course, would be Miller.

The committee, which some Hill staff called “Select Kids,” soon loosed its staff of young female lawyers and graduate students to investigate the cost, quality and availability of day care in America. And, as all committee staff must, they planned a series of hearings. Given the wide horizon implied by the committee’s name, they chose to concentrate on child care—a subject of interest to baby-boomer parents and a good bet to attract attention from the national media.

As the hearings got under way on that April morning, the staff and chairman had reason to smile. For the first time Miller was converting a personal agenda into a committee docket. And right here, on his own stage, Miller would have a supporting cast that provided not only political credibility but political cover as well. Under the benign penumbra of kids and families, Miller could enlist and involve members with widely divergent views, some of whom would otherwise avoid any association with him or his ideas. This was his chance to change the terms of debate, to cast the spending programs he supported in terms of children and families rather than welfare or bureaucracy.

His own opening statement was heavy on rhetorical questions. Could anyone have predicted that by 1984 more than 40 percent of the workforce would be female? And would anyone have believed that more than 40 percent of American women with children under the age of one would be in that workforce? “The need for child care today cuts across the entire spectrum of economic and social lines,” declared the chairman. “And as a result child care is a less partisan issue than it has been in the past.”

To prove his point, Miller was eager to introduce the man sitting to his left, Dan Marriott, an insurance underwriter from Salt Lake City and that city’s representative in Congress, whom the Republicans had named the subcommittee’s top-ranking minority member. A lifelong Utahn and a Mormon with four children, Marriott had an interest in family issues quite as passionate, in its own way, as Miller’s. Conservative as his state, Marriott was nonetheless enthusiastic about the hearings at hand. When Miller handed off to him on this Wednesday morning, Marriott talked a lot about getting “the private sector” involved. But he also thanked Miller
warmly "for making child care a major priority" and said he looked forward "to the solutions that come out of these hearings."

Next up was Pat Schroeder, a congresswoman who at forty-four had served nearly a dozen years representing Denver and become the senior Democratic woman in Congress. She was, for the moment, also the best known (a distinction she would lose in a few months to Geraldine Ferraro, a congresswoman from New York whom the Democrats would nominate for vice president).

On this particular day, Schroeder had several reasons to chafe at her lesser status. Better known than Miller, she was also older, more senior in the House, more senior in committee standing and, as cochair of the Congressional Caucus for Women's Issues, more involved in women's causes. But select committees are special animals, and this one belonged to Miller. All the same, Schroeder immediately displayed her flair for the personal dimension.

"I want to say," she said, "that the child care issue has deep meaning for me. While we can cite statistics on the need, I remember the years when I had two very, very young children here in the Congress. People would ask me what my biggest fear was. I knew I was supposed to say something very serious—like, would peace be maintained?—but my greatest fear was that I would lose day care."

Schroeder had borne her own children under the old rules. Her first arrived in 1966, when she was just two years out of Harvard Law School and working as a field attorney in Denver for the National Labor Relations Board. Years later she recalled that she did not even inquire about a pregnancy leave policy at the time, presuming the policy was: "You get pregnant, you leave." Her husband was a successful attorney, so they could afford for her to stay home. Besides, as she remembered years later, she thought it better "if you could manage to be with a child the first few months after it was born."

Schroeder did not raise the issue of the "first few months" that morning. But as it turned out, the first witness to testify before the committee would do it for her. That witness was Sheila Kamerman, a professor in the School of Social Work at Columbia University and a fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford. She was typical of the feature witnesses called to congressional hearings: a tenured academic whose publications and credentials gleamed with prestige. Such experts lend an air of scientific authority, and they are usually given the floor right after the last member present has finished talking (including guest colleagues who are not members of the committee but ask to speak).

Witnesses are rarely prepared for the severe abbreviation of their contribution. Some spend weeks preparing testimony, imagining themselves holding forth for hours before rapt members of Congress. In practice, much of every hearing is consumed by the committee members, who are sometimes hard to cut off. A witness importuned and flattered by staff into crossing the continent often confronts an impatient chairman asking for a five-minute summary (with the obligatory assurance that the full written testimony will be included "in the record").

But Kamerman used her allotted minutes efficiently, touching nearly every argument that would be heard supporting child care and parental leaves over the next several years of debate. And she surprised some of the members and some of the audience when she reached her recommendations. Her first one did not deal with day care or facilitating mothers' participation in the workforce at all. It spoke of keeping mothers home to care for their children.

Alluding to the high percentage of working mothers with infant children, she urged that "any policy consideration given to infant care pay attention to the importance of... parenting leaves from work, both unpaid and paid leaves."

Seated beside Kamerman at the witness table, facing the committee, was the equally distinguished Edward Zigler, a psychology professor who was also director of Yale University's Bush Center in Child Development and Social Policy. Shortly after the microphone was passed to him, he returned to the subject of infant care in the home. Zigler said he saw no problem with "supplemental child care" outside the home for toddlers and older children, but that "rather heated" debate surrounded the issue of day care for infants. "Even if high-quality infant care were affordable," he said, many parents and professionals would still be concerned about the potential effects of separating parents and infants in the first few weeks and months of life.

Some of the members looked at one another. Had he really said parents? Not just mothers? But in the next moment Zigler used the same word in seconding Kamerman's remedy: He liked the idea of parental leaves so that at least one parent "could be at home to care for a newborn." He spoke very much as if either parent would do.

"I would also like to suggest that the federal government begin to investigate the feasibility of a policy of paid infant-care leaves, commonplace in Europe and Canada." In that sentence Zigler was not only raising the economic ante enormously, he was also introducing a second discomfiting idea that would be heard often in the years to come: the idea that workplace customs and conditions in other countries might actually
be superior to those in the United States. The members on the dais seemed to be listening intently.

When the first panel of witnesses had finished, Miller pronounced the material at hand “overwhelming” and noted with pleasure that members had been arriving on the dais in time to hear it.

But Miller’s tone suggested he had not expected home care for infants to be this salient in the testimony. When he thought about child care, he thought about mothers at work and children in day care. His concern was for overcrowded day-care centers and working-class families unable to find or afford care. The direction taken by the leadoff witnesses might prompt the committee Republicans to take off on a tangent.

The first to do so was Dan Coats, an earnest second-term Republican from Indiana who had succeeded Dan Quayle in the House when Quayle became a senator. Coats had worked for Quayle and had an even more conservative reputation on social issues. Among the most intense opponents of abortion in Congress, Coats had been highly attentive that morning, especially at the mention of newborns. “That period when the mother and child needed most to be together,” he asked Zigler, “was that six months or a full year?”

Zigler said the consensus would favor a full year, but that “if you’re going to start somewhere, the first six months is where to start.” Coats bore down, asking whether research had found adverse effects when children started day care at six months rather than a year. Zigler said he thought there might be some. Coats wanted to know whether Zigler would recommend the full year at home where “economically feasible.” Zigler said he would.

Coats then began to question the notion of economic necessity. He wondered aloud how many women were really working to put bread on the table and how many to put “a new VCR under the Christmas tree.”

The hearing moved on to the funding of Head Start and the ways the tax code might be used to encourage parents to stay home. But the news had been made at the outset. Zigler and Kamerman had brought to congressional consciousness an issue that had yet to appear there. Academic research in their field had been going on for years, but on the Hill it was as fresh as the April air outdoors.

It was the naturally insistent way that Kamerman offered her first recommendation that made it sound so acceptable. Suddenly, the idea of requiring employers to grant leave—perhaps even paid leave someday—was more than an academic hypothesis. While still far from being a bill, it was for the moment at least a proposal before Congress.

Miller’s hearing had opened a window on Capitol Hill to a field of promise. Here was a new direction for social activism that even the most outspoken conservatives might hesitate to denounce. The idea of keeping parents with their children had scientific underpinnings, a research base and a wealth of anecdotal supporting evidence. Here was a chance for liberals to talk not about individual rights but about family needs, not about abortion rights but about parenthood, not about comparable worth but about keeping one’s job. Here was a strategy for social legislation in the 1980s.

And, thanks to the decision of a federal judge in California just two weeks earlier, it had a built-in sense of urgency.

While Miller was absorbing what he had heard in April and planning field trips to hear more over the summer, Lenhoff and her boss at the Women’s Legal Defense Fund, Judith Lichtman, began a series of meetings of their own. Partly to help Berman and partly to prepare for a possible confrontation with him, Lenhoff and Lichtman enlisted like-minded lawyers and activists in a working group that met at their offices near Dupont Circle.

Among the first to join were Georgetown law professors Wendy Williams and Susan Deller Ross and Sherry Cassedy, a recent Georgetown Law graduate who was counsel for the Congressional Caucus for Women’s Issues. Beyond that, Lenhoff and Lichtman wanted diversity of background, and they found it. They brought women from the Association of Junior Leagues, the Coal Employment Project (an arm of the United Mine Workers), the Children’s Defense Fund and even the U.S. Catholic Conference.

In part because they were preselected, the women in the group arrived quickly at a shared understanding of the bill they wanted to see. Cassedy and Anne Radigan, executive director of Schroeder’s caucus, were soon circulating a draft outline for a bill based on the group’s discussions. It required all employers in interstate commerce to offer leave to any employee temporarily unable to work due to physical disability. The leave could be as long as twenty-six weeks—half a year—but it did not provide any compensation other than a continuation of seniority and benefits.

The leave benefit would be explicitly extended to parents of newborn or newly adopted children. There was also a new minimum of paid sick leave (ten days per year) for an employee’s own illnesses (other than work-related injury) or for those of an employee’s dependents. The outline did not exempt small businesses.
The one issue on which consensus did not readily develop was the issue of pay. Who could afford to take six months off with no money coming in? Certainly not single mothers or two-wage families below the median income. The European models all offered at least partial compensation, whether the money came from the employer or from government insurance.

But the women in the drafting group had been through the legislative mill on Capitol Hill before. They knew a new federal entitlement would have been a hard sell even in better times, let alone when Congress was becoming obsessed with budget deficits. Neither would Congress readily accede to stick private business with the bill in an era of anxiety over "economic competitiveness."

So while the intention had been to write a model bill rather than a modest one, the drafting group reluctantly chose not to press for paid leave. With that decision taken, the coterie was beginning to become a coalition. They agreed for the moment to call their work in progress the Family Employment Security Act, and Lenhoff began addressing her memos to the FESA Group.

Lenhoff had been operating under the hopeful presumption that her March meeting with Berman had bought her some time, but he was still moving on his own. Berman had looked at Lenhoff's draft of an equal-treatment bill based on universal rights to disability leave, but he had remained unconverted and gone looking for more help. He had found Fred Feinstein, a lean, unprepossessing lawyer in his mid-thirties, who had once worked for Congressman Phil Burton, the powerful mentor to Berman, Miller and other House liberals (Burton had died suddenly in 1983). Feinstein had become the chief counsel and staff director for the Subcommittee on Labor-Management Relations of the House Committee on Education and Labor. Berman knew any bill mandating employee leaves would go straight to Ed and Labor, and to Labor-Management Relations, where Feinstein would have much to do with whatever happened next.

Berman told Feinstein he wanted to see some action. He said he understood why some of the national women's groups were hesitant to tinker with existing laws, but he also thought their broader bill was reaching too far. Maybe someday, he thought, but not in the mid-1980s. As for right now, Berman said, if we had a leave bill that just covered birth and adoption we could pass it tomorrow; we could make the case because all these people claimed to be pro-family and pro-life. If we wrote it right and pitched it right we could get it passed and signed into law. All the family-oriented social conservatives Miller had on his select committee would have to vote for anything so family friendly. And if they did, the White House might just be brought along.

The next step was to get a formal draft from the Office of the Legislative Counsel. Even the simplest bill must be rendered into legislative language to be officially introduced. This includes references to previous laws and citations of legal authority and empowerment. A simple change in the tariff applied to foreign oil, for example, can mean multiple amendments to the trade-governing Smoot-Hawley Act of 1930 and line-by-line alterations in the accompanying tariff schedules.

So, although members of Congress are often lawyers themselves, they delegate the legal research and drafting of their bills to the Office of Legislative Counsel, whose dozens of lawyers occupy a warren of offices in the Cannon Office Building (thoughtfully remote from the bustle of busier hallways and just a short jaunt through a tunnel from the Library of Congress).

Berman sent his ideas to Legislative Counsel in May. Meanwhile, Radigan and Cassedy were circulating a "time-line for action," which spelled out the immediate objectives, to others in the drafting group. They needed to get Schroeder and her caucus cochair, the Republican Olympia Snowe of Maine, to sign off on FESA. Then they needed to get Schroeder to press their case with Berman. They also wanted to get Congressman Don Edwards, the dean of the California delegation and a champion of civil liberties, to buttonhole Berman as well. They also hoped to find a prominent California feminist "to provide Berman some cover" if he dropped his own approach and supported the coalition's. Their "dream candidate" would be a state legislator or a celebrity, or perhaps a significant contributor to Berman's campaigns.

But all this would take time. And it would mean getting members together to talk over their differing aims and notions of how to proceed. By the end of May, Berman had his second working draft back from Legislative Counsel and seemed increasingly eager to act. He did agree, however, to see Lenhoff and her FESA colleagues on June 11.

There were too many people to squeeze into Berman's office in Longworth, and Berman lacked the seniority or committee standing to command meeting rooms on short notice. So they found themselves crowded into one of the nameless, windowless rooms in the bomb-shelter basement of the Rayburn Office Building. Berman and his staff were joined by staff from several other Hill offices. Feinstein was there, as were
Cassedy and Radigan. Berman had also brought along Alan Reuther of the United Auto Workers and a woman from the California Attorney General’s Office.

But Lenhoff had brought an impressive contingent as well: lawyers from the National Women’s Law Center and the League of Women Voters, not to mention the original Williams-Ross combination and representatives from the National Organization for Women, the National Women’s Political Caucus, the American Civil Liberties Union and others.

The meeting began in midafternoon. Berman made his case for doing what could be done in the here and now. “We can make a case to all the people who claim to be pro-family and pro-life,” he said. On that basis, the bill might be passed and even signed by Reagan. The group discussed the option of two bills, one to do what Berman wanted and one to do everything else that the national women’s groups wanted. But no one seemed to think the latter bill would have much of a future once the first bill had been passed.

It soon became apparent that some of the congressional staff, including the caucus women, liked the broad approach as much as Lenhoff’s group of activists. If so ambitious a bill could not be passed in the foreseeable future, it might at least have political value as a defining issue in some future campaign. And if that left the short-term situation in California unresolved, so be it. The Cal Fed case was being appealed. As the meeting wore on, there did not seem to be so many Californians in the conversation.

In the end, Berman agreed to back off on his own bill. He even agreed to endorse whatever came out of Lenhoff’s group, a coalition he sensed was firming up before his eyes. But at the same time, he said, if the bill was not going to be modeled on his California law, perhaps the coalition would want someone else to carry it in the House. Talk turned to George Miller, among other likely candidates, before the meeting broke up.

**TWO DAYS AFTER LABOR DAY 1984** Miller was rapping his gavel again to reconvene Select Children. It was five months exactly since his first hearing. He had spent his summer witnessing history (the Democrats had come to San Francisco to nominate the first man-and-woman national ticket in major-party history) and holding a series of field hearings on child care in California, Texas and Connecticut. These hearings, Miller intoned, would conclude “the most in-depth congressional look at child care in a decade.”

As if to reprove any who doubted the importance of that topic, Miller cited three articles on child care that had appeared in *The New York Times* the previous weekend and a cover story on the subject in the current issue of *Newsweek*. Parents working outside the home had “changed family life dramatically,” Miller said. Economic and social changes abroad in the workforce were nothing short of “profound.”

For the renewal of his hearings, Miller had secured the more honorific setting of the House Armed Services Committee’s main hearing room in the Rayburn. But Miller was disappointed at the attendance of his colleagues at the hearing. Although the official record would later show ten members in attendance (out of the appointed twenty-five), the session opened with just Miller and two other members on the dais.

After plowing through his opening statement, Miller turned to Republican Dan Coats, whom he introduced as the “senior minority member currently present.” Coats offered a wry correction: He was “the only minority member currently present.”

Miller’s staff had lined up scores of witnesses for that Wednesday and Thursday, covering every aspect of child care from psychology to tax policy. The question of work leaves would not be as prominent in these sessions as in April, but it would reappear in Miller’s final recommendations, which would call for “personnel policies . . . which do not penalize parents for giving birth or spending an acceptable period at home with their infants.”

Carefully worded to be gender-neutral and open-ended, the recommendation would also be respectful of business and supportive of family—enough so that Coats, Marriott and other Republicans on Select Children would feel comfortable signing off on it, just as Berman had predicted.

That achievement might have established Miller as the clear choice to introduce the bill providing for family and medical leave. Lenhoff, Lichtman and their working group were delighted with his attention to the issue, particularly the strongly worded recommendation from his report and the suggestion that he might hold hearings specifically on parental leave in the next session. But they were far from convinced that they had found their legislative champion.

The first problem was that Miller still preferred putting in a bill along the quick-and-narrow lines that Berman had proposed. The two were allies. They had a natural bridge between them in Congressman Henry Waxman of Los Angeles. Waxman had been politically associated with Berman since their days together at UCLA and with Miller since their
days together as freshmen members in the renowned "Watergate babies" class of 1974.

Miller was also distracted by other legislative interests. He had been appealing because of his seat on the Education and Labor Committee, the House panel where parental leave (or any bill telling employers how to manage employee benefits) would surely be referred. He was even the chairman of the Subcommittee on Labor Standards, giving him the opportunity to schedule hearings on the bill on his own authority. But now, as the 1984 session was waning, Miller had decided to give up his subcommittee chairmanship and his seat on Education and Labor so as to be in line for a different subcommittee chairmanship on a different committee: Interior and Insular Affairs.

In this new job Miller would have vastly increased influence over water in the West, including California, an issue in which his interest approached obsession. He had been planning and positioning himself for a shot at this subcommittee chair for two years, and had devised his select committee largely to enable him to deal in children's issues even if he chose to leave Education and Labor. What was all well and good for Miller, however, was not so satisfactory for Lenhoff, Lichtman and their working group.

Before the 1984 session drew to a close in October, Berman and Miller had talked, and Miller and Schroeder had talked. Members of Congress often do business in impromptu fashion, in hallways and on elevators. They confer while milling in the aisles of the House chamber or congregating at the railing in the rear. And while nothing was decided in a formal way, the Californians seemed to be backing off, ceding the field to the Congressional Caucus for Women's Issues and, therefore, to Schroeder.

It was far too late to do a bill that year. Adjournment usually comes early in election years so that members seeking reelection can go home and campaign. It was enough that the general outline of the proposal had been glimpsed and the field of potential sponsors narrowed. Now, it seemed, a timely effort could begin with the new Congress, the 99th Congress, in January 1985.

JANUARY 21, 1985, WAS A MIDWINTER Monday at the midpoint of a decade. Arctic air had settled over much of the nation, but it seemed especially cold in the capital, with a subzero temperature at dawn and a windchill of thirty below. Washington is accustomed to indignities of heat, enduring its summer with sodden, southern resolve. But it collapses in the cold. Plumes of white steam rise from its buildings to hang in the thin blue air like so many flags of surrender.

The record-shattering weather came at a conspicuous time. It disrupted the second inauguration of Ronald Wilson Reagan, a ceremony to be performed outdoors on the West Front of the Capitol before an expected 140,000 spectators. The swearing-in was held instead in the Rotunda, an immense interior space that for all its exceptional grandeur had never been used for this purpose before. While the expectant throng would be turned away, there was room enough for the families, the cabinet, the Supreme Court and all 100 senators and 435 members of the House of Representatives—a gathering as weighty, in its way, as the nine-million-pound dome that stood overhead.

Members of Congress attend inaugurations with varying degrees of enthusiasm. On this occasion, many were loath to cross the street from their office buildings on Independence or Constitution Avenue. They
Clay and Schroeder had been around for the heady days that followed Republican presidential landslides in 1984, 1980 and 1972 (Clay had even been around for the first Nixon inauguration in 1969). And anyone could see that Bush’s approval numbers were wildly inflated by the highly successful and brief war. Just a few months earlier, after the rejection of the budget summit agreement in October 1990, Bush’s overall approval had been barely above 50 percent. As his poll numbers inevitably drifted back to earth, the trend would create an impression of waning popularity.

For their part, Dodd, Marge Roukema and a few other congenital optimists saw Bush’s sudden popularity as an opportunity. Perhaps Bush would be too strong to be challenged, on family leave or any other issue. But if so, he might just be secure enough to change his mind and sign a bill he previously had vetoed. This line of reasoning had appeal for those who believed that Bush would have preferred to sign HR 770 all along. If Bush’s second term was now assured—as it surely appeared to be—he could now set aside political fears and laugh at political pressures. All that was needed was to persuade this new, omnipotent president to look kindly upon family leave—perhaps by fashioning a bill just different enough to justify a fresh look.

To that end, Dodd had his staff team of Rich Tarplin and Jackie Ruff talking constantly to other Senate staff and keeping close contact with Donna Lenhoff, Michelle Pollak and other key people within the support coalition. Dodd had already renewed his door-to-door negotiations with Republicans he had talked to in the previous Congress when he was recruiting votes for cloture. One of them was Kit Bond, the first-term senator from Missouri who had voted against the bill in 1988 but had shown real interest since. When Dodd’s staff sent over memos about possible amendments, Bond’s staff hit them back over the net. Dodd passed the word to Marge Roukema, who called Bond and gave him a sales talk on family leave. Pollak, who had worked with the Missourian before, told him the issue would be good for him. She had regular lunches with his legislative director, Julie Dammann, and other staff, pitching them her “every Republican needs an issue on which he’s not a Republican” line.

Despite the war and the competition from other legislative matters, the House committees moved HR 2 with the dispatch befitting a bill number in single digits. Pat Williams held what would serve as the one full-dress hearing in the House in the 102nd Congress, in the Labor-Management Relations Subcommittee on February 28. The arguments aired were more than familiar for all but the newest members of the subcommittee. The most notable word spoken at the proceedings came from Secretary of Labor Martin, who sat down at the witness table and immediately said: “Veto.” Despite her earlier support for the bill Martin was now on the Bush team, and she made it clear the White House was not waverling.

The following week, on March 7 (the day after the joint session heard Bush announce victory in the Gulf War), Williams engineered a largely pro forma markup in the subcommittee. Its fifteen Democrats were solid, and they were joined by ranking Republican Roukema, who had a nice line in the debate: “This is not about working families getting rich, it’s about working families getting by.”

The only amendment discussed was offered by Congressman Tom Petri, a Republican from Wisconsin who had been visible on the edges of the family leave debate for several years. Petri, like his in-state colleague Steve Gunderson, had spoken fondly of “giving people leave” but rejected sternly the federal mandate. If some form of government regulation was desirable, Petri said, why not let the states set their own standards? To that end, Petri offered a rough approximation of the law just enacted in his own state (with the signature of a conservative Republican governor). The Wisconsin statute required six weeks for birth or adoption but just two weeks for serious illness. The amendment did not provide for elder or spousal care leaves. Petri did not call for a recorded vote on his amendment, which died on a voice vote. But a marker of a kind had been laid down, and staff and members alike took notice. More than a few of those who had opposed family leave in 1990 had given thought to adjusting their position in the 102nd Congress. And among those who were casting about for something to be for, the Petri substitute offered a starting point.

Over in the Post Office Committee, now the bailiwick of full committee chair Bill Clay, the relevant subcommittee did its work on March 12 and the full committee added its imprimatur the following day. For federal workers, the leave periods in the bill would still be eighteen weeks (for family) and twenty-six weeks for employees’ own medical leaves. The subcommittee had also approved an amendment restoring spousal care to the situations enumerated under the bill. Although it was an essential article of the bill to the American Association of Retired Persons, spousal care had been inexplicably missing in the version of HR 2 that emerged from the Legislative Counsel and found its way into the hopper on January 3.
On March 20, one week after the Post Office action, the handiwork of Williams's subcommittee was taken up by Chairman Ford at the full Ed and Labor Committee. Unlike in past years, when committee Republicans felt duty-bound to contest the markup, this round was relatively calm. Roukema warned her party colleagues not to oppose "a distinguished pro-family bill" and ranking Republican Bill Goodling of Pennsylvania delivered the veto threat that was now expected at all proceedings on the bill. But this time there was no flurry of amendments from Steve Bartlett, who had resigned from Congress earlier that month to run for mayor of Dallas. His former coagitator, Dick Armey, did not renew the old confrontation, and HR 2 was reported by the full committee on a voice vote.

Another reason for the Republicans to accede to a voice vote was that a recorded vote would have been 28 to 11 in favor of the bill, well beyond two-thirds. Roukema now had two Republican colleagues on the full committee who were willing to vote with her for family leave. One was Susan Molinari, a Republican who had succeeded her father in the Staten Island seat in time to vote for family leave in 1990, and the other was yet another Wisconsin Republican, Scott Klug, who had joined the committee as a freshman in the 102nd Congress.

It is unusual for any committee to have more than one Republican from a given state, and Klug was the third from Wisconsin on Ed and Labor. But it was not always easy for the Republicans' Committee on Committees to fill its fourteen seats on this particular panel, so anyone asking for the assignment usually got it. Klug, the first Republican elected in his liberal Madison-based district since 1956, wanted Ed and Labor as a showcase for his social views—the less conservative side of his political profile. So Goodling could see three of his troops, including both of the women, going against him. He did not want a momentum-building vote on the record, nor one that looked too bipartisan.

Bipartisanship was the theme Dodd was after on the Senate side as well. That was why he kept working with Bond, Dave Durenberger and others. He wanted to have so many Republicans on the bill that he could not only fend off a filibuster but even dictate terms, as it were, to Bob Dole. He wanted not only cloture, but enough strength to demand a roll call vote. If successful, this might help matters in the House. And Dodd was busy calling some of his former colleagues in that chamber, too. He had made scores of phone calls to the House before the failed override of the previous July. And if the House could be goaded into a big vote for the bill, Bush might finally see the light. Surely the president would rather make a deal for the sake of families than risk marring his perfect record on vetoes.

Dodd waived the subcommittee proceedings that spring and Kennedy scheduled a full committee markup for April 24. By this time, Dodd's negotiations with Bond had reached the point where the Republican was willing to support the bill with a few relatively minor changes. But Dodd decided to hold off on that transaction until after the committee markup. "If we did the Bond amendment in committee, we'd have to do five other amendments on the floor," staff aide Tarplin explained. "We wanted to do it once."

At the April 24 markup the amendments were relatively few. Kennedy himself offered one that applied the provisions of the bill to Senate staff. It was approved by voice vote. Durenberger, a potential source of multiple amendments, focused on trimming the leave length from twelve weeks to ten and tinkering with the medical leave provisions (which had consistently bothered him). But hearing no vocal support for his modest adjustments, he withdrew them.

Also noteworthy at the markup was a new study by the Small Business Administration which disputed the high cost estimates still being circulated by the Chamber of Commerce and other business lobbies. The SBA suggested that replacing workers permanently cost more than substituting for them temporarily. The study, less than a month old, was interesting primarily because it was based on a broader sample (1,750 businesses nationwide) than the GAO study that had been relied on in past debates. But its positive spin was also eye-catching for more subliminal reasons. The SBA was a bit player among federal agencies, a perennia target for budget cutters proposing its elimination. But it had the key words "small business" in its title, and it was being run in 1991 by Pat Saiki, the former congresswoman from Hawaii who had been a family leave supporter in the House.

But if the April 24 markup was short on amendments, it was long on speeches. Kennedy told of caring for his son, Patrick, who lost a leg to cancer in 1973. And Paul Wellstone, a freshman Democrat from Minnesota attending practically his first markup, told of time he had taken off for his parents, both of whom had Parkinson's disease. It was unusual to hear the parental care aspect of the legislation highlighted.

When Dodd had his moment, he went for the high-impact overstatement. "For the first time ever," he said, "we have a strong bipartisan consensus in this committee and the Congress at large." Orrin Hatch, the ranking Republican on the committee, immediately called Dodd's
bluff. "Neither the legislation nor the political landscape has changed," Hatch said, challenging Dodd to prove him wrong. Dodd was not prepared to talk about his dealings with Bond that day, nor did he know that he had another unrevealed ally among Hatch's colleagues.

But before the final vote was taken, and without a word of advance notice to Dodd, Kennedy or their staffs, Senator Dan Coats, a Republican from Indiana, pulled his microphone to him and announced he would be voting for the bill. Coats had voted against previous family leave bills as a House member and in his first Congress as a senator. But he had thought the matter through again, he said, and its potential impact on families and on women who might otherwise consider abortion (so as not to lose their jobs) had come to weigh on him. He said he still believed it best to allow employers to set their own leave policies, but he was willing to see the government set a minimum standard as a starting point.

Dodd was delighted, Hatch was stunned. The business lobbyists were all but speechless. "He could have had the courtesy to warn us, to give us a chance to talk to him before he did that," Motley of NFIB said, shaking his head in disbelief and disgust. Coats was known to the political world mostly as the man who had succeeded Dan Quayle: first in the House, and then in the Senate. In 1977 he had been Quayle's home district representative back in Fort Wayne. When Quayle ran for the Senate in 1980, Coats ran to succeed him in the House; and both won. When Quayle became vice president, Coats had been appointed to fill the vacancy by Indiana's Republican governor (he was presumed to be Quayle's choice as well). After his appointment in 1989 he had faced the voters in 1990 and won election to the rest of Quayle's term.

A fiscal conservative, Coats was nonetheless known for his willingness to spend money on programs he saw as worthwhile for families. During his years in the House, Coats was known for his work as the ranking Republican on George Miller's Select Committee on Children, Youth and Families. He had been among those who sat listening respectfully at the seminal hearing on child care in April 1984, when family leave was first broached on Capitol Hill.

Hatch had already counted on the defection of Jim Jeffords, a long-standing supporter of family leave in the House and Senate, when it came time to vote. Now, with Coats gone too, Kennedy would surely insist on a roll call to emphasize the bipartisanism of the majority. When the committee clerk called the roll, all ten Democrats were for the bill, and Jeffords and Coats made it an even dozen. It did not matter for purposes of committee approval, but the majority exceeded two-thirds, just as it had in the House Education and Labor markup. A signal was being sent.

Even before the markup George Mitchell had said he thought family leave might be on the Senate floor before the Memorial Day recess. On the House side, where the last committee vote had been taken in March, committee leaders had spoken of going to Rules before summer. The tide seemed to be running.

Still, Dodd did not want to go to the Senate floor until he was sure his strength would be overwhelming. And so, after the markup, Dodd went back to work behind the scenes. He already had the outline of a compromise worked out with Bond, but he wanted to bring still more Republicans and southern Democrats on board. The talks went on throughout the summer, and they began to involve Wendell Ford of Kentucky.

Ford was the new majority whip in the Senate, having succeeded Alan Cranston at the start of the 102nd Congress. The whip is technically the number-two man in the party hierarchy. As a practical matter, however, his power is limited. First elected to the Senate in 1974 after a stint as Kentucky's governor, Ford was well liked and conservative enough to weather the Reagan era in his home state. But having won a third term in 1986 without breaking a canter, he found himself stalled on both of his major committees behind chairman and other senior members who were politically secure and disinclined to retire. He had the gavel on the Senate Rules and Administration Committee, but that panel deals primarily with institutional housekeeping and only occasionally with legislation. So Ford set his sights on the whip job. He argued that the leadership needed someone from the South and someone who was not an Americans for Democratic Action liberal. The first time Ford tried for the job, Cranston beat him easily. But late in 1990, Cranston gave up the job voluntarily, battling both cancer and an investigation of his ties to a savings and loan kingpin. Ford was elected to succeed him.

Ford was an old-fashioned legislator who still smoked in committee meetings and liked to talk about Kentucky's "fast horses, good whiskey and beautiful women." But he made it his business to make friends with Mitchell and the new breed of Democrats who increasingly ran the Senate, much as he had found ways to accommodate the Republican regime during the early 1980s. His forte was the negotiated understanding, and he practiced it as a craft. Ford had a good feel for Republicans such as Bond. They were both former governors from border states who had begun running for public office in the 1960s and had been through two
have this and 33 states have their own laws." Yet they would characterize a federal mandate for family leave as somehow uniquely devastating. "We saw the issue as: how big should the federal government be?" said Nick Calio of the Bush White House. But however important that question might be, it was not easy to convey against the images of mothers and fathers at their children’s bedsides. And no one knew that better than Calio.

At the same time, the single most effective organization on either side of eight years of family leave lobbying was probably the NFIB. From the first involvement of the group in the late years of the Reagan administration until the House vote sustaining Bush’s second veto in 1992, lobbyists for the small-business group were ubiquitous and indefatigable.

The NFIB knew exactly what it was fighting against in the family leave debate. Motley saw family leave as the first part of "a new wave of quasi-social business legislation where business is asked to take on more and more of the social costs. We were set on stopping the first one or making its passage as painful as possible."

In terms of cost, Motley readily admitted, family leave was a minor matter. "It’s an inconvenience," he said, "mandating something businesses are doing on their own." But once such a pattern of mandates had been established, Motley believed, it would be the precedent for such mandated benefits as employee health insurance. "We felt we had to die on that line," he contended. "It was literally do or die for us." Lichtman would mull this over months later and say: "They were not wrong."

But what set the NFIB apart from the Chamber of Commerce and the other large organizations was its ability to generate persuasive testimony from its constituent army, in person, on the phone and in countless telegrams and mailings. When the NFIB solicited letters from its membership, it went first to its field offices (one in each of the fifty state capitals) and then to prominent members of the group who had personal relationships with members of Congress. These individuals would be expected to call or write personal notes. Then there were the mass mailings to the organization’s 600,000 members, which could produce enormous outpourings of return mail addressed to individual House and Senate offices. And then there were the random personal contacts that the NFIB encouraged their members to make. "Our members are really everywhere," Mary Reed, an NFIB lobbyist in the later years of the family leave fight, liked to say. "The Ford dealer who sells a member a car, the barbershop where he gets his hair cut and the place where he drops his laundry off."
But while the NFIB was hard to beat, the coalition supporting family leave grew steadily stronger and more savvy until passage of the legislation was inevitable. By making common cause with antiabortion conservatives, the basic core of feminists and labor liberals had performed the essential trick that turns ideas into laws. They surrounded the opposition and minimized it. The day Henry Hyde took the floor in the House to speak for family leave, the issue was essentially decided.

If the sponsors and support groups were the dynamic forces, their product was shaped as well by the institutional constraints of Congress itself: the need for legislative language, the multilevel committee process, the gatekeeping role of the leadership, the pitfalls of floor consideration, the necessity of doing it all in one chamber and then doing it all again in the other—and, finally, the imperative of obtaining the president’s signature.

Meeting all these tests is like working the combination to a lock on a vault. But it is more than that. Because the human dynamics of lawmaking not only produce a product, they also create the product in the process. “If we had not been there,” Mary Tavenner said of her CARE coalition, “family leave would have passed as written. We made them change it. The bill became more and more ‘reasonable’ until inevitably some businessmen were neutralized.”

Many serious-minded people regard this characteristic of government as a flaw, a persistent impurity. But in functioning lawmaking bodies, the ideal and the pragmatic are not mutually exclusive values.

In reflecting on the family leave fight, Pat Schroeder tended to pine for the purer bill she had introduced in 1985. But Chris Dodd did not. In his last floor speech on family leave he quoted Ted Kennedy saying the best ideas he had seen in thirty years in the Senate had all taken time to become law. Months later, reflecting on it all in his capital hideaway office (in a space where Daniel Webster once aged his wines), Dodd added: “The best ideas are better because they take time. They are better thought out. We have a better sense of balance and a better sense of what we’re doing. Maybe the best ideas should take a little more time.”

Epilogue

(Updated for the Paperback Edition)

The early postenactment history of the Family and Medical Leave Act in 1993 defied both the high hopes of the law’s advocates and the dire predictions of its adversaries. The bill did not unleash a great wave of leave-taking among eligible employees, nor did it prompt the passage of other, larger pieces of social legislation. At the same time, the new law did not notably disrupt the conduct of business, nor did it lead to a host of new mandates upon the private sector.

President Clinton was pleased to talk about family leave, making it a fixture of his addresses to Congress (including his first two State of the Union speeches) and public discussions of his record. Marking the second anniversary of the law’s effective date in 1995, Clinton told a national radio audience about a father in Port Lavaca, Texas, who had been able to leave work to be with his daughter for the month before she died of leukemia.

Other Democratic leaders made family leave a facet of their stock stump speeches, often citing anecdotes of its use. One was Chris Dodd, father of family leave in the Senate, who took on the title of general chairman of the Democratic Party in 1995. Dodd sometimes referred to a telegram he had received from a sergeant at the Pentagon. The sergeant had a brother dying of AIDS and their mother in Connecticut had wanted to take time off from her job so her son could die at home. Because of the bill, the sergeant said, his mother could take twelve weeks and keep her job.

But if such stories were set aside, it was hard to show just how much