

How a Law is Made: A Real-World Lesson in Civics

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"So you're the guys who blew it."

Those were the first words out of the mouth of my Congressman, California Democrat Sam Farr, when we met on Friday, November 14, 2003, at a ribbon-cutting ceremony for a new entrance to a freeway in Marina, California. Our conversation, and later, my observation of him at a hearing at which I spoke, said a lot about how this particular politician thinks of himself and his role. The whole event at which I spoke looked like a scene out of *Atlas Shrugged* and showed that the belief in central economic planning is alive and well on the central coast of California. And the whole afternoon would have been an incredible civics lesson for anyone willing to learn. But I'm getting ahead of myself.

First, some background. I'd been shown a report, "Estimating the Effects of Price Controls in the Redevelopment of Fort Ord," by two sharp young economics professors from San Jose State University, Ed Stringham and Ben Powell. They had been commissioned by some developers who want to build houses in a small part of the ample land left by the closing of Ford Ord. Stringham and Powell analyzed a proposal that Congressman Farr had made a few months earlier. The Fort Ord Reuse Authority (FORA) was about to go ahead with a requirement that 20% of the planned 6,000 houses be "affordable." In case you don't know, "affordable" is the euphemism for "price controlled," that is, priced below the market. Although Fort Ord closed about 8 years ago, very little housing has been built. The approval process is long, complex, and full of chances for opponents to delay. Farr had added further to the delay by coming and demanding that 50% of the houses be "affordable," that is, price-controlled. Most economists like price controls about as much as doctors like infections. Stringham's and Powell's paper showed that the price controls favored by Farr would be so extreme that the developers would make no money even if FORA gave them the land for free. In fact, showed Stringham and Powell, with price controls on 50% of the houses, the only way FORA would get the units built would be by subsidizing the developers by about \$50 million. Furthermore, they noted, the price controls, by

reducing construction, would make housing more scarce and drive up the price of other houses, thus making housing even less affordable. I found their study sound. We agreed that at the hearing on Farr's proposal, I would introduce Stringham and Powell, and wrap up.

On Friday, November 14, we caravanned through the former Fort Ord. Driving through mile after mile of abandoned, decrepit military buildings in an area with not one human in sight, I flashed to pictures I had seen of U.S. jeeps driving through the streets of Berlin at the end of the World War II, minus the rubble. I couldn't help imagining the tens of thousands of houses that would have been built there had the government simply gotten out of the way. If a free market had been allowed, I wondered, what would the new houses built have sold for? Maybe \$250,000 or \$300,000, instead of the \$500,000 that most people believe the 6,000 houses will fetch?

When we parked, we walked down to a highway. In the middle of the highway sat a podium and a microphone. The various government officials were celebrating the opening of the entrance to a freeway, and, I was told, the developers needed to attend to show support for the politicians there. I decided just to observe. And there was much to observe. While we, along with about 40 other people, stood on the road, a Marina policeman pulled his car up to where it was almost touching us, double parked it, got out, and walked forward with a tough-guy look on his face and a swagger. Then the event began. The various people who spoke were almost all politicians or other government officials and almost the only people they thanked for the project were other politicians. One of the people most thanked was Congressman Sam Farr because he had brought in federal funds for the project. No one bothered to thank the hapless taxpayers around the country for their munificence. The only non-politician thanked was the contractor, who, I thought, maybe deserved it because he had brought the project in ahead of schedule. Still, I wondered as I watched, when Disneyland or another private developer builds a road, do they have some big event at which they congratulate each other?

After the highway ribbon cutting, Sam Farr's district director, Alec Arago, came up. Someone introduced him to Ed, Ben, and me, and he responded, "Ah, the authors of one of the dueling studies." He was referring to Ed's and Ben's study

and a study by Bay Area Economics that FORA had commissioned to study the feasibility of Farr's proposal. "Actually," I responded, "they aren't completely dueling. In fact, the studies agree that your boss's proposal would require that FORA give the land to the developers and subsidize them." There then ensued a lively debate. At times, we seemed to be persuading Alec or, at least, getting him to doubt his own previous certainty. In the middle of the debate, Sam Farr came up.

That's when Farr made his opening remark, "You're the guys who blew it."

I was a little surprised by this. I've met probably 20 or so Congressmen and about 5 or 6 Senators in my lifetime. I'm not bragging; I wish it had been fewer. But in virtually every such situation, both they and I had a surface friendliness and politeness. Not so with Sam. He didn't ask our names and didn't stick out his hand to shake. Is he different because he's ruder than the others, I thought, or because he sees us as a threat, and the other Congressmen didn't? I don't know. No matter; he had given me my cue.

"How did they blow it?" I asked.

"Because more than 20% of the housing can be affordable," answered Farr.

"But your proposal doesn't make it affordable. It just benefits a lucky few and raises prices for the many," I answered. As I did so, I noticed Farr stepping away from us.

As Farr stepped away, Phil Rafton, one of the developers, yelled out, "Great to see an open mind." Farr commented that we were unrealistic in thinking we could stick with just 20% of the units being price controlled, and kept moving away.

If I had followed every part of my upbringing, I wouldn't have said what I said next. But hell, I thought, he was incredibly disrespectful of us; I'm going to dish a bit back, not with my argument, which was respectful, but with how I addressed him, which wasn't. "Your restrictions will hurt the people you claim you want to help, Sam," I said. Later I thought, "Here's this guy saying we're unrealistic and

we're standing in the middle of what looks like downtown Berlin in May 1945 and he thinks that's realistic."

A while later came the hearing in a big meeting room. One of the first items discussed was insurance for unexploded ordnance (UXO). Two insurance experts stood up and presented what they had learned from the various insurance companies about the cost of such insurance. One of the members of FORA asked them about what they knew about a federal government insurance scheme for such situations. The insurance experts answered that there were only ever 3 claims made against the government for insurance payments that the law clearly required the government to make, and that, years later, the government was still refusing to pay. Sam Farr then piped up that he was trying to get a federal program of disaster insurance. The contrast was jarring. Here we had two experts documenting how badly socialized insurance had worked and, seconds after, a man who, presumably, had heard this, bragging that he was trying to get more socialized insurance.

The next big issue was Sam's 50% proposal. First up was the FORA lawyer, Gerald Bowden, who presented his legal reasoning. His bottom line was that nothing in the law that created FORA authorized FORA to implement Farr's proposal. Farr responded, "But that's why some of us are in federal politics. We can't do the things that are prohibited. But we can do anything that's not prohibited." I quickly dug my copy of the U.S. Constitution out of my brief case and started paging through it. Somehow, after having read the Constitution at least 5 times in full, and dozens of times in part, I had missed the legal insight that Sam's razor-edge legal mind had picked up. All along I had thought that the Constitution gave the federal government strictly enumerated powers and no others. But now I learned that, no, the Constitution was written so that Sam and his buds could do almost anything they wanted. One other issue that came out clearly was that if they raised the so-called "affordability" quota criterion from 20% to any higher number, they would have to again go through various approvals that would take at least 18 months, if everything went smoothly, and more likely a few years. Got to have that affordable housing, even if it means people can't have them until 2008.

Next came Bay Area Economics, which reported its results. As mentioned,

although there was not complete agreement between their study and the Stringham/Powell study, there was a fair degree of overlap.

Finally, after attending a self-congratulatory road opening and having sat through about 145 minutes of hearing, we got our turn. The chairman announced that the developers would make their presentation.

As Ben, Ed, and I stood up to make our way to the podium in our nice suits, the disapproval from some of the people in the crowd was tangible. We were, after all, "the developers." But what I felt surprised me in a pleasant way, and before telling the feeling, I need to give some of my own history. My father, whose income had been slightly below the median, had believed that anyone making more than 30% more than him was rich and had somehow obtained his income dishonestly, or, at least, dishonorably. (I discuss this in Chapter 9 of my book, *The Joy of Freedom: An Economist's Odyssey*.) At an intellectual level, I had learned early on in my study of economics how wrong my father was and that, if anything, there was a financial return to being honorable. But the emotional healing took much, much longer. As I became more financially successful in the 1990s, I struggled with my guilt. If you had asked me even a few months ago how I would feel about being paid to represent developers in front of an audience containing a number of people who were anti-developer, I would probably have said that I would feel some guilt, or, at least, some fear.

In fact, I felt guiltless and fearless. And I felt enormous pride, pride in what I had become and pride in representing people who were trying to build as much housing as they were allowed to, which would improve the lives of the occupants and of those who bought the occupants' previous houses.

I introduced myself as a local who was also an economics professor at the Naval Postgraduate School who had read, and been impressed, by Ed's and Ben's study. Then I summed up two of the study's highlights. First, I said, "affordability" was a euphemism for price-controlled housing. Ironically, therefore, the more "affordable," they tried to make housing, the less affordable it would be. The reason, I said, was the same reason that rent controls in New York city had caused higher rents for non-rent-controlled housing: the rent controls reduces construction and, with a given demand, this meant higher rents for the non-

controlled apartments.

Then Ben and Ed got up in turn and did an outstanding job of presenting their reasoning and results. They pointed out by requiring price-controlled housing to be built, the government was preventing higher-value housing from being built. If the higher-value housing had been built, they reasoned, then the people who moved into that housing would typically be moving out of lower-valued housing, which would then be bought by people trying to move up, who would vacate even lower-valued housing, etc. The result, they concluded, was that the chain of moves would benefit everyone, whereas requiring some of the houses to be sold to lower-income people at artificially low prices would prevent this general move up. Ed concluded, "The right amount of price-controlled housing is zero." In summing up, I gave an analogy to cars. If price controls were imposed on new cars, causing fewer new cars to be produced, I asked the audience, what would happen to the prices of used cars? They would go up, wouldn't they? The way to get affordable new housing, I said, is to have as much of it built as possible, just as the way to have affordable used cars is to have the new cars built that as closely as possible conform to people's desires. While I was speaking, Sam Farr got on his cell phone and started making, or taking, calls.

There followed the public discussion, with members of the public, in other words, representatives of various special interest groups getting up and saying that they wanted affordable housing and why weren't we for affordable housing. The most articulate representative of this viewpoint was a young student who said he was there as a representative of the Associated Students of California State University, Monterey Bay (CSUMB). He applauded Farr's proposed 50% number and ended by asking us how relatively low-paid faculty members were expected to be able to buy housing in the area. Ben Powell fielded this question beautifully, pointing out that as a beginning assistant professor at San Jose State University, he faced exactly this problem. He noted that when he sat on the balcony of his tiny apartment wondering why he had to pay so high a rent for so little, he looked out and saw hills on each side of him on which there were no houses. That's why, he said, he has to pay so much. If wealthy people were allowed to build on those hills, they would do so, selling their houses to those less wealthy, who would sell to those less wealthy, etc., until the net result was that he could get more house for less money. As he spoke, something interesting

happened. The student who asked the question nodded his head in understanding.

Shortly after, the event ended and people started milling around. Ben and I went up to him and I emphasized again to the student that the way to get more affordable housing is to get more housing. "Are you convinced?" I asked.

"Yes," he answered, "but as part of my duties as a representative of the Associated Students, I had to read the statement supporting Farr."

I wanted to take one last shot at either persuading Farr, or, more realistically, getting some reaction from him now that he had seen our presentation. But reporters around him were taking notes on what he had to say. So I went up to his aide, Alec Arago, who was nearby. I wanted to understand whether it was Alec or Sam who wanted the 50% proposal. "I'd like to ask a question," I said, "that you may not want to answer. Who is more strongly in favor of the price control on 50% of the housing, you or your boss?" Alec answered, "I represent my boss." I took this as code for, "My boss is the one who believes it and I believe it less, but I'm stuck with having to push for it." I understood his situation and was satisfied with the answer. But he was not through. "I'm a lawyer," he said, "and I represent my boss. That's the way it is with lawyers. Your job is to have the same views as your boss. Your job, essentially, is to be who your boss is."

No it's not, I thought, and I had thought about this a lot 20 years earlier. In 1982 to 1984, when I had been a senior economist for President Reagan, I had struggled with this issue and had asked another Reagan aide, Doug Bandow, how he managed to maintain his own views and his own integrity intact while still being a loyal employee. Bandow had answered that when he was asked a question and he and Reagan agreed, he would say what he believed. But when he and Reagan disagreed and someone asked him what he believed, he, knowing that most of the time people wanted to know what Reagan believed, would answer, "The President believes that . . ." I adopted the same technique while at the Council of Economic Advisers. On the 10% or so of issues that came up on which my boss, Martin Feldstein, had views different from mine, if I thought people really wanted to know Marty's views even though they had asked mine, I answered, "The Chairman believes that . . ." In the rare instances where people

noted that language and pushed to ask what I believed, I told them and added that the Chairman and I disagreed. I was pleased with my choice. It was a way of keeping clear on what I thought. As Tracy Chapman put it in a song, "All that you've got is your soul." That makes our souls pretty damn important. I had been pleased with my choice over those two years, especially as I saw colleagues at my level in other agencies gradually come to represent their bosses' views as their own even though they weren't their own.

"Your job as a lawyer is to represent your boss," I replied, "but that doesn't mean that you are what your boss is. If you were a lawyer representing a thief, that wouldn't make you a thief." Alec squirmed. "It's apples and oranges," he said. I have no idea what that meant and the conversation broke up.

All in all, the afternoon's events gave me a pretty good peek at the workings of the political system. What I saw was how messed up housing can get when central government planners take over, how little the most powerful politician in the room cared about the result for the locals, how kneejerk is the call for socialism even in the face of powerful evidence that socialism destroys, and how dangerous it is to give politicians control over anything that matters to us if there is any other way.

Of course I pretty much already knew all this, but reading about it and writing about it are still different from seeing it played out in the raw.