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**The Politician as Outsider: Judy Nadler and the Santa Clara City Council**

Less than a year after her election to the Santa Clara, California, City Council, Judy Nadler found herself at odds with her fellow council members. At issue was the handling of an incipient scandal that threatened to taint the entire city government. In the summer of 1986, the San Jose *Mercury News* had published a series of articles alleging that local contractor Ray Collishaw had purchased influence through personal favors and fundraising efforts on behalf of some city officials. Among the most potentially compromising favors was a $52,000 loan that Collishaw—whose companies were doing work for the city—had made to the director of Santa Clara's Parks and Recreation Department.

Nadler wanted the city council to authorize an independent investigation of the loan and a survey of city employees to uncover other questionable favors. But both the city manager and the mayor argued that the city's internal investigation, which had not turned up any flagrant violations, was sufficient; and the other city councillors went along with their view.

This was not the first time Nadler had found herself in disagreement with her colleagues on the city council. In the ten months she had held office, she had challenged them on a number of largely procedural issues that, she felt, reflected their failure to conduct their business in full view of the public, without undue influence from development or other special interests. These challenges had won her the resentment, if not the enmity, of the other councillors, who saw her, at best, as a zealous neophyte or, in a darker light, as an ambitious attention-grabber. By August 1986, she was feeling her isolation. "I wasn't feeling the heat as much as the freeze," she says. "When I walked into a room, they would just stop talking."

Now, stymied in her efforts to get the council to launch an inquiry, Nadler had to consider how far to push her point. As she studied her options, it became apparent that continuing to fight for an investigation would mean making an end run around her colleagues and taking her case to an independent arbiter: a state ethics commission or a county grand jury.

**The Collishaw Connection**

Judy Nadler's crisis of conscience had begun on August 10, 1986, when the San Jose *Mercury News*—the leading newspaper in the Santa Clara valley— printed the first of its four-part series on Ray Collishaw, detailing the contractor's numerous ties to local government officials and the many real estate and contracting deals that had made him one of the wealthiest men in the area.

The *Mercury News* articles appeared against a backdrop of a 15-year economic boom that had transformed Santa Clara from a quiet rural community—known as the "valley of heart's delight" for its many fruit orchards—to a bustling city of 90,000 in the heart of the Silicon Valley. Along with prosperity had come the usual headaches associated with rapid growth—traffic congestion, loss of

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open space, spiraling real estate costs. For developers and contractors like Collishaw, however, Santa Clara's newfound popularity was an unalloyed delight. As the *Mercury News* put it, "the story of Collishaw's rise from small-time contractor to wealthy land baron is the tale of Silicon Valley in a minor key. Not a whiz kid or a big stakes entrepreneur, Collishaw nonetheless cashed in on the electronics boom at its fringes through a series of lucrative land deals."

At the heart of the *Mercury News* stories were allegations that Collishaw had been able to profit from Santa Clara's boom at least in part through the judicious use of gifts, campaign donations, and personal favors to local officials, whose decisions on contract awards and land use, the paper claimed, were crucial to his success.[1] Collishaw, the paper reported, had contributed generously to campaigns of both parties and at all levels—from governor to board members of local community colleges; his contributions from 1981 to 1986 reached a total of $82,000, while companies he owned donated a comparable amount and employees from those firms chipped in an additional $44,000 in donations. He helped candidates as well by sponsoring numerous fund-raising events to boost their campaigns. So valuable were his efforts, claimed the *Mercury News*, that Collishaw had become "almost indispensable to the political process in Santa Clara County."

Collishaw was equally generous at a personal level to a number of officials in Santa Clara and other nearby communities, entertaining them lavishly, providing them with vacations at his resort homes, or helping them out in business deals. In turn, the *Mercury News* suggested, Collishaw had reaped the benefits of some key decisions made by city officials. For instance, the paper reported, the value of a parcel of land owned by Collishaw increased after the Santa Clara City Council agreed, without a formal vote, to extend water and sewer services to it; soon after, Collishaw sold the land for about six times what he paid for it. The *Mercury News* also claimed that Collishaw's various landscaping and construction enterprises had had "great success in securing public jobs," landing over $26 million in contracts from local governments over a ten-year period.

The *Mercury News* articles supplied the names of several Santa Clara officials who had at various times been the beneficiaries of Collishaw's largesse, whether in political donations or personal favors. They included newly appointed City Councillor Vern Deto, current Mayor Everett "Eddie" Souza, and Parks and Recreation Director Earl Carmichael. It was the allegations concerning Carmichael that appeared most damaging, at least to the reputation of Santa Clara's city government.[2] According to the *Mercury News*, in 1978 Collishaw had arranged a $52,000 loan for Carmichael, Santa Clara's parks director for 27 years, at favorable interest rates; Carmichael had not, the paper noted, reported the loan in public disclosure statements "as is required."[3] Collishaw had also provided all-expenses-paid trips and vacations for Carmichael and his wife, and arranged a real-estate investment opportunity that had yielded the parks director roughly $16,000 in tax write-offs. Over the same ten-year period, the paper continued, "Carmichael took part in decisions that enabled

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1 Collishaw has filed a multimillion dollar lawsuit against the newspaper, charging that the allegations were false.

2 Another potentially damaging revelation concerned Leo Himmelsbach, district attorney for Santa Clara County. According to the *Mercury News*, Collishaw contributed substantially to Himmelsbach's political campaigns and arranged a real estate investment that generated at least $10,000 in income for the district attorney.

3 Technically, the loan was made to Carmichael's daughter and son-in-law; Carmichael had co-signed the loan.

Collishaw to get more out of his financial dealings with Santa Clara—dealings that included $1.2 million worth of parks contracts." The article particularly noted Carmichael's authority to recommend change orders to the city council, which had resulted in more money or more time to complete the work under contract.

Carmichael, along with the other government officials named in the articles (at least those who would speak to the *Mercury News*), vigorously denied showing any favoritism toward Collishaw either in contract issues or in land use decisions. The parks director insisted, for example, that all the change orders he had recommended were standard and in no way reflected special privileges accorded to Collishaw. Others sprang to Collishaw's defense, noting his even-handedness in political donations and his generosity to philanthropic causes, contributing and raising millions of dollars to a variety of causes, such as the Crippled Children's Society.

While Collishaw refused to talk to the *Mercury News* reporters, he had outlined his reasons for making political contributions in a 1984 press release which the paper quoted. "Basically we donate money to a candidate; we're not buying," Collishaw said. "You're doing it for one thing: when you call, they return your phone call and you can put your position before them." According to Eddie Souza, mayor of Santa Clara since 1985, Collishaw did not abuse even the privilege of calling politicians. The only time Collishaw called him, says Souza, was to ask if he (Collishaw) could help expedite a parking variance for a respite house for crippled children and their parents. "He said, 'Can I help?'" Souza—himself the parent of a disabled child—recalls. "[I said] 'Hey, you don't even have to ask, that's something I strongly see needed.'"[4]

Souza expressed outrage at the *Mercury News* articles, claiming that the paper's presentation distorted the facts and their significance. "It says Eddie Souza, mayor, received $6,000 in contributions and in turn granted numerous contracts and change orders that benefited Collishaw," he says. "I did? When the hell did I do that? There's a difference between putting my hand in your pocket and ripping the money off and somebody giving you money as a campaign contribution which was all legally noted and recorded." Moreover, Souza says, Collishaw contributed the $6,000 over the course of three elections and several years—a fact the newspaper did not point out. Both Souza and City Councillor John Mahan questioned the *Mercury News*' motives in publishing the articles on Collishaw. "I think the *Mercury News* is trying to be the controlling interest in Silicon Valley," says Mahan. "They're trying to go head to head with the *San Francisco Chronicle*."[5]

But not everyone in Santa Clara city government discerned ulterior motives in the *Mercury News*' reporting. Judy Nadler was disturbed by what she read, by both the particulars of Collishaw's ties to Santa Clara city officials and by the pattern of "cronyism and ... old-boy network and ... just taking care of their own" that those ties revealed. It was concern for precisely that pattern of

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4 Collishaw helped the cause by calling other city councillors to alert them to the issue. On reflection, though, Souza could recall another request from Collishaw: "[He asked] if I'd write a letter wishing his mother a happy birthday on a certain day. That's the only other thing Collishaw has ever come to lobby me on."

5 Souza and Mahan also suspected that the articles in the *Mercury News* (which, one councillor says, was sometimes referred to as the "Murky News") were printed in retaliation for a libel suit against the paper brought by a local politician; apparently, some at the *Mercury News* believed Collishaw had bankrolled the lawsuit, though Collishaw has denied doing so.

governing that had prompted her to run for office less than a year ago, and it was to fight the very abuses noted in the articles that she believed she had been elected.

**Running for Office: Judy Nadler**

Nadler had lived in Santa Clara for over a decade before she decided to enter the race for city council. She had come to the area in 1974 after graduating from George Washington University, where she had majored in politics and journalism; in her last year at college, she had worked as an intern for Rep. Al Ullman (D-Ore.), chairman of the House Ways and Means Committee. In Santa Clara, she found work as an editor at *Sunset*, a regional magazine that focused on Western living, while her husband Jerry attended Santa Clara Law School and then took a job as a deputy district attorney for Santa Clara County.

At first Nadler was content with volunteer civic duties—she served on the library board and her husband on the civil service commission—but after the birth of her daughter in 1984, her need for involvement in the community deepened. "When Sarah came along," Nadler recalls, "I thought, this is her hometown, and what is she going to say [about it] when she grows up? Is she going to say, 'Santa Clara was such a wonderful place to grow up,' or is she going to say, 'Oh, I grew up in Santa Clara' and sort of not want to talk about it?"

Nadler worried that Sarah might opt for the latter. In her view, those in charge of Santa Clara's destiny had shown a weak hand at the tiller. She was disturbed by what she saw as the city's failure to cope with development pressures.[6] In the years since she had first come to Santa Clara, she had watched open space give way to highways, traffic congestion, and high rise developments. There were questions in her mind about who was benefiting from the untrammeled growth she saw. She had followed with consternation the city's controversial acquisition of a failing amusement park; the turbulent negotiations to purchase the park—at enormous expense—often took place behind closed doors, heightening her sense of "all this chaos [that] seemed to be going on in the city government."

The combination of these concerns propelled Nadler to toss her hat into the ring in 1985, offering herself to voters as an independent candidate for city council unconnected to any special interests. "Grassroots," she says, "was clearly the way that I wanted to go." Nadler's candidacy bypassed the traditional routes to public office in a couple of ways. Although a member of the library board, Nadler had not served on either the city's civil service or planning commission—the "traditional stepping-stone," she says, to elected office in Santa Clara. She also did not avail herself of the usual sources of financial support. Steering clear of Collishaw and other major contributors, Nadler raised money for her race from friends and family and in a door-to-door campaign. "People asked me when I walked door-to-door, 'How much money have you taken from Collishaw or [former

[6] Not suprisingly, some in city government did not see their response to Santa Clara's growth as a failure. "We were encouraging development," says City Councillor Sue Lasher, "and increasing our tax base."

mayor Gary] Gillmor?'"[7] Nadler recalls. "And I said truthfully, none. And they said, 'Well, you've got my vote.'"

Just before election day in November, Nadler's candidacy was buoyed by an editorial in the San Jose *Mercury News*. Decrying what it called "dense industrial and commercial development" in Santa Clara, as well as "cronyism, back-room deals and the triumph of special interests" in the city's government, the paper endorsed Nadler as the "outstanding" candidate in the race. Her election, said the editorial, "could mark a turning point in Santa Clara's politics."

Nadler went on to win her seat by just three votes, edging out Vern Deto, a native of the area who had served nine years on the planning commission.[8] "While it's not winning in the traditional sense," says Nadler, "for someone who was young and a woman with a one-year-old, who was not born and raised here, who'd never been on the planning commission, it was quite a statement."

### On the City Council

When Nadler took her seat on the Santa Clara City Council in November 1986, she was one of four Democrats—the first time Democrats had ever made up a majority on the council.[9] In other ways, though, she was in the minority—sometimes of one. She was one of two women councillors, and only the third woman ever to serve on the council. She was not from the Santa Clara valley (Nadler hailed originally from Oregon), and she had been educated in the East. Nadler says that she and fellow council member David Tobkin (who attended Santa Clara University) were "the best, quote, formally educated people on the council."

From the very start, she felt a chill in the air. There was no welcoming party, she says, and in fact, on the first night of business, Councilman James Ash proposed voting on the spot to appoint her opponent, Vern Deto, to fill the seat left vacant by Souza. (The councillors decided not to do this; instead Deto, following the usual procedure, applied for the position and was then appointed in December.)

In the ensuing weeks, the chill intensified perceptibly, as Nadler took unpopular stands on issues that had previously been matters of routine procedure. The first skirmish arose over the issue of late adjournments. The city council held weekly public meetings every Tuesday evening beginning at 7:00; the press of business often kept the sessions going well past midnight. "I think the first night I got on the council," Nadler recalls, "we adjourned at 1:00 a.m. and the next week it was 1:30 a.m. and then it was 2:00 a.m." Since few Santa Clarans stayed for the duration, Nadler felt the situation was akin to meeting behind closed doors. Moreover, she says, it was hard to think straight at that time of night.

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7 A real estate broker and close friend of Collishaw, Gillmor was also, according to the *Mercury News*, a "major political donor."

8 According to the *Mercury News*, Collishaw had supported Deto's two previous, unsuccessful runs for city council and helped bail out a local newspaper of which Deto was part-owner. After the election, Deto was appointed to the city council to fill the seat vacated by Eddie Souza, who was elected mayor in the same race.

9 The Santa Clara City Council consists of seven members, including the mayor, who serve staggered four-year terms. The Democrats on the council were James Ash, Vern Deto, Eddie Souza, and Nadler. The Republican members were John Mahan and David Tobkin. The seventh member, Sue Lasher, had registered as "declined to state."

Things came to a head in early spring when the city council took up the matter of a change order on the golf course the city was building on part of its landfill, a project that had begun to run seriously over budget. "The killer was," Nadler recalls, "we were handed a change order on the golf course for some horrendous amount of money[10] at one or two in the morning and it had to be signed off on that night. I felt it was irresponsible. I wouldn't refinance my house at two in the morning." It was unreasonable, she felt, to be "handed the papers and told, in three minutes you have to sign this." Accordingly, Nadler abstained. Her colleagues did not, approving the change order by a 6-0 vote. Undaunted, Nadler announced that she would thereafter abstain from voting on any council business after 11:30 p.m.

Nadler's position won her notice in the *Mercury News*, but few friends on the city council. The longer she kept up her policy of abstention after 11:30, the more irritated the other councillors became. Nadler had "a valid point," says Councillor David Tobkin, "but to keep it going for a long period of time like she did wore a little thin on people." Another councillor, Sue Lasher, felt that Nadler had exaggerated the problem. Most meetings did not run past midnight, Lasher says, and most were well attended by the public. "I'm sure Nadler was aware of the length of meetings when she decided to run," she adds. " ... A lot of things [Nadler] kept bringing up, I said, 'She's new, let's give her time,'" Lasher recalls. "We're all green when we get on [the city council]. You have to know precedents, you have to know what has been done in the past to solve problems. And until you find out, you don't know what it costs to solve all the problems, and I don't mean just money."

Despite her colleague's displeasure, Nadler did not back off from challenging their practices. That spring, there was another confrontation, this time over the seemingly innocuous matter of a used conference table and chairs. Ray Collishaw had offered the furniture—valued at between $1,200 and $2,000—to the city after, he says, a fire inspector, who was checking out a building Collishaw had just bought, noticed it and suggested the fire department could use it. The city council was all for accepting the offer—except for Nadler. Especially in view of the sizable change order for the golf course the council had just approved, which she felt had given Collishaw "an easy break," Nadler felt uncomfortable about the propriety of the offer. "I kept thinking, why would he give us this table and chairs? He's very involved with the Crippled Children's Society and raises thousands, hundreds of thousands probably, for various charities and why wouldn't he want to give the table and chairs to one of them? It wasn't on our wish list or anything." She urged her colleagues to refuse the furniture. "I made a statement to the council members at the time that I felt it was inappropriate," Nadler recalls.

Once again, her colleagues did not agree with Nadler. They voted to accept the table and chairs; Nadler cast the lone dissenting vote. "She [wasn't]—at least I don't think—previously aware that we had accepted other things in the community," says Vern Deto, such as an annual donation of $1,000 from wealthy Santa Claran Austin Warburton to a trust fund he had set up "for the benefit of the community." Others, like Mahan and Tobkin, felt it was good common sense to take the furniture. "If

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10 The change order was actually an add-on for golf cart paths and two greens, requested by the city staff. The Collishaw Corporation, which had been awarded the landscaping contract for the golf course, was given this work as a change order in the amount of $412,625. City staff recommended that the company doing the landscaping should do this additional work, and did not put out a public bid.

the city can get something free that's useful to the city, that's a cost savings as far as I'm concerned," says Tobkin. "You have to ask yourself, does a conference table and chairs influence you? My answer is no."

Tobkin was not without sympathy for Nadler's position. Elected to the city council in 1979 at the age of 27, Tobkin had been, by his own admission, "a purist." He had had his own tangles with the council over Collishaw—he had opposed the parking variance Collishaw sought for the respite house for families of crippled children and refused transportation (plus drinks) offered by Collishaw to council members for a visit to a real estate development. Over the years, though, Tobkin had mellowed and learned to pick his battles. "You can be a purist all you want to," he says, "but [the other councillors] keep this little file in the back of their heads, and things that they should have supported they shot down on occasion just because I was a purist for so many years."

Others on the council were not so sure Nadler's motives were pure. The favorable notices she continued to receive from the *Mercury News* led some to believe that, because of her connections as a journalist, she was getting special treatment from the paper, not to mention hogging the limelight. Nadler denied any special treatment or self-serving motives. "Having been a journalist," she explains, "I know how to give a good quote and put out press releases."[11] Nevertheless, she acknowledges, her high profile in the *Mercury News* did not help her with her colleagues. "I was hearing from other people in the community," she recalls, "about conversations that were being held about me in restaurants, grocery stores, golf courses, etc., by council members. ... Some of the stories were incredible, not only about my ties to the *Mercury*, but what I really had in mind—that I didn't care about Santa Clara, it was obvious that I had my eyes on higher things, I'd sell my soul—those kinds of things."

**Dealing with the Collishaw "Scandal"**

It was in the context of her worsening relations with her fellow councillors that Nadler read the *Mercury News* series on Ray Collishaw and his ties to Santa Clara city officials. If she found that the articles made for disturbing reading, she was not alone. "When I read it, I couldn't believe it, because I know Ray," says Sue Lasher. "Then I felt someone maybe found out something I didn't know." As she read on, she says, her primary concern became "whether this is fact or not. The first thing I wanted to do is get down to the base yes or no. It sounded like there was some wrongdoing, something I thought was detrimental to the city." Mayor Souza agreed with Lasher on the need to get the facts. On August 12, after the third article had run in the *Mercury News*, he asked his staff to prepare a report on the number of city contracts on which Collishaw had bid from 1981 to 1986, the number he had been awarded, and the number of change orders that had been approved. Souza told his staff he wanted "the record to be clear," and he wanted to be prepared to answer questions from reporters or citizens. The city engineer, who oversaw the bidding process for city contracts, asked for two weeks to complete

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11 Nadler urged a more sophisticated use of the press on other city officials. She suggested, for instance, that the city council follow the lead of other cities and publish its agenda in the newspaper or in a newsletter. City Manager Donald Von Raesfeld rejected the notion, arguing, she recalls, that "there's no place in government for PR." Nadler felt just the opposite: "I said, 'We need to market our company, we need to let people know what services we provide them with, like a utility or the parks and recreation or the library.'"

the report. In the meantime, concerned that the report would be at best a halfway measure, Nadler did some research of her own.

The object of Nadler's study was to find out what resources were available to define and investigate potential conflicts of interest and unethical conduct in government. A lot of her concerns, she discovered, had been, at least in theory, addressed by the California legislature, when it passed the Political Reform Act of 1974. The law established a new watchdog agency, the Fair Political Practices Commission (FPPC), which was authorized to examine campaign practices and questions of ethics and to devise regulations governing conflict of interest issues. In the regulations it subsequently promulgated, the FPPC set up strict reporting rules and procedures for state and local officials. For example, the FPPC prohibited a public official from participating in a decision that could affect a company or individual who had given the official cash or in-kind gifts, or made a political donation, of more than $250 in the preceding year. It also required elected officials and upper management appointees in state and local government to file financial disclosure statements. Finally, under FPPC rules, donors whose contributions to political campaigns in a single year totaled more than $10,000 (raised from a limit of $5,000 in 1985) were obligated to file a "major donor" statement listing their contributions.

FPPC regulations also required city and state agencies and local governments to create their own policies on gifts, conflicts of interest, and limits on campaign contributions. In fact, Nadler discovered, even before the passage of the Political Reform Act, Santa Clara already had a code of ethics on its books. Written in 1963 and amended in 1974, the code set rules of behavior for city officials and employees. It was not a familiar document in city hall. Mayor Souza, for instance, had never heard of it. It was also frequently confused with the conflict of interest code the city put together in 1976 (revised in 1981) in accordance with FPPC regulations. "When I asked for the code of ethics," Nadler recalls, "I got one document from the city attorney and [a different] one from the city manager."

The confusion went deeper than mere titles: in one key area, the two documents contained conflicting language. The older code of ethics prohibited any city council member, official, or employee from accepting gifts valued at over $20 from anyone doing business with the city. The conflict of interest code, following the lead of the FPPC regulations, simply required that all gifts over $25 be reported on the proper financial disclosure forms. To complicate matters even more, FPPC regulations merely required mayors, city managers, city attorneys, members of planning commissions and city councils, as well as candidates for any of those elected positions, to report any gifts over $50. Most officials in Santa Clara, including the mayor, believed the state code made the local code unnecessary.

It was not clear to Nadler that the FPPC would be helpful in clearing up the confusion in ethical codes. She had concluded from her research that the agency had done little to publicize the requirements of the Political Reform Act or its own regulations. Despite his well-known involvement in politics, for example, Collishaw had never heard of the major donor requirement, much less filed one. He was by no means alone in this. Nor had the FPPC taken an aggressive stance as a watchdog agency, evidently preferring an advisory to an investigative role.

However, the FPPC, Nadler learned, was not the only body authorized to investigate the actions of local governments. Under the provisions of California's state constitution, grand juries were empowered to oversee the operations of county and local government agencies. (Only Nevada's constitution delegated similar power to grand juries.) Grand juries in California could investigate independently and on a regular basis such institutions as a county board of supervisors or a city department without any initiative from the district attorney's office (although the district attorney did act as an advisor to the grand jury) and even in the absence of any direct suspicion or evidence of criminal wrongdoing. Grand juries could decide to investigate an agency simply because it was due for scrutiny or in response to a complaint from a citizen. Typically, the source of a complaint was kept confidential, even after the grand jury released its final report. (Nadler confirmed the details of grand jury operations with her husband, who continued in his role as deputy district attorney for Santa Clara County.)

At the end of her research, Nadler was convinced that something more than the internal investigation that Souza had launched was needed to probe further into the *Mercury News* revelations. However, she had also concluded that the city, not she, should take steps to ensure that something was done. When a reporter from the *Mercury News* telephoned her to ask for city council news, she told him that she was going to request an independent inquiry into the circumstances surrounding the loan to Carmichael.

The story of Nadler's pending request broke on Friday, August 22, a few days before the next scheduled city council meeting on August 26. "I don't think we can afford to ignore this," Nadler told the paper. "When any city employee is involved in a situation like the one with which we've been presented, I think it's worth looking into." (The paper made no mention of Souza's inquiry.) Formally, Nadler would ask City Manager Donald Von Raesfeld to recommend an investigator; he could, she told the reporter, go to the FPPC, the grand jury, or "conduct his own review." The *Mercury News* followed up the story a few days later with an editorial that appeared on August 26, the morning of the city council meeting. Entitled "Not Business as Usual," the editorial applauded Nadler for "questioning things that many people in Santa Clara take for granted," but warned that "[a] majority of the council may genuinely wonder why naive little Judy is so upset about Earl Carmichael's taking favors from Ray Collishaw." After detailing campaign contributions Collishaw had made to five of the seven council members in the last five years,[12] the editorial concluded: "Good luck, Councilwoman Nadler."

**The Meeting and Its Aftermath**

When the Santa Clara City Council convened on the evening of August 26 and dispensed with opening formalities, Nadler was the first to speak. Reading from a brief, plainly worded memo, she noted that "[r]ecent reports in the press" had indicated that a city employee had not reported a loan. "In order to clarify the facts surrounding the loan," Nadler requested the city to undertake a number of actions: 1) an investigation "by an appropriate body" into the circumstances of the loan itself, with the results to be made public; 2) a survey of city employees to turn up other unreported gifts; and 3) a

12 Only Tobkin and Nadler had not received donations from Collishaw.

clarification of the city's policy on accepting and reporting gifts and loans. Nadler also asked that copies of the city's code of ethics be distributed to all employees.

There was no immediate response to the substance of Nadler's request. When Souza deflected discussion of it on procedural grounds and moved the council on to a consideration of the findings of the internal investigation he had ordered, Nadler offered no resistance.

Donald Von Raesfeld—Santa Clara's city manager for 25 years—read the report of the investigation to the assembled councillors. "I find no cause to be concerned with [Carmichael's] job or performance," he told them as prelude. "His administration and handling of money has never been under question." Von Raesfeld went on to report that out of a total of 98 engineering contracts the city had put out for bid between 1981 and 1986, companies owned by Collishaw or a family member had bid on sixteen and, as low bidders, had been awarded nine. One of those nine was a contract with the Parks and Recreation Department and hence under Carmichael's supervision. As was standard practice with public contracts, all bids were sealed and opened publicly at the same time, and, Von Raesfeld reminded the council, change orders were approved by the councillors themselves. In sum, "the ability for an individual department head to play favorites with a contractor is very remote." Von Raesfeld reported that he had spoken with the FPPC, which had advised Carmichael to file an amended disclosure form with the city clerk. Beyond complying with that, the city manager saw no reason to ask more of Carmichael. "I find no basis," he concluded, "[to suspect] favoritism with respect to a specific contract at that time or subsequent to that time."

Nadler stuck by her request for an investigation by an "appropriate body," to be determined by the city manager or city attorney, or even the FPPC. "I feel it would be appropriate for us to clear up questions," she told Souza. She found some support for her position from the audience, when a representative from the ad hoc Citizen's Advisory Committee stood up to urge the council to launch an independent inquiry. "We believe the citizens of Santa Clara have a right to expect arms-length relationships between the officials who run the city and contractors who do business with the city," the committee chairman told the council. "There seems to be some evidence, as far as financial relationships [go, that] there isn't."

But the debate on Nadler's request basically ended there. Souza told the councillors he had been in touch with the city manager, the city attorney, and the FPPC. All had advised that Carmichael should file an amended disclosure form. "The attorney general and the FPPC [can get involved] if there are charges made," he continued. "And this time I haven't heard any charges." If there were a formal investigation, Souza added, "I'm sure the council will make the information [in the report] available." With the report of the internal investigation in hand, he concluded, "basically, I think the action has been taken." With that, Souza called for a motion to "note and file" Nadler's request, and Nadler, ambiguously, responded, "I will move to note and file if that's the action the council wants to take." The motion passed unanimously, with only Lasher abstaining.[13]

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[13] Lasher had argued that the Carmichael affair was personnel business—normally the preserve of the city manager—and should be discussed by the council, if at all, only in closed session.

Technically, "note and file" means that a piece of council business—a report or a request, for example—is noted in the minutes and then filed away. No action has been taken on the matter and it is shelved, until and unless someone puts it back on the council agenda at a later time. However, a vote to note and file does not necessarily preclude further action by city officials, so that Von Raesfeld, who had oversight of all city employees, was theoretically free to seek an independent inquiry into the loan to Carmichael. Most of the city councillors apparently took the vote to note and file as strictly a shelving action that put the Carmichael matter and the issue of further investigation to rest, essentially for good. Von Raesfeld could have persisted and pursued an inquiry on his own, says Tobkin, but "from a political point of view it would be suicide for him, because he would have had the other six [councillors] beating [on him]."

But the seventh councillor—Nadler—saw it differently. She understood the vote to note and file as a move that gave tacit approval to her request and cleared the way for Souza and Von Raesfeld to seek an investigation. It was not unusual for the council to move to note and file, she contends, and "that doesn't mean that no action is going to be taken." Satisfied that a probe would be launched, she had not wanted to press too hard at the council meeting. "Having seen [the vote to note and file] happen before," she says, "and not wanting to create bad blood—which this was clearly on the verge of doing—I thought we'd all agree to that [i.e., an investigation] and it would be kind of a quiet way not crucify anybody in public."

But when, the day after the council's vote, she met with the city manager to ask "how he was going to proceed on the investigation," she was surprised to hear he was not planning to proceed at all. Von Raesfeld was going with the stricter interpretation of "note and file." "The decision to note and file [Nadler's] request," he says, "was basically a decision to do nothing. That's what the council does when they've decided they don't want to handle something." Moreover, he felt he had discharged his own responsibilities as city manager. "As far as I was concerned," he says, "I had conducted an investigation." Carmichael had been cleared of all but a technical financial reporting error.

This left Nadler in a not unfamiliar quandary, where, as far as the city council was concerned, she seemed to stand apart and alone on an issue. "If everyone believed this loan was okay, I thought to myself, my God, what else was out there that people thought was okay and not okay," she recalls. Moreover, she felt that the residents of Santa Clara didn't necessarily believe the loan was "okay"—and she had appealed specifically to the electorate's concerns about ethics in city government in her campaign. "I couldn't accept," she says, "that people all over Santa Clara would accept the lack of action and say, 'Well, this is the way business is, and it goes on everyday,'"

In view of her colleagues' decision to let the matter of the Carmichael loan rest where it was, Nadler faced some tough choices. She could go along with them, but that might violate what she regarded as her mandate from voters: to "challenge the thinking as it has been," and not be "intimidated by the political powers, and not be aware of them." She could seek an investigation on her own by going to the FPPC or to the grand jury, which would, if she wanted, keep her request confidential. But any move, confidential or otherwise, was almost certain to isolate her further from the other councillors. Already her frequent appearances in the press had served, some felt, to diminish her efficacy on the council. "Judy could have been a part of a team that could have made a lot of social

changes in Santa Clara," Souza contends, "if she would have cut back on her nitpicking and holding press conferences every two weeks to try to discredit us."

Nadler insisted, however, that she was not out to discredit anyone. "I did not want to nail Earl Carmichael," she says. "I did not want to nail Ray Collishaw. I wanted to look into the policies and practices surrounding the acceptance and reporting of gifts and loans." The fact that none of her colleagues agreed troubled her, but she was not sure that she had to have their backing. "Do you take [a stand]," she asks, "only when you've got your support lined up?"