

## Preface

An account in *The Hill*, on January 29, 2003, described Art Rynearson's office on the sixth floor of the Dirksen Building as being dominated by a map of the world, hung behind his desk, along with pictures of China and his college and law degrees. It seemed an appropriate setting for a legislative drafting specialist who, in his own words, had his "fingerprints all through foreign relations legislation prepared in the last quarter century, including all the major treaties."

That year, when he retired after twenty-six years with the Office of Legislative Counsel, as Assistant Counsel, Senior Counsel, and Deputy Legislative Counsel, the Senate passed a resolution commending his exemplary service as "the primary drafter in the Senate of virtually all legislation relating to international relations, international security, immigration, and the State Department, and all matters relating to Senate consideration of international treaties."

The Office of Legislative Counsel dates back to 1919 when it was created to "aid in drafting public bills and resolutions or amendments thereto on request of any committee." Over time, the nonpartisan Office also provided drafting services for individual senators as well as for committees. By statute, the President Pro Tempore of the Senate appoints the Legislative Counsel "without reference to political affiliations and solely on the ground of fitness to perform the duties of the office." The Legislative Counsel then appoints the rest of the Office staff, with the approval of the President Pro Tempore.

The Office of Legislative Counsel adopted an "attorney-client relationship" to its work with Senators and committees, treating each request as a confidential matter. It was a strict rule that the attorneys had no role in the development of any legislative policy. They served solely to implement the policy desires of the Senator or committee requesting assistance, and to point out any potential constitutional problems with the proposed legislation.

To develop expertise, each attorney was assigned to a specific area of statutory law. With a lifelong personal interest in foreign relations and law school training in international legal affairs, Art Rynearson was hired in 1976 to draft foreign policy-related legislation. He had been born in Caracas, Venezuela, on April 18, 1949, but had grown up in Yonkers, New York. In 1971 he graduated from Hamilton College, and for the next two years worked at

the Congressional Research Service. In 1976 he earned a law degree from the Cornell Law School and was admitted to the D.C. bar.

Senator Joseph Biden, who chaired the Foreign Relations Committee, described Art Rynearson as “a backstage participant in many historic foreign policy decisions of the Senate, assisting the Foreign Relations Committee to draft both legislation and resolutions of advice and consent to ratification of treaties. His actions were rarely recognized or noticed by the public, but his contributions were essential. Art’s job was to ensure that our legislation clearly expressed the intent of the committee and that it meshed properly with existing law. He accomplished that through marvelous attention to detail and a complete absence of partisanship.” Senator Biden added, “It is not overstatement to say that the Senate could not function without people like Art Rynearson. Every day—and many a night—he was there, unfailingly courteous and professional, ready to assist the committee’s members and staff to draft and refine legislation for consideration by the committee and the Senate.”

Senator Ted Stevens, the President Pro Tempore, commended Rynearson’s dedication and professionalism, and noted: “We all rely upon the attorneys in the office to provide legislative drafts to carry out our legislative policy.” Senator Robert C. Byrd, a former President Pro Tempore, added that Rynearson’s departure would “leave a void that is difficult to fill as he is truly a part of the institutional memory of the Senate.”

### **About the Interviewer:**

Donald A. Ritchie is associate historian of the Senate Historical Office. A graduate of C.C.N.Y., he received his Ph.D. in history from the University of Maryland. He has published several articles on American political history and oral history, including "Oral History in the Federal Government," which appeared in the *Journal of American History*. His books include *James M. Landis: Dean of the Regulators* (Harvard Press, 1980); *Heritage of Freedom: History of the United States* (Macmillan, 1985); *The Senate* (Chelsea House, 1988); and *The U.S. Constitution* (Chelsea House, 1989); *Press Gallery: Congress and the Washington Correspondents* (Harvard University Press, 1991); *Reporting from Washington: The History of the Washington Press Corps* (Oxford University Press, 2005); and edited the *Minutes of the U.S. Senate Democratic Conference, 1903-1964* (Government Printing Office, 1999). He also edits the Executive Sessions of the Senate Foreign Relations Committee (Historical Series) (Government Printing Office, 1978-). A former president of the Oral History Association and Oral History in the Mid-Atlantic Region (OHMAR), he

received OHMAR's Forrest Pogue Award for distinguished contributions to the field of oral history.

**THE CONGRESSIONAL RESEARCH SERVICE**

**Interview #1**

**Thursday, April 17, 2003**

**RITCHIE:** I'd like to start at the beginning. The most unusual item I noticed in your bio was that you were born in Venezuela, and I wanted to ask, how did that happen?

**RYNEARSON:** Well, my dad worked for Carrier Air Conditioning Company in their international division. When he was in his twenties, my dad was offered an engineering job in Colombia assisting the man who served as Carrier's liaison to the local Colombian distributor of Carrier air conditioning. He worked in Colombia during World War II and then returned to the States after five years and married my mom, and then they were reassigned to Caracas, Venezuela. I was born a couple years after they were there. Unfortunately for me, I left after a couple of years. In fact, I initially left after eight days because I needed to see a doctor in the States. At that time, I believe I was the youngest person to have ever flown on Pan American Airlines. This was in April of 1949. But I returned to Venezuela after a few months and then returned, finally, to the States after a couple years. I have no memory of my time in Venezuela.

It did play a major role in my life, though, because some of my earliest memories are of my parents telling me about South America, showing me slides, showing me maps. I think it really played a role in getting me interested in international affairs. Also my dad had so many business friends and associates from all around the world that when they would come to New York City on business, he would have them up to our house in Crestwood in Yonkers, New York. I would get to meet very interesting people from all over the world, but particularly from Latin America. Dad also worked for a short time in Brazil and Peru. He had friends in Argentina. The whole South American continent was well represented by his friends. It was a great learning experience for me.

**RITCHIE:** Were your parents both from New York before they went to South America, or did they just move there when they came back from South America?

**RYNEARSON:** They just moved there after they came back. My dad is a country boy, who grew up in Flemington, New Jersey, which at that time was quite small and largely agricultural oriented. My mom is a city gal. She grew up in the heart of Philadelphia. I

don't believe she had ever been out of the country until she met my dad. I got quite a range of experiences from the two of them.

**RITCHIE:** Did you ever live abroad? You said your father had business in other South American countries. When you were growing up after you came back from Venezuela, were there other opportunities for living abroad?

**RYNEARSON:** After Venezuela I never lived abroad except for one summer when I was in law school, I had an opportunity to participate in a study program in Guadalajara, Mexico. I lived with a Mexican family during that summer. That was my only other time as a resident overseas. My mom and dad took me overseas on short little vacations from time to time, so I did have those experiences.

**RITCHIE:** Did they speak Spanish?

**RYNEARSON:** Yes. My dad speaks quite well. When he went to Colombia, it was 1940, and he was assigned to a little historic town on the west coast of Colombia, Popayan. Dad had studied French in high school and knew no Spanish when he arrived in Popayan, but in Popayan, there were virtually no English language speakers. He had to learn Spanish as a necessity in short order. He learned quite well. My mom never equaled his proficiency in Spanish, but she had to learn enough Spanish to get around in Caracas to do grocery shopping and looking after basic needs. At one time, her Spanish was very good, but then she lost it.

**RITCHIE:** Did you pick any up when you were a kid?

**RYNEARSON:** My dad tried to teach me a few words. I remember at an early age, I could count to 100 in Spanish. I learned a few other words. I ended up having to study Spanish beginning in ninth grade. I had an unfair advantage over the other kids in the class in that I had had some introduction to Spanish. I should say that I loved Spanish and I still love Spanish. It was my best subject in public school. I took some in college as well and did pretty well with grades in it. I love the sound of the language and I've often wondered whether, as a baby, just having some people speaking Spanish in my environment, if that had anything to do with my proficiency, or whether it was simply the enthusiasm of my parents that got transmitted to me.

I loved Spanish and considered majoring in it in college, but unfortunately my college had a poor program in Spanish. Being a small college, there were only two professors, at the time, in the entire Spanish department. They were transient professors, at that time, and not entrenched in the college. I thought to major elsewhere.

**RITCHIE:** I'd like to know about your education. You mentioned you went to public schools in Yonkers?

**RYNEARSON:** That's right. I did all of my education through high school in public schools. I went to an elementary school called P.S. 15, which was located only about a long city block from my house. Then I went to Walt Whitman Junior High School, which was four or five blocks away. Finally, I went to Theodore Roosevelt High School on Central Avenue in Yonkers. That was an older school dating from the 1920s. I had to take a school bus to get there. That was about a mile from where we were living.

After that, I went to Hamilton College in Clinton, New York, of which I am extremely fond. After graduation at Hamilton, I worked for a couple years in Washington and then did my law degree at the Cornell Law School in Ithaca, New York.

**RITCHIE:** Could we back up a little bit? I'd like to know how you decided to go to Hamilton College.

**RYNEARSON:** Sure. Well, my mother took the lead in getting me interested in college. I had a little bit of feeling I wasn't sure I wanted to go to college. I had not really known anyone who had a college degree. Neither of my parents graduated from a college. I was unsure whether I was going to like going to a college. My mother, on the other hand, thought that I should look at small colleges. I had had excellent grades all through public school and was really a prime candidate to go to college, but I just didn't have much initiative, as a late teen, to do the spade work necessary to investigate the schools. So my mother took the lead in that and she came up with a bunch of small colleges for me to look into. My dad also thought that I ought to look into Syracuse University since his company, Carrier, was headquartered in Syracuse.

We took a summer trip. I guess this was the summer after my junior year in high

school, although it might have been the previous summer. I can't remember at this point. We drove to upstate New York, which was a distance of two hundred, two hundred and fifty miles from where we were living. I visited Syracuse University and I visited Colgate. After visiting Colgate, my mom observed that we were just twenty miles away from a small college that a neighbor boy was attending. That college was Hamilton. She thought that since we were in the neighborhood we ought to take a look. We dropped by on this beautiful summer day and the campus was just gorgeous. We ran across a student who was quite helpful to us and gave us an improvised tour of the campus. Then, later on, a student proceeded to correspond with me knowing that I was interested in applying. I was very impressed with the personal attention that the college gave to my interest in Hamilton.

I also applied to five other colleges, all small colleges with one exception and that was the State University of New York in Binghamton. I was lucky enough to be accepted at all six colleges, but I felt that Hamilton was the best of the six. I never seriously regretted my decision to go there.

**RITCHIE:** On one hand, Hamilton helped you make a decision because it didn't have a Spanish department to speak of. Were there professors and courses that began to interest you when you were there?

**RYNEARSON:** Well, I wasn't sure exactly what I wanted to do, but I had a strong feeling that whatever I wanted to do would have an international bent to it. I wasn't sure whether I wanted to be in the Foreign Service or do some other government work. I also had some fleeting ideas of doing some archeology work. I've always been interested in pre-Columbian cultures in the Americas. I knew that whatever I took in college, I wanted to explore subjects that I had not been exposed to in high school. Hamilton had a very strong history department and a not as strong government department. But I felt that there were enough international-related courses between the various departments that I could be quite happy studying there. I really didn't know what the quality of the Spanish department was until after I had arrived, so I still held out hopes of possibly majoring in Spanish when I applied.

As it turned out, Hamilton did not have any international relations major per se, being quite a small college with a limited faculty. But I effectively devised an international relations major by taking courses among the different departments. It was never recognized

as such. I was taking Latin American anthropology, diplomatic history of the United States, Asian history, introduction to international relations in government and political modernization in the developing world. So after it was all done, I had had quite a smattering of courses in international relations.

**RITCHIE:** I noticed you also had some association with the Root-Jessup Council.

**RYNEARSON:** That's right. There was only one organization at that time that was really a public affairs organization on campus, and that was the Root-Jessup Public Affairs Council. [Elihu] Root, a secretary of state and a United States senator and also, I believe, secretary of war, was a graduate of Hamilton. We like to think of him as our foremost graduate. The Root family sent several generations to Hamilton. In fact, I knew a Root student contemporaneous with my studying at Hamilton. [Phillip] Jessup was also a graduate and quite famous as a law professor at Columbia University in international law. I believe he was on the World Court as a judge. He has written some of the major treatises in international law.

I got involved in the Council early on. For a long time, I was involved in running a film series that we would show at no charge to students, more or less travel logs of interesting countries. Then in my senior year, I served as president of the Council and brought some major speakers to the campus. We had the Georgia State Representative Julian Bond speak. We had the controversial attorney for the Chicago Seven defendants, William Kunstler, speak. We had the communications director of the Nixon White House, Herb Klein, speak. And we had Ralph Nader speak. I have great memories of interacting with those individuals. I have the unusual distinction of having driven Ralph Nader fifty miles from Hamilton to the Syracuse airport one morning so he could catch a return flight. I spoke to Herb Klein briefly about the Vietnam War, which was ongoing, about which I had some views I wanted to get off my chest.

Unfortunately, Hamilton had to pay speakers quite an enormous sum of money to appear and speak. One of my responsibilities was to generate enough interest on the campus that we could cover the cost of the speakers by charging the students. I believe we had to charge the students about six dollars to hear each speaker, which was regrettable. We never came up with enough to cover the costs, but the trustees made up our deficit. But since we had a very small student body, to cover the cost of a speaker, we would have to have an



attendance of several hundred to make it financially viable. That was my main responsibility as president of the Council, but we also had other public affairs activities that we ran. I was pleased to be involved in it.

In the spring of my senior year, I had the honor to introduce Judge Jessup when he returned to the campus. I'll never forget the opportunity to have done that. My government professor and my mentor, Professor Richardson, advised me to make my introduction short. I didn't quite manage that. It was my first real public speaking opportunity. I'm afraid I took the opportunity to write a little speech, which was quite eloquent, but largely unnecessary. I hope I've learned my lesson. It was a great honor to introduce him.

**RITCHIE:** The time period we're talking about here is 1967 to 1971, and the Vietnam War was going on. There were a lot of international events that must have shaped your earlier thinking. What was the mood on the campus at Hamilton in that late Vietnam period?

**RYNEARSON:** Hamilton is situated in a quite remote country setting. I believe that had something to do with a general apathy that existed on the campus. That tended to get my dander up. I've never believed that people should be apathetic about current events. On the other hand, I was hardly a radical for my time. I never participated in any of the anti-war demonstrations, partly because I was offended by displays of the North Vietnamese flag and the Vietcong flag. I didn't want to be, what I felt I would be, tarnished by association with people whose views I didn't fully share.

I was opposed to the war. This was a sentiment that came to me over time. I had been reading about the war beginning in fifth or sixth grade in elementary school when we received newspapers on current events. The newspapers were tailored for children. They were not adult newspapers. I read about our advisors that were in Vietnam under Eisenhower and then later Kennedy. I was not a novice to the Vietnam issue when I arrived in college. It was while I was a sophomore in high school that the war escalated dramatically when President Johnson sent in regular ground combat units of the U.S. armed forces. I was initially supportive of our efforts in Vietnam but, by the fall of '65, I was beginning to have serious doubts about it. I did a lot of reading and certainly by the time I was in college, I felt that the war was a mistake and we were going about it incorrectly and I just couldn't see how we were going to get ourselves out of it. I always retained a little bit of an ambivalence on

it. I had no love of communism. If we could have achieved a military victory that would have enabled South Vietnam to retain its independence as a non-communist state, I would have been all for that. Even in college, I remember staying up late at night listening to radio reports about our military activities in Laos and Cambodia, hoping that we would actually bring a closure to the war successfully. But my predominant view was skepticism that we could win militarily.

What I felt was most important was that at Hamilton we not ignore the war and that we have debates on it. I was briefly a member of a debating club at Hamilton. I remember getting up to make some debating points about the war and how it was being opposed now by Martin Luther King and the civil rights movement. This would have been about 1968. I did believe we ought to have a full discussion of the war on campus and I believe later on while I was at Hamilton there were some demonstrations at the student union. Perhaps what hit home to me the greatest at Hamilton was in my junior year when I roomed with three other men, one of whom was a senior, and I learned of his anxiety about possibly going to fight upon graduation. I remember particularly hearing the conversation between him and another senior about their feelings on the war and I remember it because I had been looking at the war from a fairly academic point. I remember being struck by how immediate it was to them.

Then, also as a junior, the lottery system for choosing draftees was instituted and I received a fairly low lottery number. In fact, it was number ninety. The numbers corresponded to the number of days in the year. I had to go to a draft board and take a written exam and take a physical to see whether I would be drafted. This was in the spring of my senior year at Hamilton. The war did achieve an immediacy to me then. The first few years my views on the war were completely academic because I never envisioned that the war would go on so long that it would have an immediate effect on me. I personally did not feel a lot of anxiety about possibly fighting in war until quite late in my college experience.

**RITCHIE:** You mentioned that when Herb Klein came to the campus, you had a few words with him about Vietnam. Do you remember what that was about?

**RYNEARSON:** Well, the setting of that conversation was that the president of the college had invited me and some other students who were largely responsible for Mr. Klein's

appearance to the president's house for dinner and a chance to meet him before his speech. I remember while we were standing around during a cocktail hour—I was a teetotaler, I was going through the motions of being sociable at the cocktail hour. I remember speaking to him in a polite way, but I remember it was an abrupt change in the conversation. The gist of my remarks, I believe, were to impress upon him that most of the students at Hamilton were opposed to the war, that feelings were strongly against the war. When I look back at this, I'm sure that this was nothing that he had not heard previously, and it was probably quite tame to some things he had heard since passions were quite high in the country at the time. For me, it was a big deal because I was always taught to be polite and non-confrontational, but I felt an obligation to speak up since I had such a high ranking member of the administration within earshot. That was my little contribution at that time to the anti-war movement.

**RITCHIE:** It's interesting because Klein had a reputation of being one of the more moderate people in the Nixon administration, especially in terms of media relations. Reporters thought he was more approachable than most of the hardcore Nixon team. But even he got his defense mechanism up at the hint of opposition.

**RYNEARSON:** One of the students in my class had interned in his office during our Washington semester program of which I was a participant. Probably the fact that my friend, Bill Monopoli, had interned with him kept me from being even more blunt with him. It was still a big deal to me to speak up in that way. This was prior to my law school training, so I do remember the moment quite vividly.

**RITCHIE:** You said you came to Washington on the Washington Semester Program? When was that?

**RYNEARSON:** My college started a semester program in Washington in my junior year. I was on the first program of the college. Previous to that, the college had sent one student each year to participate in a program run by Colgate University in Washington. My year was the charter program for Hamilton College. There were about fourteen, fifteen students participating and one of my government professors, Eugene Lewis, was the professor who was assigned to accompany us to Washington and teach us while we were interning. It was an absolutely great experience for me and very significant in my life. I had an excellent internship on Capitol Hill in the House of Representatives for two months with

a congressman from Illinois, Paul Findley, who represented, I believe, the 20<sup>th</sup> district of Illinois, including Springfield and Quincy, Illinois, a district which, to this day, I have still not had the opportunity to visit, but about which I know a bit. It was a great internship. His staff were very personable. They tried to get me doing things that were educational for me. The congressman was a former newspaper editor and was an excellent writer. I appreciated having the opportunity to do some writing for him and to have him edit my work.

Subsequent to that internship, I interned at the Agency for International Development which, at that time, was physically located within the State Department building. That was also an educational experience, but not as impressive to me as my congressional internship. The fact that I had had such a better internship in the House and not quite as useful internship in the State Department did affect my views. I also felt that when I was in the House, I was doing more matters of responsibility than while I was an intern at AID. Rightly or wrongly, I concluded from that that an individual could easily get swallowed up in the bureaucracy of the executive branch. That did influence my views subsequently.

**RITCHIE:** This was 1970 when you were in Washington?

**RYNEARSON:** No, it was actually the fall of 1969. A lot was going on in Washington at that time. President Nixon had not been in office for very long. He was inaugurated in January of that year and was instituting his Vietnamization program in the war. We had just landed on the moon with Apollo 11 on July 20 of that year. The Apollo 11 astronauts were in quarantine until about the time of my arrival in Washington in September of that year. I had the opportunity to see President Nixon officially greet them on the South Lawn of the White House that fall. He gave them the equivalent of a head-of-state reception on the South Lawn. As a young man of twenty years of age, that was quite impressive. It still is impressive to me.

Senator [Everett] Dirksen, unfortunately, passed away the first week of my internship in the House of Representatives. Since my member, Congressman Findley, was also from Illinois, he had the opportunity to attend the official ceremonies for Senator Dirksen in the Rotunda of the Capitol. He permitted me to accompany him. I'll never forget his asking one of the Capitol policeman if I could stand in the doorway and observe the ceremonies. I did witness those ceremonies and witnessed the president of the United States coming to the Rotunda to pay his respects to Senator Dirksen lying in state.

I had some unusual events that were never duplicated at any time in my Senate career. Sometimes I've felt that interns get to see more than the regular staff members of the Senate and the House. At least it's a theory I have.

**RITCHIE:** Were you there during the moratorium, the big protests?

**RYNEARSON:** I was there during, I think, two of the big demonstrations. I remember one occurred in October of '69. I believe the crowd size was in the two to three hundred thousand range. It occurred on a Saturday, as I remember. I was still interning on Capitol Hill for Congressman Findley. As a conscientious intern, I felt that I needed to work that day in the Library of Congress on a research paper relating to the war powers of the president. It was my major research project for the congressman. The dilemma I faced that day was how to get from Foggy Bottom, where I was in a rental apartment, up to Capitol Hill, without getting tangled up in the demonstration on the Mall. I remember taking a taxicab ride that went circuitously through Washington to avoid the demonstration and get me up to the Library of Congress.

I also felt strongly that I should not be at the demonstration lest I embarrass the congressman in any way. The congressman's views, as best I can describe them, were mildly opposed to the war. He had skepticism about the war effort and how we had gotten involved in the war through the Gulf of Tonkin incident. I don't know to this day to what extent he would have been embarrassed had my photo appeared in the demonstration. But I wasn't about to take any chances so early in my congressional career.

Instead, I contented myself with working on this research paper, which was methodically dealing with the interaction between the executive and Congress on war powers issues through history. I felt that that itself was a contribution to the anti-war effort, in that I believe that Congress had not fully asserted its powers in the war area to regulate presidential conduct. Of course, the president did have the Gulf of Tonkin joint resolution as a basis for authorizing his war effort, but it was largely perceived in the anti-war movement, at the time, that Congress had not done enough, that Congress had abdicated its responsibilities. What I was doing in the research paper, which was requested by the congressman and was not something foisted by me on him, was to detail the history of the interaction between the two branches. I tried to do that in a way that kept my personal views out of the paper.

**RITCHIE:** Do you remember his reaction to your paper when you finished it?

**RYNEARSON:** Well, it took most of my internship to complete the paper, and then I was later told by his administrative assistant that he had been able to use some of the material in testimony before hearings that were held. I don't know to this day whether the paper had much of an impact on him or his views. This was, however, before the enactment of the War Powers Resolution. The congressman did introduce his own legislation dealing, I believe, with presidential obligations to report to Congress on his introduction of forces overseas. But whether my paper had any real influence on the eventual writing of the War Powers Resolution is highly doubtful since the congressman was a minority member of the Foreign Affairs Committee of the House. However, the War Powers Resolution does contain a reporting requirement that is drawn at least partially from the House legislation that was in conference. To what extent the congressman influenced that piece of legislation, I just don't know.

**RITCHIE:** Was this your first visit to Washington, when you came as an intern?

**RYNEARSON:** No, I had come with my parents at least once before. I believe it would have been about 1960 that I had come on a sightseeing tour of Washington. I was eleven years old at the time. I remember going to the Smithsonian and seeing the Wright brothers' plane. I remember taking some photographs on the Mall. I remember seeing the Capitol at various times from the outside. I don't recall whether I was in the Capitol Building, although I imagine that I was. It was during the summer, and I just remember that it was a pleasant sightseeing tour. It was not the only stop on our vacation. I believe we were also at Williamsburg on the same trip and that made quite an impression on me. I always loved history and I knew a lot of American history. I suppose that Williamsburg made more of an impression on me than Washington did.

Also, I should say, that before I began my internship, I did a little bit of a scouting trip in Washington to line up a rental apartment. I had a very good friend at Hamilton, Kim Williams. His full name is Glenn Kimball Williams. He attended high school in Annandale and lived on the same floor of my dorm in my junior and senior years at Hamilton. His parents very graciously put me up in the summer before my internship so that I could go into town and interview in different members' offices and line up my rental apartment for the fall.

Before I arrived in September of '69, I had some familiarity with the city. I also remember buying a book, *Washington, D.C. on Five Dollars a Day*. It contained a lot of useful tips on Washington, some of which I still use, although the price is certainly not applicable. I learned how to find my way around. I have a distinct memory of drawing the major streets in Washington in the sand while at the beach in New Jersey the summer before my internship in order that I would have the city clearly laid out in my mind so that I could get around. Even though I had lived just ten miles outside of New York City, growing up, I was always somewhat intimidated by cities. I had a certain anxiety level, a mild anxiety level about being thrust into the city and having to get around on my own. I did a lot of preparation before I arrived.

Once I was in Washington, I found that I just loved the city and had no fear of it and thought that Washington compared in many ways favorably over my knowledge of New York and Philadelphia. It seemed to be a more manageable city and quite a bit more beautiful. I really fell in love with Washington right from the very beginning. It didn't hurt one bit that, in the fall of 1969, Washington enjoyed an unusually protracted Indian summer with a great deal of nice, warm weather, which conveniently coincided with weekends. I have a memory of floating down the Potomac River on the Gray Line cruise to Mount Vernon in November 1969, sitting out on the deck of the boat and getting a mild sunburn. Of course, Hamilton, at the time, was having snowfall. I felt I was in paradise. I felt that this was it, really a great place. If I had anything to say about it, I was going to find a way to return to Washington after my college years or higher education, however that would turn out. I wanted to return to Washington.

**RITCHIE:** When you graduated from Hamilton, you spent a brief period as a newspaper reporter in Syracuse. How did that come about?

**RYNEARSON:** Well, in the summer of my junior year in college I was looking for a job. I should say, as background, my parents had moved from my childhood home in Yonkers, New York, from the community that we called Crestwood. They had moved to a suburb of Syracuse called DeWitt in October of my freshman year at Hamilton. In other words, I had applied to Hamilton and been accepted in the spring, thinking I was going 200, 250 miles away from home only to find one month into my college career that I was at a college thirty-five miles from home. I was not entirely pleased with that. Being an only child, I was a little bit relishing the idea of getting away from home. As it turned out, it

didn't make much of a difference except to make things more convenient for me when I did return home during breaks.

Although my dad's company was headquartered in Syracuse, he worked for the international division that was headquartered in New York City. The reason for the move was that the new president of the company decided in 1967 that he wanted to bring the international division up to Syracuse and basically gave the employees in New York the choice of having their careers wither on the vine during a transition period while he phased out the New York office or joining the company in Syracuse. Of course, my dad opted for the latter.

It turned out that when I went home in the summers, I was going home to Syracuse, an area with which I had no familiarity. My dad tried to help me out. He knew someone at Carrier who had a friendship with an individual down at the newspaper in Syracuse, the *Syracuse Herald Journal*. I applied for a job there and sat for an interview. I believe I mentioned my dad's Carrier friend's name. The result was that I was offered a very low-paying temporary job at the newspaper in the summer of my junior year.

I performed two jobs that summer. The one job was to help the entertainment editor of the newspaper, Joan Vadeboncoeur, who did all the movie reviews for the paper, to help her with her filing. Joan was a marvelous film reviewer and entertainment reporter, but she had a filing cabinet that had way too many glossy pictures of stars for the capacity of the cabinet. Nevertheless, my job was to somehow or other squeeze these glossy photos into the cabinet, and I would come home with my fingernails all bloodied from working with the photos. The other job that I performed was in the newspaper morgue where I assisted a nice elderly lady who had been crippled from a horseback riding accident, to help her with filing in the newspaper morgue. Later, when it appeared that I was a conscientious worker, I was given the job of preparing copy, in some way that I cannot clearly remember, but it was a ministerial function. I had to do some stamping or preparation of newspaper copy and I did that on the night shift of the paper. That was my experience at the paper in the summer of my junior year at Hamilton.

After that, the newspaper offered me a job as a starting reporter upon my graduation from Hamilton. I started out, I believe, at the salary of ninety dollars a week. I was to work on the night shift of the newspaper, where I would be doing stories that related to the



outlying areas to Syracuse, some of the country areas. This was because of my having gone to Hamilton and having some familiarity with those areas.

I was offered the job largely because I had struck up a very nice relationship with the night editor of the newspaper, Mario Rossi. Mr. Rossi was a major figure in the newspaper and also in Syracuse, generally. He had run for mayor of the city unsuccessfully. I believe he was defeated in a primary. But he knew the city like the back of his hand. He wrote a column for the newspaper, which was widely read. He was a beautiful writer. Studying his columns, I learned some writing tips. He promoted my career within the newspaper. He invited me to his apartment in downtown Syracuse, where he was a great fan of Italian art and opera. He made quite an impression on me as being a real Renaissance person. He is more responsible than anyone else for my getting the starting job as a reporter. However, my job was on his shift of the paper. He was the night editor, and I would go into the paper at about 4:30 in the afternoon and work until midnight or later. Of course, I was not real thrilled with those hours, but as a young man, I was a lot more tolerant of them than I would have been later on.

I enjoyed my job, but I worked there for just a short time, six to eight weeks max, because I did receive a job offer at the Library of Congress while I was working as a reporter. The job offer was not entirely unexpected. I had interviewed at the Library of Congress in the preceding January, the January of my senior year at Hamilton. The Library staff led me to believe that they did want to hire me. They did not have a current vacancy, but would keep me in mind.

The Library job was much more of what I had in mind for myself than the newspaper job. But I never regretted working for the paper. I did learn some things during my short stint on the paper. I feel very fortunate that I had so many great experiences preparatory for what I would later do in the Senate. I feel as if many individuals are not able to fully tap their earlier experiences for the benefit for their later careers. I pretty much milked my early experiences for all they were worth and got a great deal out of them to assist with what I would later do.

**RITCHIE:** I was very interested to see that you came to the Library of Congress or the Congressional Research Service right out of college, other than the few months you were with the newspaper. That was a plumb job to get at that time.

**RYNEARSON:** It was. I had a little bit of help. When I was applying for a job in Washington in my senior year at Hamilton, my dad suggested that I look up the daughter of a longtime friend of his from Flemington, New Jersey. This daughter was working at the Congressional Research Service. She was in the Education and Public Welfare Division of the Library, which I had no interest in since I had no real background in that area. But I made contact with her, and she knew the assistant chief of division of the then-Foreign Affairs Division of the Congressional Research Service. In fact, the two divisions shared the same floor in the old building of the Library of Congress, which we referred to as Deck A because it used to be a floor reserved solely for housing books. She took me over to meet the assistant chief of the division, Warren Johnston. Mr. Johnston and I got along well and he took an interest in having me join that division. I remember that he took me around to meet some of the longtime analysts in the division when I was not even yet hired.

What Warren said to me was that they did not have any current vacancies, but they expected that they would and that they were going to seriously keep me in mind for a vacancy. I don't really feel that he was doing this out of friendship to my dad's friend. I think there must have been something in my resume that caught his eye, either the fact that I had been an intern in the House or that I had done a fair amount of writing, and my international background made me a good candidate. In any event, I feel that I was a good candidate on my own merits.

That July, I received a call in our home in DeWitt, New York, in which Mr. Johnston announced that, on account of the division having to do a major research project on the so-called Pentagon Papers, the division was in need of additional help and that he could offer me a job, which initially would be, I think, what they called "temporary conditional" and then it would be regularized to a full job. I wasn't sure about the distinctions. In retrospect, the distinction was that I was not paying into the Civil Service Retirement System in the job as it was initially offered to me, but I later had the opportunity to pay in and get credit for it. In any event, it was a full-time job in terms of what was expected of me. I had regular hours and performed, more or less, the same duties as other people in the division. Then the status was changed so that I would actually be paying into the Civil Service Retirement System.

I was a little disappointed initially, however, to find that, having been lured to Washington with the mention of the Pentagon Papers, my duties did not involve the Pentagon Papers in any way, shape, or form. I was merely freeing up other people to devote

more time to that work. The division was involved in some sort of compilation and excerpting of the Papers to produce as a congressional document. It did become a public document.

I started working and doing reference work, which meant usually that a congressional office would call in and want background information on a subject. I would go about xeroxing the appropriate articles, whether they were in periodicals or in books, to provide them with the background information they needed. However, as a result of the Congressional Reorganization Act of 1970, my responsibilities got to be a little more sophisticated than that. The 1970 act charged the CRS with devoting more of its resources to assisting the congressional committees. So we had a greater amount of committee work than we had had previously. We also were doing more original research.

The Congressional Reorganization Act of 1970 changed the name from the Legislative Reference Service to the Congressional Research Service, and that change in wording was quite deliberate and was intended to have functional consequences. The Legislative Reference Service had been doing some research previously, but the 1970 act was designed to institutionalize that. The short answer is that the Foreign Affairs Division began to get more and more committee research work, and as I proved my mettle in the division, I was given more pure research assignments.

I also had the assignment from time to time to write canned speeches for Members of Congress, where you would write a speech, for example, in favor of foreign aid or against foreign aid for a Member of Congress that the member could either give verbatim or try to work with. I always enjoyed doing creative writing, so I enjoyed doing those speeches, although I certainly don't know to what extent they were ever used verbatim.

I was doing quite a bit of work, initially, on State Department-related issues. At that time, one of the big issues in the State Department was the lack of an appeals procedure within the Foreign Service to take care of grievances. I remember working on that issue particularly and attending a hearing in the House chaired by Wayne Hayes of the House Government Operations Committee, as I believe it was called at the time. He was considering legislation to require a grievance procedure within the State Department.

The widow of a Foreign Service Officer, Mrs. Thomas, attended that hearing. I've

forgotten whether she testified or not. She was lobbying in favor of the procedures because her husband had been tragically separated from the Foreign Service through a bureaucratic mistake. As a very well educated man, he had difficulty finding work once he left the Foreign Service and eventually committed suicide, I think, believing that the insurance policy would kick in for the benefit of his wife. In any event, I remember her lobbying Congressman Hayes, who did not appear that sympathetic to the problem. I also remember Congressman Lee Hamilton giving testimony, I believe, in favor of having a grievance appeals procedure. I believe he had legislation on the subject.

Later on, the Foreign Affairs Division realized that my greatest interest in international affairs was in Latin American affairs. They permitted me to assist the chief Latin American affairs analyst, Barry Sklar, who later would become an employee of the Senate Foreign Relations Committee. I assisted him along with another lady in the division, Virginia Hagen. Barry and Ginny Hagen were very nice persons with whom to work. We worked on any Latin American issue, reference or research, that came up. I did that for more than a year. One of the things that I did was to prepare a chronology of events on the Allende government in Chile, which was later printed as a House document. People told me for more than two decades afterwards that that chronology was something that the division was able to circulate to offices in Congress and use quite a bit.

I also got to know a little bit the chief Latin Americanist in the House Foreign Affairs Committee and the Senate Foreign Relations Committee. At that time, in the case of the House, it was a very nice man called Mike Findley. In the case of the Senate, it was a very nice man by the name of Bob Dockery. I also assisted another great staffer on the Foreign Relations Committee, Bill Richardson. Bill, of course, would go on to greater things as cabinet secretary and ambassador to the U.N. and as governor of New Mexico. I was always pleased that I had gotten to assist him and I later assisted him from my position in the Legislative Counsel's Office for a brief period of time before he departed the Foreign Relations Committee.

**RITCHIE:** Could you describe what the Congressional Research Service was like in those days? Was it a large or small operation? What were the working conditions at CRS?

**RYNEARSON:** CRS was a medium-size organization that was expanding as a result of the new responsibilities given to it under the Congressional Reorganization Act of 1970. It was divided functionally by subject matter, so you did have an Economics Division, an Education and Public Welfare Division, a Foreign Affairs Division, a General Government Division, and there were some others. Each division had perhaps thirty or more employees. Eventually, it got up to, I think, more like sixty employees. During my time there, it was somewhere in the thirty to forty range. The division had people who were quite talented and were very good at getting information so quickly. It was amazing they could get congressional staffs information quickly. If called upon to do research, however, they could be involved in very long, drawn out projects, some of which, I'm sure, the congressional staffs felt were not timely when they were received but it was difficult to do that with original research.

The Foreign Affairs Division seemed to have a split personality. It seemed to have some individuals who were librarians by training or by temperament. They just wanted to bury their heads in books. Sometimes they were not terribly social people. They lived for books. Of course, part of me has that temperament, and I can certainly understand it. The other half of the division were people who were more interested in the political side of things, in the current events, who might be using their job as an initial job to go on to something else. They were very easy to socialize with but, perhaps, did not stay at the division for as long a period of time. As it turned out, a number of my friends at the Foreign Affairs Division made lifelong careers of their jobs. I remember more than twenty years later, in fact, close to thirty years later, there being several individuals whom I initially got to know who were just retiring from their jobs at the Foreign Affairs Division.

The Foreign Affairs Division performed an essential role and was very helpful, and is very helpful, to both houses of Congress. I was pleased to work there and occasionally I think about what it would have been like to have made my entire career there. It would have been a very good career, I feel, if I had stayed there. But I don't regret going on and doing what I did. The Foreign Affairs Division was great training for what I would later do because the division was under the charge of being professional and non-partisan. By and large, the division did do that. I do remember that there were some individuals in the division who put up presidential campaign bumper stickers on their cubicles in those days, something that I would never have dreamed of doing and did not do then or later. There were individuals with very strong views on current events, who were chomping at the bit to

express them. But I think, overall, that they contained themselves and constrained themselves and behaved professionally in terms of their work product.

**RITCHIE:** Did you ever find it frustrating to not take a side on an issue that you had some feelings about?

**RYNEARSON:** No. I had strong feelings on current events, and I still do, but I always felt that we were serving an important role in the process by providing information and data and letting other people decide what conclusions to draw from that data. I felt comfortable in that role.

I never believed that what I was doing there or in the Senate promoted any great moral travesty. In other words, I never felt that I was a party to something that was totally beyond the pale morally. I felt that reasonable people could differ on what they did with the information we provided. I felt comfortable in that role.

**RITCHIE:** I think it's always been a problem for some of the people in the CRS, who chafe at the notion that they have to present the other point of view, as well as the side that they agree with.

**RYNEARSON:** I found it more to be an intellectually challenging thing, particularly when you're writing speeches, to be able to write a speech on both sides of the proposition. I tried to make whatever I wrote very heavily laden with facts so that it had very little of me, if anything, in the speech. In fact, ideally, I would be trying to have none of me in the speech and all of the congressman, but sometimes it was hard to know exactly what the congressman's point of view was.

I shouldn't overemphasize the speeches. I only did a handful of those. What I did, mainly, was the reference work and also some of the original research that I was called upon to do. Typically, in the Foreign Affairs Division, there would be some research paper that would be required, that would be divvied up among the analysts. I would write just a small part of a larger document.

I did have a large research project involving the brain drain of foreign scientists and doctors to the developed world, especially the United States. This was a project of particular

interest to the assistant chief of the division. The division was under a request to prepare a study for Congress on the subject, and I was given the task to do the initial research on it and write it. I wrote what was for me then quite a long document, of fifty pages or longer, on the subject. I got quite interested in it, particularly the immigration aspect of it. In the course of researching it, I came across the name of a Senate staffer who was involved in immigration matters, who I later got to meet and became very good friends with.

That's a little bit of a digression. The gist of what I wanted to say is that the study I did in its initial draft was sent to a senior analyst in the Science Policy Division to review. He did not care for the way I had written this study. In fact, he took a lot of pot shots at my writing, which really hurt my ego. In retrospect, it's hard to know whether he was coming down hard on me because of that or because he felt he should have been involved more. I don't know what the politics of it was.

The upshot was that the assistant division chief tried to introduce me to some additional writing guidance. There was a man who had written extensively on how you improve your writing by being aware of the fog index. His tips for writing, which I found useful, boiled down to this: In the English language many of our words are, of course, Latin in origin, coming to us from the Normans. Those words were to be avoided at all costs because they tended to be a little more pretentious, multi-syllabic and just harder on the English ear. Instead of using the word, "canine," you would use the word, "dog." You would go with the Anglo-Saxon equivalent. I found that theory to be amusing and useful. I tried to follow that in my writing thereafter.

In terms of the person I met doing my research, it was an aide to Senator [Jacob] Javits, Mary McFerran, who was a caseworker, specializing in private immigration cases. She had been involved in some reform of the immigration laws dealing with exchange visitors to the United States, the so-called "J" visa visitors. I called her up having seen her name in the *Congressional Record*. I wanted to interview her for my research project. We met for lunch over at the Supreme Court cafeteria, a place I had never been. We struck up a lifelong friendship, which ended about three years ago when she passed away at about age 81. She proceeded to get me more interested in immigration matters. That was an interest that continued to grow with me throughout my career, but it really had its origins in that research project that I did for the Foreign Affairs Division.

**RITCHIE:** Would the division work more with the House or with the Senate, or was it split fairly evenly? What were your experiences?

**RYNEARSON:** I believe that it worked a little bit more with the House than the Senate. Its responsibilities were equal, but it appeared that we received more requests from the House, perhaps that was because of the smaller size of congressional representative staffs needing assistance. That was my recollection. We did more requests that were derived from House members and from House committees than from senators and Senate committees.

**RITCHIE:** Well, the Library of Congress is also a wonderful place to be able to do research. I assume that in those days you had access to the stacks?

**RYNEARSON:** We had total access to the stacks. I really enjoyed going into the stacks to find books for research. It seemed as if every time you looked for one book, you would find so many more that were interesting. Also, as I recall, the stacks had marble floors, and in the summer, the Washington summers, they were delightfully cool. Our division was not much on appearances. It had a linoleum floor, which really was best suited for employees wearing roller skates because it was a fairly large expanse of area, but I don't recall anyone having done that. I do remember some people wearing sneakers, although I never did. I was always dressed with a tie on and came to work in a sports jacket or a suit.

There was an old elevator that ran up to Deck A, which was the top deck in the building. There was an elevator operator. The elevator was quite small and slow, and there was no way to actually walk up to the deck. It was probably a fire hazard. I do recall that the Library of Congress had quite a few fire engines come to it during the time that I was there but, fortunately, nothing that occurred in our area. It was also somewhat dusty and probably a bad place for me to work in terms of my allergies. I have quite significant allergies.

The people in my old office were very friendly, very helpful to me. It was a great experience in terms of how to behave professionally vis-a-vis the congressional staff and also it gave me a great, basic introduction to the resource materials in the international area to the extent that college did not introduce me to all of the appropriate materials. I really got a great introduction at the Library of Congress. I worked there for two full years. Afterwards, I went away to law school.



In the summer of my first year of law school, I came back and worked on a contract basis, doing a project for the Library of Congress. That project was even more helpful to me in my later career than what I had done while an actual employee of the division.

**RITCHIE:** What was that project?

**RYNEARSON:** That project involved reading 1700 pages of the major foreign relations laws of the United States that were bound in a GPO printed document called the *Foreign Relations Laws of the United States*, and preparing an index, the very first index ever done for that annual compilation. As a result of that, I became familiar with laws that I would later be called upon to revise by drafting amendments. It was absolutely an invaluable experience for what I would later do, although the indexing itself was somewhat of a tedious ministerial job. I did do some research on how to do an index. I did that index and I worked with the Library of Congress staff on how this index would be printed.

I had some of my contract work inside the Library building, but most of the work I performed in an apartment that I rented on Capitol Hill where I worked all day long reading these laws and preparing index cards to be used. It was the summer of 1974, and the hearings were being held in the House on the impeachment of President Nixon. I remember listening to the radio while I was doing this index to keep abreast of the charges of impeachment that were being leveled at the president. The House Judiciary Committee, I believe, held the executive meetings on the impeachment—executive may be the wrong word, they were probably open to the public. In fact, I thought about going over there to see it, but I was dissuaded. I felt I would never get in because of the sheer number of people who wanted to witness it. I remember hearing the impeachment votes on the separate charges on the radio, while also trying to get my index project done. I also remember eating a lot of ham and cheese sandwiches the last two or three weeks I was in Washington because I had fallen behind on my progress in doing the index and I was really trying to crash at that point. I also remember not being able to look at a ham and cheese sandwich for months and months afterwards. [laughs]

That project served me so very well later on. In drafting legislation, I needed to draw upon my knowledge of the foreign relations laws on a daily basis and I kept the *Foreign Relations Laws of the United States* at my desk as my Bible. Those 1700 pages of *Foreign Relations Laws of the United States* have now expanded to become a five volume set of laws,

which must number in the thousands of pages. For the project I did, there was only a single volume involved, but it was about the maximum number of pages that GPO could bind.

**End of the First Interview**

**THE SENATE LEGISLATIVE COUNSEL'S OFFICE**

**Interview #2**

**Tuesday, April 22, 2003**

**RITCHIE:** We left off when you were working at the Congressional Research Service. You were doing the index to the laws, which proved so useful later on. But that's just when you go off to Cornell Law School. When did you think about going to law school and why did you go?

**RYNEARSON:** Well, I started thinking about going to law school even while I was at Hamilton College. I was agonizing between taking a graduate degree in international relations, probably a Master's, or going to law school. In fact, I applied to a bunch of schools in both categories in my senior year at Hamilton, but I did not have the time to fully feel comfortable with a choice between the two possibilities, so I opted to work after college. It was really just a few months after graduating that I arrived at a choice. In the fall of 1971, while I was at the Library of Congress, I decided that what I wanted to do was to go to law school. To this day, it was not a decision that was entirely clean cut.

Occasionally, I have wistful feelings about what my career might have been like if I had gone the Master's or even Ph.D. route. I felt, at the time, that the law degree would be more useful for me in a career in Washington. I very much wanted to continue to work in the public sector in Washington. I felt rightly or wrongly that the law degree would give me more skills and expertise than the Master's in international relations. I saw some individuals in my division in CRS who had Master's degrees and the level of work that they were doing did not appear, offhand, to be much different than the work I had been doing with just a college degree. That played a factor in my thinking. Also, I came to a rationalization that I really didn't have to choose, that I could do a law degree and then go on and do a Master's degree at a later time, but I never did that. Instead, I got interested in applying to Cornell and some other schools. Cornell had a specialization program in international legal affairs. I ended up taking that course of study at Cornell. I did get quite a bit of exposure to international matters while I was studying law.

I did not apply to law schools in the fall of '71. By the time I had made my choice in November of '71, it was just a little bit too late to apply. So I continued to work at CRS for a full two years after initially starting. It wasn't until the fall of '72 that I applied to law

school and got my acceptance in the spring of '73 and started in Cornell in late August of '73.

**RITCHIE:** What kind of experience was Cornell Law School?

**RYNEARSON:** I guess, for me, it was a little bit of a mixed bag. I found that I had a lot more academic competition at an Ivy League law school than I had had at Hamilton. I worked very hard to try to stay up with the competition. It was quite an adjustment for me to go to law school. No one in my immediate family had been an attorney. I had to learn to think like an attorney. My grades were not great, but I was also taking a heavier course load because, by taking the international legal affairs specialization, I was taking some additional courses that others were not taking. I thought the faculty at Cornell was just really bright and impressive. They did not have quite the warm and fuzzy feel that college professors had had. They were a bit intimidating, which I did not care for. But looking back at it, they were overall a terrific faculty. I really loved being in Ithaca. I thought that was a darling little town that had the best of both worlds. It had a large student population but, at heart, it was a small town. I enjoyed being in that environment. That was basically my law school career.

I went to work on a contract basis at the Library of Congress in the summer of my first year in law school, and then in the summer of my second year, I took a study program in Guadalajara, Mexico, and studied U.S. immigration law and Latin American civil law from some United States law professors. I lived with a Mexican family, which was a really rewarding experience. It gave me a chance to ratchet up my Spanish to a higher level, and I found it to be a very educational experience that was really the highlight of my law school career. The immigration law that I learned that summer benefitted me for years to come. I studied under the former general counsel of the Immigration and Naturalization Service, Charles Gordon, who was recognized as quite an authority and had published extensively in the field. He really gave me a strong interest in immigration law.

**RITCHIE:** I was going to ask you what did international law entail and I guess immigration law would be a big part of that. What else would you do beyond what a regular law student would do?

**RYNEARSON:** I took a basic course in public international law and I also participated on the *Cornell International Law Journal* and did some draft writing for the journal. I took a course in comparative law, which had been originated by the law professor who taught me, Professor Rudolph Schlesinger. Professor Schlesinger was the most popular law professor at Cornell when I was there and an absolutely brilliant man, whose mind was able to reach beyond the compartments of the law in order to give you a comparative view of the law, comparing United States law with the law of France and Germany and other civil law countries, also differences between United States law and English law. For the first time, I felt as if the law was making some sense to me. He, unfortunately, retired from Cornell the very year after I had him as a professor. Cornell had a mandatory retirement age, which in his case was a great mistake because his mind was so sharp and he was so popular with the students. He ended up going to Hastings Law School in California and teaching there for several years. Almost immediately at Hastings, he was voted the most popular law professor there. He was quite a remarkable scholar, and I was fortunate to have had him at all.

**RITCHIE:** Earlier, you said that Cornell made you think like a lawyer. What did you mean by, “think like a lawyer”? How differently did you come out of this experience than when you went into it?

**RYNEARSON:** I think that law school tends to make you more detail oriented. It also emphasizes the need to perceive distinctions. I think in college there is more of a tendency to see similarities between different areas, to synthesize in effect. In law school, the thinking is just the contrary. Law professors want you to see distinctions and to be able to argue that differences have different meanings and consequences. I don’t think there is a right or wrong there. I think one can usefully use both approaches. But to generalize, I would say that in college, the reasoning is a bit more deductive, and in law school, it’s a bit more inductive. Someone once said to me that the intent of law school was to sharpen your mind by narrowing it. That was a phrase that always annoyed me. I never wanted to think that I had a narrow mind or was aspiring to a narrow mind, but I do believe there is a big grain of truth in that observation.

**RITCHIE:** In terms of your later dealings with senators, probably the majority of senators have a law degree. That was traditional throughout the twentieth century. But there are always senators who come from other backgrounds, in business, or astronauts, or

whatever. Did you find over the years that there was much difference in dealing with senators who had a legal training as opposed to those who didn't?

**RYNEARSON:** I believe I did, although I did not have what I would call extensive direct contact with the Members. My direct contact with the Members was intermittent, but I did see differences in working with the staffs of Members who were attorneys and staffs of Members who were not. I also had a couple of experiences where I was in the presence of a Member or Members who expressed their great disdain for lawyers. I assumed they were not lawyers. [laughs]

It was not coincidental that the word "legis," relating to law, is in "legislation." To totally blind oneself to the legal component of legislation is a big mistake. I always felt that Members who put down the legal element in legislation were doing themselves a disservice. However, looking at the other side of the coin, working with staffs where the Members were lawyers, the interaction was not always uniform. Sometimes the fact that the Member was an attorney meant that the Member really was chomping at the bit to write the legislation by himself or herself and that I was subject to a lot of micro management, which didn't please me either. It's hard to generalize to say that one group of Members were much easier to work with than another set of Members. That was my experience.

**RITCHIE:** In terms of your expression about narrowing your mind, is there a difference between those who are sort of the "big picture" people, who had the concept but not the application, and those who were detailed-oriented, who worried about subclauses and the impact that they might have on the outcome?

**RYNEARSON:** Yes, absolutely. One thing I noticed is that some of the Members who were attorneys actually wanted to read the legislation that I was drafting. I always found that that was a heartening sign even if I didn't always agree with their revisions. Senator Byrd was one such senator. I have been in his presence several times where he would be carefully reading legislation that I had assisted in drafting. It always increased my respect for him that he did that. It seems to me that before you put your name on a piece of legislation, you should read it.

Both "big picture" and "micromanagers" posed challenges to me as a draftsman, but very different challenges, and they had to be handled in different ways.

**RITCHIE:** You spent three years at Cornell and got your law degree. You wanted to come back to Washington. Did you have any idea what you wanted to do when you got back here?

**RYNEARSON:** I was very interested in coming back to work on Capitol Hill. I did look into a couple possible opportunities in the executive branch. I looked into an opportunity at the General Accounting Office which, of course, is responsible to Congress but which operates somewhat as an executive branch agency.

I was very fortunate, though, that my choice basically came down to two. I had an opportunity to return to the Library of Congress in the American Law Division, and I had an application filed there. I also, for the first time, became aware of the Office of the Legislative Counsel of the Senate and the counterpart office in the House. I became aware of them just by happenstance. I was receiving a magazine at Cornell that was designed for law students and I came upon an article that was about the “unknown attorneys of Capitol Hill”. I’m paraphrasing. That may not have been the exact title. But it was entirely about the two offices. What really struck me was that I had had no awareness of either of the offices during the two years that I worked in CRS or earlier when I had interned in the House. That got me intrigued at how I could have been so ignorant. I was interested to find out about the offices. The more I read about the offices, the more I thought that this might suit me very well since it emphasized writing and acting in a nonpartisan, professional way and dealing with the important job of preparing the technical writing of the legislation.

I applied to both offices and interviewed at both offices. Actually, I had a visit planned to Washington not long after I read the article and I was able to drop into the Senate Legislative Counsel’s Office for a brief informational interview with the head of the office, Harry Littell. Mr. Littell was encouraging and he told me what additional information they needed. Mr. Littell later invited me to come back for a full blown interview in the office, and I was interviewed by him, of course, and by several other attorneys in the office. I dropped off my writing samples. Then in April of ‘76 (I believe it was about April 16<sup>th</sup>), I received a letter in the mail offering a full attorney job at the entry level upon my graduation and taking of the bar exam. Of course, I was thrilled. I did have an application still pending at the Library of Congress with the American Law Division. I did weigh the two jobs. In fact, I was called shortly by the Library of Congress indicating that they were still interested in me, but they got my first name wrong. They called me Alan instead of Arthur. That may

have tipped the scales. In any event, I shortly thereafter accepted the job at the Senate Legislative Counsel's Office. I really never regretted having made that choice. The American Law Division is a fine office, but I think my job in the Legislative Counsel's Office had some advantages. I really was pleased with that choice.

**RITCHIE:** Could you describe exactly what the Legislative Counsel's Office is and some of its history?

**RYNEARSON:** Certainly. The Legislative Counsel's Office is the professional, technical office of the Senate in drafting legislation. It operates on an on-demand basis. In other words, it is entirely optional with the Senators and the Senate committees whether to use the office and to what extent to use the office. But the office does provide professional legislative drafting services to both the Members in their individual capacities and to Senate committees. The office was established by law in the Revenue Act of 1918, which I believe was enacted in 1919. There you can find the basic charter for the office.

The office had its origins a few years earlier when Congress found that the enacted laws were increasingly disorganized, self contradictory and perhaps just plain sloppily put together. About that time, there was a law professor at Columbia University Law School, Middleton Beaman, who was pioneering professional legislative drafting services in a clinic that he ran at Columbia. He was extended a contract by the House of Representatives to come down and perform a demonstration project or what we now call a pilot project for the House to show the feasibility of drafting legislation in a technical, almost scientific way. He did that for initially, I believe, the Committee on Merchant Marine and then for the Ways and Means Committee in the House. In the course of doing that, he made quite a positive impression on the House leadership. It came to be that they wanted to institutionalize his services in a single office that would serve both the House and the Senate, of which he would be the head. That was the effect of the enactment of the law in 1919. Initially, he had one attorney who assisted him. I believe his name was Mr. Parkinson. Mr. Parkinson would do work relating to the Senate and Mr. Beaman would do work relating to the House. But after a few years, it was decided that there was too much of a conflict having a single office representing both houses. The office was divided so that each house would have its own office. That is basically the way the office got started.



Very helpfully, there was a tradition that arose of non-interference in the appointments of attorneys to the two offices so that a professional legal staff could be hired strictly on the basis of merit. I came to an office that was, and is, nonpartisan, non-policy-making, a technical, professional office. At the time I joined the office, there were fourteen attorneys already present. It was a relatively small office, but much larger than the office in 1919. Of course, in 1919, it appears that the office could only draft legislation on selected items or selected requests, whereas the office I came to in 1976 was attempting to draft for every request made in all the fields of legislative jurisdiction.

**RITCHIE:** You said that the Counsel's Office started out as a single office and it eventually was separated into two. Was there much difference between the Senate and the House Legislative Counsel's Office when you first arrived here?

**RYNEARSON:** There were differences. They were largely based on the differences in the institutions. The House Legislative Counsel's Office seemed to be more tied into the committee structure of the House. That is to say that there were attorneys in the House Legislative Counsel's Office who virtually doubled as counsels for the committees for which they were drafting legislation. In the Senate, there was more of a separation between the attorneys in the office and the Senate committees that had their own counsels. Our attorneys would have the committee counsels as clients and we would frequently work through the committee counsels as well as committee staff who were not counsels, but there was more of a separation there.

It also seemed to be the case, and I think still is the case, that the House Legislative Counsel's Office does less floor work in the House than the Senate office does on Senate floor work. That is to say, in the Senate Legislative Counsel's Office, we were always inundated with requests for potential amendments to be offered on the Senate floor, and this was much less the case in the House. I ascribe that to the difference in the rules between the House and the Senate. The House floor action was generally much more tightly controlled by the necessity of adopting a rule before you could bring major legislation to the House floor. The House rules would frequently exclude nongermane amendments or perhaps any amendments at all. In the Senate, it was much more of a freewheeling situation in most instances.

**RITCHIE:** Did the committees and the Senators go to any sources other than the

legal counsel? In other words, would they go to the Congressional Research Service or the American Law Division for assistance in this kind of drafting or was yours, essentially, the only drafting service?

**RYNEARSON:** The Library of Congress never has had a true drafting component within it. This was, in fact, intentional. At the time that the Legislative Reference Service was established in the nineteen teens, some thought it was going to have both the Reference Service and the drafting service in a consolidated office. This was not done, I think, largely because there were some concerns that such a service would essentially strip the Members of their legislative responsibilities. There may have been other reasons, as well, as to why the two functions were not consolidated within a single office. In any event, during my tenure in the Senate, the Library of Congress never appeared to seriously attempt to draft legislation. They would have been foolhardy to have done so because legislative drafting is quite a specialization. It can only really be mastered under an apprenticeship-type situation. For an attorney to attempt to do it out of the blue with no prior experience is only an invitation to disaster.

I should say that I think both CRS and the Offices of the Legislative Counsel in the House and the Senate had a mutually respectful view of each other's functions. My office wanted to refer Senators and committee staffs to CRS in order to have their policy refined to the point where we could be useful as draftsmen. I believe most of the CRS analysts also wanted to channel their clients to our offices at the point in which drafting was indicated. So I believe the relations between our offices were good and I felt in particular I always had an especially good relationship since, in many cases, I was referring clients to former associates of mine in the Foreign Affairs Division or people in the American Law Division whom I had gotten to know and thought very highly of. That was the relationship. But those two functions are fairly distinct functions and it's appropriate that they are performed by different offices.

**RITCHIE:** As you say, writing legislation is not something you really learn in law school, you have to apprentice. How did you go about apprenticing once you got hired by the Legislative Counsel's Office?

**RYNEARSON:** Well, I was assigned to a mid-level attorney to serve as my mentor, and his name is Frank Burk. Frank later became Legislative Counsel, the chief of the office.

Frank was a great tutor to me. He helped me immeasurably. He is a very bright man who had great writing skills and still does have great writing skills. He put me through my paces. As a mentor, he would pass along introductory drafting jobs to me or he would be the supervisory attorney and would have the last review. He would give me the jobs in such a way that I would really have to stretch my level of knowledge to do the job and expand my level of drafting expertise. We had an extensive file system of our drafts, and he would encourage me to go into the files and look for previous drafts to use as a jumping off point for what I would be doing.

Unfortunately, you could rarely take a previous job and just copy it. I found during my career that virtually everything we did in the office constituted an original piece of drafting at least in part. We could borrow certain boilerplate phrases but, essentially, every piece of legislation is customized and so with the jobs that Frank would give me, I would have to customize those jobs to the policy that was being expressed.

I apprenticed with Frank for a period of close to two years. My apprenticeship really took two stages. The first six months, in which I was entirely dependent on Frank for the jobs that were to be drafted, he would take in the requests from the Members and pass them on to me. After six months, I assumed my own portfolio, the international affairs portfolio of the office, and was receiving the requests directly, but Frank would do a review of many of my final drafts before they would go out of the office. I had the benefit of his expertise for a long time after I assumed my portfolio.

I also got quite a bit of benefit from consulting with the other senior attorneys in the office. The office always encouraged you to consult with whatever attorney had some expertise. I frequently found that Blair Crownover was a great source of institutional memory. Blair was mentoring the other attorney who was hired at the same time that I was, Bruce Kelly. The four of us, Frank and Bruce and Blair and I, often were together socially and as part of our training. I found that Blair was a great source of information on how to draft.

**RITCHIE:** Were there any sorts of tricks of the trade that you had to learn early on before you got into doing this? Do you remember the types of recommendations that you were getting from the people when you were starting out?

**RYNEARSON:** Well, I don't think I can easily summarize the tricks of the trade. I really learned the tricks of the trade over my entire career. I was always learning better ways of doing things. At the time that I was hired, the tricks of the trade varied a little bit from subject area to subject area. Later on, under Frank's administration of the office, a uniform style was adopted by the office. This was inspired, at least in part, by our counterpart office in the House that had adopted a partially uniform style. They had adopted a drafting style known by the attorneys as "tax style" because it originated with drafts that were done for the House on tax legislation. Tax style was later adopted by our Senate office as part of its uniform style. So now if you are a beginning attorney in my office, you have a much more fixed set of guidelines to use. The tricks of the trade are partially written down for you right at the outset. But in my case, I had to learn many of these stylistic matters on an ad hoc basis through my mentor and later on as I observed other people's drafting.

I guess there are a couple things I can mention that I think are common to both offices in terms of writing and that is, you try to use the same terms throughout your drafts because there is a drafting convention that different words are presumed to carry different meanings. Unlike creative writing or writing a novel, where you're trying to keep the reader engaged by showing off your knowledge of English vocabulary, legislative drafting is very boring by continuing to reference the same terminology. This is perceived by a layman as being further proof of the absolute humdrum and bureaucratic nature of legislative drafting, but it is actually done deliberately in order to make sure that administrators and executive branch agencies and judges in federal court will interpret the same words and phrases in the same way. The other very usual technique in drafting legislation is, generally, to keep your sentences short, or if they are long sentences, to break out the constituent elements of the sentence through indentation so that they can easily be referred to. A good principle is always to keep your sentences corresponding to individual ideas. In other words, to have only a single legal concept in a sentence. Those are two of the most common tricks of the trade. There are many more than I can summarize without giving a course in drafting.

**RITCHIE:** Early on, within a few months, you took over the portfolio of international relations or international issues. Had somebody else been doing that before, or was that something that you were creating a portfolio on?

**RYNEARSON:** There had been an attorney working in that area. Michael Glennon was the attorney in the office drafting in that area. He, in turn, had been taught by Larry

Monaco, who was no longer in the office when I arrived. Mike Glennon was the only attorney in the office working in international relations when I arrived. He was extremely knowledgeable in international law and international matters. But after I was in the office just six months, he left the office to become chief counsel for the Senate Foreign Relations Committee. Mike always expressed more of an academic bent, and I don't believe the drafting of legislation suited him very well in terms of his interests. He later went on from the Senate Foreign Relations Committee to become a well known professor of international law and published extensively in international law. There was a part of me that always wanted to emulate Mike and do more academic work in international law, but my office had a fairly narrow function to perform, the actual writing function, and I enjoyed writing. It was a combination of the writing, editing, and the fact that I enjoyed the wonderful staff that we had, that kept me in the office for my entire career in the Senate.

**RITCHIE:** Well, you came at sort of an auspicious time in the late 1970s. We'd just gone through the Vietnam War. The War Powers Resolution had gone into effect. The Church Committee was coming down the pike. There was a lot happening in terms of, not only America's relations in the world, but the Congress' role in foreign policy, which they felt they had turned over to the presidency and that they needed to reestablish some of their own authority. What kinds of issues did you get involved in when you first came here?

**RYNEARSON:** Well, it was a very exciting and active time in the Senate in foreign relations. This was despite the fact that, as Mike Glennon was leaving the office, he told me that he thought the year 1977 would probably be relatively inactive in foreign relations. I remember that because just the opposite was the case. I've always learned from Mike's mistake not to prophesy the Senate schedule. In 1977, of course, President Carter was inaugurated. It was an important part of his agenda to make human rights an element in our foreign policy. He attempted to do that by getting human rights-related provisions inserted into a variety of foreign relations laws. I remember that year one of the things that we were trying to do was to get human rights considerations made a part of the decision-making on financing that would be extended by international lending institutions. In other words, international banks. I worked on what later became the International Financial Institutions Act, which did exactly that. Also, human rights provisions were inserted in foreign aid laws.

Some where along the line, I was present at a joint Senate-House conference on legislation in which the human rights provisions were in dispute between the two houses.

I remember Senator Hubert Humphrey being a conferee at that conference. It is one of my few memories of a Member of Congress actually changing the mind of other Members at a group meeting. I really detected a shift in the position of the House conferees because of the eloquence of Senator Humphrey. He impressed upon the Members that this was something the President very much wanted. I have that memory from the late 1970s, probably '77 or '78.

President Carter also was interested in the non-proliferation of nuclear weapons. Carter wanted to reform the laws relating to the non-proliferation of nuclear weapons to beef up and strengthen the Atomic Energy Act of 1954. That was primarily in the jurisdiction of the Governmental Affairs Committee. I did get involved in that a little bit. I have to say I was way over my head at that point. It was more of a learning experience for me than what I brought to the table. Nevertheless, it was a very good learning experience and it culminated in the enactment in the Non-Proliferation Act of 1978. By virtue of working on that, I had background for years of additional work in that area. But my handiwork cannot be seen in the '78 Act, I don't believe. I was working at a much rougher, preliminary stage of what was enacted.

Also, as part of Carter's agenda, in September of '77, he sent up to the Senate the negotiated Panama Canal Treaties. I got involved with that right at the very beginning and played a major role in the Senate's action on the treaties. The President had negotiated two treaties with Panama relating to turning over the Canal to Panama. The first treaty came up on the Senate floor I believe in February of '78. By this time, I was beginning to get my sea legs on drafting and I had done some preparatory work to give me some understanding of treaty law. I became immediately very interested in treaty law and the Senate procedures on considering treaties. I had met with Bob Dove of the Parliamentarian's Office, and Bob was very helpful in getting me up to speed on the Senate procedures. I was in a reasonably good position to do the drafting and I ended up drafting probably more than 200 potential amendments to the Senate's resolutions of advice and consent to the two Panama Canal Treaties. These amendments took the form of amendments to the text of the treaties, reservations to the treaties, understandings, declarations, and other miscellaneous items.

The Panama Canal Treaties were the pending business on the Senate floor for roughly two months. I don't believe at any time later in my tenure that there was any piece of foreign relations-related legislation that was so continuously the pending business of the Senate. In

retrospect, I wonder how I handled it because for long stretches of continuous debate, it gets very wearing on the legislative draftsmen, who are always at the beck and call and the deadlines are always quite short. I worked on the two canal treaties and the second treaty was particularly memorable to me because it appeared that President Carter had 66 votes only, and he was going to need 67 for the Senate to give its advice and consent to the ratification of the treaty. There was one senator in particular who was viewed as a potential swing vote. He had been quite critical of the two treaties. The Carter administration was trying very hard to get him as the 67<sup>th</sup> vote. That was Senator [Dennis] DeConcini of Arizona.

As it turned out, I had been working with the Senator's staff on amendments to the resolution of ratification, and they involved me at the very end to help them fashion a reservation that both the Senator and the Carter administration could live with. I got to meet with Senator DeConcini directly in the course of doing that. As it turned out, the Senate adopted his compromise reservation, and he voted in favor of the second Panama Canal Treaty. I believe President Carter also got a 68<sup>th</sup> vote from a Senator, I believe, from South Dakota, who came on board at the last minute, but I felt that I had played an important role in the Senate's consideration of the treaties. I was on the Senate floor when the final vote was taken on the second treaty, and all one hundred senators cast a vote, and I was handed a tally sheet and remember keeping a record of the vote.

That day also turned out to be my birthday. My office gave me a combination birthday party/canal treaty party to celebrate the end of my ordeal. They had a birthday cake and they presented me with a Panama hat and a fake letter ostensibly from the president of Panama, Omar Torrijos, that alleged to invite me down to the canal for a set of tennis under his rules. He being a dictator, that seemed appropriate. So the office had quite a bit of fun at my expense on that day, and I was pleased that they cared about what I had been working on. It was a very memorable day for me.

**RITCHIE:** That DeConcini Reservation was a very critical element. Without it, the treaty wouldn't have passed. Do you remember your discussions with him about what it was he was trying to do and what it was you were able to help him with?

**RYNEARSON:** Well, I remember the gist of it, and that was that the senator wanted to preserve the U.S. right to intervene militarily if necessary in the operations of the canal if

it would come to the point that it would constitute a threat to our national security. This, of course, was a very sensitive subject with Panama and any other Latin American country that believes that we had forsworn a right of unilateral intervention in Latin American affairs by virtue of our adherence to the OAS and the Rio Pact. What Senator DeConcini was attempting to do had to be phrased very carefully. Like most pieces of legislation, it has a number of contributors. I believe I contributed some of the phrasing, but certainly not all of the phrasing, to it. I do remember speaking with the Senator and his staff on it and I remember that they were very interested in how I would interpret the final product were I to be called to do so by an outside source, by a journalist or otherwise. As it turned out, I was never called upon to give an interpretation of the language, so it was a moot point, but the Senator was very interested in my legal analysis of the language. I was pleased that I could play that role. Having said all of that, the DeConcini Reservation is Senator DeConcini's work product and he ultimately had the say on how the language was to read. But I was pleased that I had a chance to directly give my advice to him.

**RITCHIE:** Did you have any contact with the State Department or did they go through the Senator's office

**RYNEARSON:** The administration worked with the Senator's office. I don't believe I had any direct contact with administrative officials. In our office, it was always stressed not to have that sort of direct contact or only have the contact with the Senator or the Senator's staff present. That was my policy throughout my tenure. I don't recall offhand being at a meeting where the administration discussed only the DeConcini Reservation. I do believe that there was such a meeting held with the senator and also the leadership of the Senate present. In that sense, I was not present when probably the final decision on the language was made.

**RITCHIE:** This was a reservation, which is different from an amendment. It's different from an understanding. They are all gradations. Could you explain what those options are when they're adopting treaties?

**RYNEARSON:** Treaty amendments are documents that purport to change the actual text of a treaty. This is not something the United States can unilaterally foist on a foreign party. What the Senate is doing, in essence, is saying to the President, "we reject your treaty, but if we were to give our advice and consent for you to go ahead and ratify the treaty, it



would be a treaty that should contain the following additional text or delete an existing provision.” That is a so-called treaty amendment. It always requires renegotiation of the treaty.

A reservation is a unilateral statement which attempts to alter the obligations of the reserving party under the treaty. It could be a sentence that says, “Article X of the treaty shall not apply to the United States.” It does not actually alter the phrasing of the treaty, just the application of the treaty and its obligations to the reserving state. A reservation may or may not require renegotiation of the treaty.

An understanding is an interpretive statement, much like a provision of statutory construction in a bill or joint resolution, that attempts to state the interpretation of a word or a phrase, usually by negating an inference that could plausibly be drawn from the expression of the word or phrase. An example would be, “Nothing in Article X of the treaty may be construed to obligate the United States to do ‘x, y, or z.’” It is a negation of an inference.

A declaration, on the other hand, is purely a policy statement. “The United States declares that by becoming a party to the treaty, it expects the other party to also do the following . . . .”

Then there is another category which we call “conditions”. Actually, all of these matters are substantively conditions, but we have a label that we have penned to those items which relate only to the matters internal to the United States. The Senate could say that it advises and consents to the ratification of the treaty subject to the condition that the President submit a report to the Senate periodically on the progress in implementing the treaty. It attempts to impose a requirement on the executive branch with which the foreign party has no interest. Conditions are controversial as a matter of law. It is unclear to what extent they may be enforced as law of the land.

Those are the variety of items that the Senate can express as caveats to its advice and consent to the ratification of a treaty. The way the Senate adopts them is much like the amending process of a bill. A senator will propose one or more of those items as an amendment to the resolution of advice and consent. In this context, the word “amendment” has to be used very carefully. One is amending the resolution of advice and consent, and one of those items may be a treaty amendment or not. They may be offered as amendments on

the floor of the Senate or they may be offered in the deliberations of the Senate Foreign Relations Committee on the treaty with the understanding that the executive clerk of the Senate will incorporate those items in the document that the executive clerk lays before the Senate.

In this sense, a Senate resolution of advice and consent is not technically reported to the Senate floor by the Foreign Relations Committee. It is merely recommended by the committee and contained in the committee's report that is submitted on the treaty itself. In other words, the Foreign Relations Committee has the treaty under its jurisdiction but not actually the resolution of advice and consent. This is a technical matter which I have never seen make a practical difference. The executive clerk always lays down the resolution of advice and consent that the Foreign Relations Committee has agreed to.

**RITCHIE:** The Constitution requires a two-thirds vote of the Senate to ratify a treaty. That's hard to come by under any circumstance, a two-thirds vote. All of these things you've outlined, are they essentially strategies for this body to form a coalition to get the necessary two-thirds vote?

**RYNEARSON:** They frequently have that effect of enabling the Senate to reach a consensus or at least a supermajority on a treaty. They may also be used to attempt to kill a treaty. Senator [Jesse] Helms was certainly no friend of the Panama Canal Treaties and he offered numerous treaty amendments to those treaties in hopes that one would be adopted, thereby necessitating a renegotiation of the treaties. They can also be used as a tactical matter as a poison pill. (I'm repeating myself.) You can get one adopted by a majority vote but which will preclude two-thirds of the senators agreeing to approving the treaty. Of course, the two-thirds requirement is a two-thirds vote of the senators present and voting. You do not always require 67 votes, but on a controversial treaty, 99 or 100 senators will cast votes.

**RITCHIE:** Would Senator Helms' office contact you for their amendments?

**RYNEARSON:** Absolutely. I did many amendments for his office and I would say I did amendments for about twenty different Senators in the course of the debates on the Panama Canal Treaties. Their requests came at the treaty from varying points of view, some attempting to make the treaty more palatable for Members to approve and others, as poison

pills for the treaty. I'd like to think that I handled all of them with the same degree of professionalism and just tried to do the best legal and drafting job that I could do for each Member. I did receive a number of thank you letters from the Senators when the debates were all over, so I believe I have some basis for thinking that I served them equally well.

**RITCHIE:** It's an interesting intellectual exercise. Here you are working on a reservation designed to help this treaty pass, and then you turn around and you start working on an amendment designed to help sabotage this treaty. Did you ever find yourself conflicted over these issues?

**RYNEARSON:** No, not really. I was certainly aware that I was working on contradictory policy. My view was that I was facilitating the Senate in its process of deliberations. It was not for me to figure how the Senate would ultimately work its will. My main goal was to handle each one of these requests in a way that would be professional, be nonpartisan, would not inject any policy not expressed by the client and which would be a document that was hopefully so well put together that it would command discussion on its merits and not on any sort of technical deficiency. I was able to basically focus on the technical aspects of what I was doing and not concern myself with how the policy would play out. I knew that frequently extreme policies on either side would not make it into the final document and that there would necessarily be a compromise document to be drafted.

I also found out early in my career that any attempt to figure what the Senate would do was really futile. You could write something and say, "well, this policy will never be adopted in a million years," and then turn around the next day and see it in the *Congressional Record* with a favorable vote. The converse was true, as well. Things you thought might make eminent sense would go down in flames. With bills, you always had the knowledge that the Senate's action was not the last action. A bill that was either poorly written or not thoroughly well drafted could be cured in conference committee. In the case of treaties, this was not applicable. It actually gave me a little more of an adrenalin rush that I was, in essence, the last line of defense on how the language got refined. This ended up being a matter of some difficulty for the Senate over the years. In the case of the Panama Canal Treaties, the Foreign Relations Committee was allowed to make some very minor stylistic changes in the resolution of advice and consent for each of the two treaties before the executive clerk would send the resolutions down to the executive branch. I was called in to assist the Foreign Relations Committee in making some of these minor, stylistic changes.

When it came to the Treaty on Intermediate Nuclear Forces, the INF Treaty, in the late 1980s, the Senate leadership precluded me from making any stylistic changes after the resolution of advice and consent was approved by the Senate. As a result, there is an incorrect cross reference in the resolution on our advice and consent to the INF Treaty. It is certainly a dicey matter to give a non-legislator any discretion after the Senate has worked its will on a treaty, and I can understand that position. However, what it does mean is that if there is any sloppiness in an amendment that is offered to a resolution of advice and consent and the Senate adopts it, that is the way the United States will be represented to one or more foreign governments. The Senate's deliberations on treaties should be carefully watched for the integrity of the resolutions of advice and consent, and the floor amendments offered thereto, from a technical standpoint. My strong advice is that all of those documents should be run through the Senate Legislative Counsel's Office prior to adoption by the Senate.

**RITCHIE:** I think the first standing committees were Enrolled Bills and Engrossed Bills. They were essentially there to make sure that the bills came out in correct form and that the two versions were the same. In a sense, they were housekeeping, copyediting type of committees. So that was obviously a problem from day one in Congress.

**RYNEARSON:** Well, the Enrolling Clerk of the Senate receives authorization at the beginning of each Congress to make very minor changes. However, in the case of a treaty, the operative official is the executive clerk of the Senate who, I believe, does not receive a similar authorization. This may be deliberate or it may be an oversight by the Senate. In any event, the Enrolling Clerk's discretion is extremely narrow based on misspellings, incorrect designations, margin errors. They are of a level that is more minor than what the Legislative Counsel's Office typically concerns itself with. If there is something faulty in the actual wording, the Enrolling Clerk will have no discretion to correct that, but in the case of a resolution of advice and consent to ratification of a treaty there is not even that level of discretion to make corrections, at present.

**RITCHIE:** Eventually you worked for about twenty different Senators who had reservations or understandings or amendments on the Panama Canal Treaties. With each one of those, do you consider that you have attorney-client privilege, that you hold that just between the two of you? Or are you able to talk more broadly about the things that were coming up?

**RYNEARSON:** The former. We absolutely maintain an attorney-client relationship with each office. We would not dream of sharing information that is confided to us with another office in the course of drafting for the first office unless the first office specifically authorizes our sharing the information. Sometimes two or more offices will approach us at the same time and, of course, you can continue to work with both staffs as your clients, although only one Senator can sponsor the legislation, be the primary sponsor. It is a very good bit of wisdom for the draftsman to ascertain early on which Senator is going to be the primary sponsor. In the Senate, among the Senate legislative staff, there is frequently the misapprehension that several Senators can equally sponsor a piece of legislation. They are somewhat taken back when they learn that one Senator and one Senator alone is the primary sponsor. I believe that has its origin in the days where a Senator had to stand up and be recognized by the presiding officer in order to introduce legislation. Two Senators cannot hold the floor jointly at the same time. There must be a primary sponsor. That causes a lot of interesting discussions among clients when they learn that, some which are conducted in front of the draftsman. [laughs] We have an attorney-client relationship, and we take that very seriously. In my tenure, I am not aware of any attorney in my office who breached that ethic by advising another office with the intent to inform them of a Senator's agenda.

**RITCHIE:** When you consider how partisan and ideological things can get here and how heated the disputes are and how high the stakes are, it's pretty remarkable that you can stay an honest broker for that long.

**RYNEARSON:** I think this is a matter of pride within the office that we are a professional office and we see ourselves as different and unique and we know realistically that to side with an office would be disastrous for our office. The main currency that we have as an office is our professionalism, our nonpartisanship, and our non-involvement in policy making. We hold those elements up very highly and adhere to them rigidly.

**End of the Second Interview**

## TREATIES IN THE SENATE

### Interview #3

Monday, April 28, 2003

**RITCHIE:** The last time we met, we talked about the Panama Canal Treaty, and it might be good for the record to go back and to talk about exactly what the Senate's role is in the whole treaty process.

**RYNEARSON:** Well, I'd certainly be glad to talk to you about it. The key thing to remember is that the Senate has no power to ratify treaties, but the Senate is required to give its advice and consent before the president may ratify a treaty. This derives from the constitutional provision in Article II, Section 2, Clause 2 that states that the president shall have power to make treaties, by and with the advice and consent of the Senate, two-thirds of the senators present concurring. This means, in effect, that the Senate's action is a necessary, but not a sufficient, condition for the president to ratify a treaty. The president retains the discretion not to ratify a treaty to which the Senate has given its advice and consent. Since the Senate may withhold its advice and consent for any reason whatsoever, it is implied that the Senate may condition its advice and consent. It does this through the resolution of advice and consent by saying that its advice and consent is subject to certain conditions. As a legislative drafting matter, this meant that senators and the Foreign Relations Committee, which has jurisdiction over treaties, would come to me to request that I draft conditions to the Senate's advice and consent.

The treaty is drafted in the executive branch through negotiations with the foreign party, and an agent for the United States, a United States diplomat, usually will be the person who initials the negotiated text of the treaty. The president is required to submit the treaty to the Senate before ratification. One of the interesting legal questions is that the president does not have to submit each and every international agreement to the Senate, but only those agreements that the president designates as "treaties." This gives the president, of course, some discretion, and the Senate usually likes to guide the president in his exercise of that discretion. During my tenure, I know of at least one instance in which the chairman of the Foreign Relations Committee threatened to stall on approving diplomatic appointments unless the president would submit a specific agreement to the Senate for its advice and consent. So the Senate does have a nonlegal way of making its wishes known in this regard. There is also an administrative document, Circular 175, which is used by the Department of

State to guide it in determining which agreements are submitted under the treaty power.

In any event, after the president decides to submit a particular agreement to the Senate under the treaty power, the original document of the treaty is submitted to the Senate and, under current practices, is held by the Executive Clerk of the Senate. Meanwhile, jurisdiction for consideration of the treaty is referred to the Committee on Foreign Relations. After the Committee on Foreign Relations acts, if it decides to act favorably or without recommendation, the treaty is placed on the Executive Calendar and may be called up under the usual procedures. When it is called up in the Senate, a motion will be made to lift the injunction of secrecy on the treaty, whereupon senators may offer these conditions to the Senate's advice and consent. Sometimes the conditions that are agreed upon by the Foreign Relations Committee are already incorporated in a draft resolution of advice and consent that is laid before the Senate for its further consideration and possible amendment.

If the Senate approves the resolution of advice and consent by the supermajority required by the Constitution, then the actual treaty document and the resolution of advice and consent are transmitted to the executive branch. If the president decides to go ahead with the ratification, he will direct the Secretary of State to prepare an instrument of ratification, which will contain most or all of the Senate's resolution of advice and consent and affix the Great Seal of the United States to that document, the Secretary of State being the custodian of the Great Seal pursuant to United States statute. That instrument of ratification will then be exchanged with the foreign party in the case of a bilateral treaty, or deposited with what is known as the "depository" in the case of a multilateral treaty, the depository usually being an international organization such as the United Nations. In the case of a bilateral treaty, the foreign party must find that the United States action on the treaty is conformable or consistent with its own act in ratifying or acceding to the treaty. If the foreign party and the United States find that the two actions are consistent, they will then execute what is known as a protocol of exchange. That represents the point at which the two parties find themselves in agreement. The president will then, usually at a future date, proclaim the effectiveness of the treaty as supreme law of the United States by issuing a proclamation. This document may acknowledge that the treaty has a delayed date of entry into force. So a treaty, in sum, operates on two levels, the point at which the United States and the foreign party are bound under international law and the point at which it becomes effective for United States domestic purposes. Those dates may be very close in time. They may even be the same day, but they do not have to be the same day.

**RITCHIE:** Could you give me a summary of what your general role would be in terms of a treaty? When there was a major treaty coming before the Senate, what types of things would you be consulted on?

**RYNEARSON:** I would receive two types of requests. The first type of request that I might receive would be from the Committee on Foreign Relations to assist it in preparing the resolution of advice and consent that would be laid before the Senate for its consideration. The resolution might be quite simple, a one or two sentence document, just directing that the Senate give its advice and consent to ratification of the treaty, or it might be quite complicated, subject to multiple conditions that could run for many pages. I would work on that document much the same way that I would work on drafting a bill. We might do many drafts of it until we got the exact language. The difference would be that there would be an international law element to the conditions that I would be called upon to draft. Conditions such as reservations, understandings, treaty amendments, as we discussed earlier, have particular meanings in international law. The one question that would always come up would be how to appropriately denominate these conditions. Under United States law, the labeling of the condition is only some evidence of what the Senate's intent is in the adoption of the condition. So it is not conclusive, but it is an important question. It certainly may have important political ramifications, but it also has legal ramifications in terms of whether the treaty would require renegotiation.

The other type of request that I would get would also pertain to the conditions, but it would be from individual senators. The motives in offering those conditions, as we discussed earlier, could be quite varied. They might be supportive of the treaty by attempting to help the administration achieve a supermajority vote, or they might be intended to embarrass the administration or draft a condition that was politically impossible to vote against but which would act as a "poison pill" if adopted on the resolution of advice and consent. Those are the types of requests I would receive.

**RITCHIE:** As you mentioned with the Panama Canal, your work with this would actually take you through the committee process, and then down onto the floor of the chamber as well.

**RYNEARSON:** I did draft some items on the Senate floor, but usually I did it in the office. I was called upon to go to the floor on several occasions in connection with the



Senate's consideration of treaties, but usually while on the Senate floor I served merely as a resource and was not too actively involved on the Senate floor.

**RITCHIE:** What about in the committee hearings when they were marking-up or considering bills?

**RYNEARSON:** Until about 1996, I did spend a considerable number of hours in mark-up sessions of the Foreign Relations Committee. My role was to collect all written amendments, note down all verbal amendments, and draft any last minute amendments. In later years, those markup sessions became quite pro forma sessions. They might be quite short because the majority and minority staffs on the committee would have worked out the language through me in great detail before the meeting, and the Members would be voting whether or not to accept the work the staff had done, of course, all at their direction. So the markup sessions could be quite short, but the amount of drafting I did was the same or even greater since the staff would want to make many revisions to the compromise text.

**RITCHIE:** Well, you bring up an interesting point. We now have majority and minority staffs for all committees including Foreign Relations. Would you have gotten your inquiries essentially from the majority staff or would you get separate ones from the minority staff? Or did the majority and minority staff ever sit down with you jointly on something like this?

**RYNEARSON:** I guess the correct answer is that both situations occurred, that there would be cooperative activity by the two staffs and there would also be times in which the majority and minority staffs would come to me separately. What was most typical in the mid to late 1990s and into the 21<sup>st</sup> century is that the majority staff would approach me first and get me going to prepare a rough draft of their optimum language for a bill or resolution of advice and consent. Then they would sit down with the minority staff, usually without my being present, and would take in the feedback of the minority staff, and then the majority staff would revisit me to revise the draft. This might go on several times, so that I could very well have done several versions of a bill or resolution of advice and consent for the Committee before the Committee was ready to hold to a markup session.

**RITCHIE:** When you had a major treaty coming, what kind of preparation did you have to do? Did you have to follow the background of the treaty? Did you read newspapers

about it? What would you need to know when it came? Or did you just treat each one generically and approach it separately within the Senate's context?

**RYNEARSON:** In the case of the Panama Canal Treaties, since I was not initially very knowledgeable on treaty law, I took that occasion to do quite a bit of reading and I even read a book by, I believe, a Mr. Miller, who summarized the Senate's treaty actions in the 1800s, to get a better idea of what the practice was in the area. I also sat down with the assistant parliamentarian, Bob Dove, to acquaint myself with the Senate rules on consideration of treaties. I believe I read some from Professor Louis Henkin, at Columbia Law School, on treaty law. I delved into a number of sources and I examined resolutions of advice and consent that my office had prepared previously to try to arrive at a drafting style that was as technically accurate as I could achieve.

When I would be requested to work on a given treaty, the first thing I always requested was to look at the president's message of transmittal of the treaty. I wanted to look at that for two reasons: the president's message actually reprinted verbatim the text of the treaty and the president's message would also give useful background information and article-by-article interpretation of the treaty. I felt that I needed to read that before working on any given treaty. Then, depending on what I would be requested to draft, I might need to delve into other sources. That was my practice in drafting.

**RITCHIE:** What kinds of problems would come up when you were dealing with a treaty like this? What were the hardest parts of the assignment?

**RYNEARSON:** I found, actually, that working on treaties was one of the easier areas for me to work on after I had developed this initial expertise. I looked forward to working on them. The principal question that would arise would be how to appropriately denominate and phrase the Senate's conditions. Another way of saying this would be, how far could the Senate go in laying down a condition without killing the treaty completely? This did involve some careful wording. That part was not easy, but it was a challenge that I enjoyed and, of course, it had huge political consequences and did require a clear understanding of what the client's intent was. Treaty amendments were rare but it was interesting for me to decide where I would place new wording in a treaty. I knew that any treaty amendment I drafted would not likely be approved by the Senate because of its consequence of requiring renegotiation of the treaty, but they were interesting to do. The real challenge came with

whether or not to state a condition in the form of a reservation and whether that would necessitate renegotiation of the treaty. That would be a closer call.

**RITCHIE:** All treaties seem to be controversial one way or the other, but the Senate has only actually rejected twenty-one treaties outright over the last two hundred years, which is pretty remarkable. Actually, that doesn't tell the whole story. I know that the Montreal Protocol in '82 on airline safety was rejected. Has there been one since then?

**RYNEARSON:** Yes. The Comprehensive Nuclear Test-Ban Treaty was rejected by the Senate. It's rejection really split the Senate along party lines. I believe the background to that was that the administration was disappointed that the Senate had not approved the treaty after many years and attempted to use that inaction by the Senate as a campaign issue, whereupon the chairman of the Foreign Relations Committee, who was opposed to the treaty, decided in effect to call the administration's bluff. Since the treaty, as we established earlier, was physically in the custody of the Senate, the Senate could call it up. So the unusual situation occurred where the opponents to the treaty were the members who initiated the calling up of the treaty for the very purpose of definitively rejecting it. That is my recollection of the Comprehensive Nuclear Test-Ban Treaty.

**RITCHIE:** That's right. Were you involved in that?

**RYNEARSON:** My involvement in that was very minimal. Because the administration did not appear to have the votes, I seem to recall that I did not have many conditions to draft. But I'm a little uncertain on how much drafting I did there.

**RITCHIE:** One reason why more treaties aren't defeated is that presidents don't send the treaty to the Senate, like the Kyoto Treaty that the Clinton Administration negotiated and signed and then never sent it up. And then the Bush administration declared it dead. Then there are treaties that come down here and as you mentioned would just sit for years; administrations would fuss and fret but nothing happens on them. Another option is that there are treaties that get passed but the Senate has put its own stamp on it in such a way to try to get it through, changing the meaning of what the negotiators had in mind. It is a rare occasion when the Senate flat out votes a treaty down.

**RYNEARSON:** It is rare. I was very interested to see that that Comprehensive Nuclear Test-Ban Treaty was called up and defeated. But you are quite correct in saying that the record of approval of treaties is misleading. Nevertheless, on major treaties, the Senate appears to be quite loathe to reject the treaty because the president has so fully put the prestige of the country behind the approval of the treaty. The most notable exception is the Treaty of Versailles. As I recall, that was a case where the Senate had approved fourteen conditions that the president found unpalatable and then directed his supporters in the Senate, I believe, to vote against the final passage of the Senate's approval of the treaty.

**RITCHIE:** For some reason, President Wilson didn't seem to understand the necessity of building a coalition. He assumed that the public would push senators into supporting it. He never went the extra mile to make the compromises that would have been necessary.

**RYNEARSON:** One of the lessons that the Senate seems to have learned institutionally from that, and that the president learned from that, is the usefulness of having senators observe the negotiation process on major treaties. During my tenure in the Senate, I can recall two groups that were institutionalized for observation of the negotiation of a particular treaty. One was called the Arms Control Observer Group. I believe the other one was regarding the Central American Peace Negotiations, but I'm a little hazy on that latter one. (In any event, my office was called upon to draft resolutions establishing these groups, and we were also called upon to revise those resolutions with changing circumstances.) And, of course, I believe the president included senators on an informal basis in other negotiations. This seems to have directly emanated from the country's experience with the Treaty of Versailles.

**RITCHIE:** During your almost thirty years up here, there were not that many years when the president had a majority of his own party as the majority in the Senate. We've had this divided government, and long periods in which no party has had a commanding lead in the Senate.

**RYNEARSON:** Well, treaties certainly presented difficult negotiations within the Senate, not only for the reason that you gave, that the Senate majority party at times was different from the party controlling the White House, but also merely because the Constitution requires a supermajority vote for the approval of treaties. I don't believe that

at any time that I worked for the Legislative Counsel's Office in the Senate that any one party had a 67-vote majority.

**RITCHIE:** Not since the 1960s. When a treaty or an issue like this came along, and the staff came to you, did they come with an idea in mind what they wanted to do? Or did they need to be coached by you? Did they need to get background about what their options were? Given the rapid turnover on the staff of the Senate in recent years, did the staff people coming to see you really need the basics?

**RYNEARSON:** You raise two questions there. In terms of the ideas that they brought to me, I had to defer completely to those ideas and I was not introducing new ideas into their drafting. However, they did frequently want my legal advice on what I perceived to be the international law ramifications or statutory interpretation of a particular phrasing. My job was always to carry out their legal intent, but in the area of treaty law, there was a great deal of ignorance about the legal effect of the varying conditions. I would give advice on what that legal effect would be in my opinion, and then sometimes the staff would decide that they wanted to change the legal effect by changing the wording. There was always an interaction and a give and take there with staff on conditions to the Senate's advice and consent. My position was purely advisory. If a client wanted to attempt something that would have a drastic legal effect by attempting to directly amend the text of a treaty, I would not dissuade them from that. I would merely advise them as to what I believed the legal effect of that would be. In fact, over the years, I drafted many conditions that would have had the effect of requiring a renegotiation of treaties, conditions that were never approved by the Senate.

Also, I might add that since we're talking about treaties that did not go into effect as law of the United States, in 1979 I worked extensively on the drafting of conditions to the Strategic Arms Limitation Talks Treaty II, the so-called SALT II Treaty. In the course of my drafting, I did literally scores of conditions, but it turned out that, in the course of the Senate's consideration of that treaty, the Senate became aware that the Soviet Union had combat ground troops in Cuba and this became a major controversy that resulted in the Carter administration not taking the treaty to a final vote.

I had done quite a bit of work for both the Foreign Relations Committee and for individual senators on the SALT II Treaty that never saw the light of day except that I do

believe that the committee reprinted the resolution of advice and consent that I helped to prepare. Also, I recall that at the time of the consideration of that treaty, I believe the chairman of the Foreign Relations Committee was Frank Church. Senator Church had either initiated the discussion about the Soviet combat troops in Cuba or he supported those senators who wanted to make that an issue. Ironically, as I recall, Senator Church was favorably disposed toward the SALT II Treaty, but that issue, I believe, was the major issue in killing the treaty.

**RITCHIE:** The vagaries of international relations!

**End of the Third Interview**

## **DRAFTING LEGISLATION**

### **Interview #4**

**Thursday, May 8, 2003**

**RITCHIE:** Earlier we talked about the Panama Canal Treaties, the SALT agreement, and other events during the Carter administration. In 1980, there was a huge change when Ronald Reagan got elected president and the Republicans won the majority in the Senate for the first time in twenty-six years. I wondered whether that historic moment affected in any way the type of work that you were doing and the work of the Legislative Counsel's Office?

**RYNEARSON:** Well, it did have an impact in terms of foreign aid legislation, which we had been considering on an annual basis at both the authorizing and the appropriations levels. With the Reagan administration's emphasis on providing tax cuts and the mounting deficit, it apparently became politically less doable to do an annual foreign aid authorization bill. After 1981, we did not have another foreign aid authorization bill until 1986, so throughout all of the Reagan years, there were only two foreign aid economic-related comprehensive authorization bills enacted into law. That did have a direct impact on my work.

There was also a general tendency, because the budget became such a hot political item, to let the appropriations bills slide to the end of the Congress and do an omnibus law at the end of the Congress. That had very significant ramifications for the work of our office. It meant primarily that, at the very end of the session, Congress was cobbling together what otherwise would have been a number of separately enacted or considered pieces of legislation into one mega piece of legislation running hundreds of pages in length. We would be drawn into that, of course, and in addition, it meant that many of the issues that had budgetary ramifications during the course of the year would be considered at one time so that, in effect, all of those issues remained on the table for further amendment late into the session.

This was an enormous strain on our staff and it also created difficulties in preparing a law that was properly usable as a reference work. In other words, when you start to stitch all of these laws together, it becomes difficult after enactment to locate a specific provision because the whole thing has not been properly restructured for that purpose. This created enormous legal citation problems and these laws were very difficult to use. Of course, we were some of the users of those very same laws. In subsequent years, it would make our

work even more difficult. Also the Appropriations Committee had a very established style and wanted to maintain the maximum level of control over the preparation of the documents. Our office was frequently frustrated by the final product. We felt they were not as good products as we normally produced doing authorization laws.

**RITCHIE:** An administrative question about this: in the structure of things, who does the Legislative Counsel report to? They're not under the Secretary of the Senate. Do they report directly to the majority leader?

**RYNEARSON:** The Legislative Counsel of the Senate is appointed by the President Pro Tempore of the Senate without regard to party affiliation or political opinion. The Legislative Counsel, in turn, hires the legal and administrative staff of the office based on the same considerations but subject to the approval of the President Pro Tempore. As a matter of custom, over the years, the President Pro Tem has deferred to these selections to make sure that they are made on the basis of merit alone. Although the head of the office is appointed by the President Pro Tem, there is a long tradition of nonpartisanship within the office. I stress that it's nonpartisanship. It's not bipartisanship. We do not have a Republican staff and a Democratic staff within the office.

This has worked out very well because the function of the office is legal and very technical. There is not a Republican way or a Democratic way to write a law beautifully. The content would certainly vary, but the drafting techniques employed are without regard to any party ideology. We're very proud of our record there. I don't remember any situation in our office where any member of the office tried to aid one party over another.

**RITCHIE:** So when the parties changed, and Strom Thurmond became President Pro Tempore and Howard Baker majority leader, they went along with the nonpartisan nature of the office? There were no efforts to make any changes?

**RYNEARSON:** Absolutely. In that sense, the office did not change at all with the 1980 elections. During my tenure in the Senate, I believe there were five changes of party control in the Senate and none of them had any impact on the personnel or the type of function performed by the office. What I was referring to earlier, with the appropriations bills, was the effect of the Reagan agenda on the Senate and certainly every president's agenda affected the type of matters that would come across my desk.



I also might mention another story in regard to the '80 elections and the new administration coming in in '81. Senate Baker was minority leader at the time and then assumed the position of majority leader. It just so happened that his administrative assistant, Rob Mosbacher, was engaged to be married to an attorney in my office, Catherine Clark. I had the honor of being invited to Senator Baker's house for the wedding reception, which also coincidentally occurred, I believe, the Saturday following the November 1980 elections. I recall at that wedding reception that Senator Baker had a very big smile on his face. In fact, I think it's fair to say that most independent observers had not expected that the Republicans would take control of the Senate and that he would, therefore, become majority leader. I do recall that Senator Baker looked very pleased by the whole situation.

**RITCHIE:** There have been several party changes in the Senate since you've been here. When there is a party change, suddenly people who used to be on the minority staff are the majority staff on committees, and new people are brought in. Is there a period in which you have to break in new committee staff and explain to them the types of services you do, and how do you go about doing it? Did you find that you need to do more instructional work at that stage, or did people come in with built-in savvy so that they hit the ground running?

**RYNEARSON:** As a general proposition, they do not come with the built-in savvy. I think it's one of the very regrettable things about the Senate. I believe it's becoming worse as time goes on. We do have to do a lot of educating at the beginning. I enjoy that aspect of it. The difficulty is not doing the education. The difficulty is really having people wanting to be educated. We find that there is a period of a number of months, maybe going into the second year, in which new staff are just trying to find us and know that they need further education in the legislative process and in legislation. I don't believe the Senate handles this very well. In terms of the committees, some committees do it better than others, and some committees have less turnover than others. You have to examine that committee by committee. In terms of the Foreign Relations Committee, even when I retired after more than a quarter of a century, there were a half dozen individuals on the committee staff with whom I had worked for all or most of my tenure. There is some stability within committees.

In terms of the personal offices, however, I found that legislative directors were not good at getting their new legislative assistants instructed, as a general rule. Of course, when the legislative director himself or herself would change, it was almost as if the senator had lost all institutional memory within the office on how to deal with legislation. Frequently

I found that successive LAs would not be instructed by their predecessors on how to relate to the Legislative Counsel's Office. This definitely caused problems because drafting legislation requires that the drafters have a base familiarity with the legislative process in order to avoid spinning wheels. Frequently, when new staff would come to us for drafting, they would be somewhat insecure and would not want to admit the areas in which they needed instruction. Also, they would tend to be very inflexible in terms of our interaction. The attorneys would ask questions to obtain a more refined understanding of what the legislative intent would be and the LAs would either not be responsive to those questions or would promise to take the questions back to the LDs and then not follow through. Or simply the LA would insist on a literal direction from the office and, basically, stiff the attorneys in attempting to fill in the details of the legislation. This, probably, was a source of more frustration and lost time by our legal staff than any other single thing. Changes in party control of the Senate would just exacerbate that situation.

**RITCHIE:** What kinds of mistakes would people make? What were the typical errors? You say they wanted to keep the details in. What did you find, in general, were the types of blunders, perhaps, that LAs and LDs made.

**RYNEARSON:** Well, how many hours do you have? [laughs] It ranged the gamut. New legislative staff in members' offices frequently would not know the difference between the various legislative vehicles in the Senate, the difference between a bill and a joint resolution and a concurrent resolution and a simple resolution, or even a floor amendment. This was something that had to be explained repeatedly. I guess I didn't mind doing that. I guess I was just amazed that individuals having the title of legislative assistant and legislative director did not know such basic information. Then, of course, there was a more complicated problem that most attorneys graduating from law school are not familiar with. That is, the difference between the titles in the U.S. Code that are positive law of the United States and can be directly amended and those titles which have not been reenacted by Congress as positive law and, therefore, are not properly subject to amendment. Rather, the United States *Statutes at Large* are the documents that are amended in those cases. This was something that had to be explained and discussed repeatedly.

More fundamentally, the errors that the legislative staff would make would be in not knowing how to relate to our office, not knowing that we worked basically on a first come, first serve basis. Everyone wanted to receive special treatment. I think that is part of the

way congressional staff behaves generally, but it is also partly attributable to ignorance of our office and the enormous workload of our office.

At any given time during the year, to make a drafting request of the office, you would likely find that the attorney who was able to bring the most expertise to the request would be backlogged. A certain amount of waiting would be required before we could start on your draft. I prided myself greatly on keeping that wait time very short. It was probably the thing that I did best, to make sure that the work got out of the office in a timely manner. But it was not an easy thing to do. Other attorneys had difficulty with that, either because their workload was heavier than mine or perhaps because they received drafting requests which were longer than mine and, therefore, would back up more clients. It would vary from attorney to attorney and from situation to situation on how expeditiously a legislative assistant could get legislation drafted. Nevertheless, in my case, I would say that I did many requests the same day they came in and most other requests took only 48 or 72 hours. Then there would be the occasional request that would require a longer time.

In any event, new legislative staff had difficulty with that. They also had difficulty in knowing what level of detail to provide us. Generally speaking, my clients divided into two camps. There were the staff who would say, and I'm being somewhat facetious here, "Why don't you rewrite all the immigration laws of the United States to reform them?"—something which I actually was requested to do and did. Or, "Why don't you reform the foreign aid laws of the United States to consolidate them?"—with not much further guidance. Those were staffers I called the "big picture" staffers.

Then there were other staffers who would provide me with a draft either written by them or, more likely, from an outside law firm or lobbying firm. They were basically looking for me to put the draft on a Senate form and tell them that it had my seal of approval. These individuals would go so far as to try to tell me where to place commas and semicolons in the sentences. I liked to refer to them to myself as the "micro managers."

Then, of course, there were some dear staff who fell in between, who understood that what our office was looking for was the legislative policy, usually expressed at an intermediate level of detail, that would allow me the opportunity to raise questions with the staff on which legal approach they would like to take. They would allow me some flexibility in organizing and phrasing the language. In fact, they might allow me complete flexibility

in phrasing. But all the time, the policy that I was writing was the policy being directed from the staff. It was just not being micro-managed. The policy was being well thought through so that various items that are essential to implementing policy, such as reporting requirements, consultation requirements, administration within the executive branch, were being thought through by the legislative staff and were not merely blanks for which I would have to elicit the policy. It is that third category that best suited my ability to serve legislative staff and it was that third category that I would least likely find with new legislative staff, especially after party changes of control of the Senate.

**RITCHIE:** But people were more likely to develop that kind of a style or approach the longer they were here, and appreciate what it was that your office could actually do?

**RYNEARSON:** That's right. Generally speaking, I preferred to work with long-time staff rather than new staff simply because it enabled me to do a better job. They were better prepared and because they were better prepared, I could produce a more sophisticated piece of legislative drafting. The difficulty that arose over the years, however, was that it appeared that the Senate legislative staff were turning over at an increasing rate. At the time when I retired, I thought that it was more or less typical to find that LAs were leaving the Senate after a year, a year and a half, two years. The frustration was that just at the point where I was establishing a comfortable working relationship with the staffer, where the staffer knew what sort of information I needed to do my A+ job for them, it was at that point that they were departing, and as I said before, frequently not passing on any of things they had learned from their interaction with me to their successor. With each senatorial office, it appeared that one was starting over with the legislative staff roughly every two years.

In any event, the 1980 change in party control in the Senate, although it did not affect the makeup and function of my office, it did have the same consequences as any change in party control would have. In addition, it had the changed emphasis in the agenda, which I mentioned earlier. And I would say it had one other effect. It ushered in an era of very close party ratios within the Senate. I believe that this was very significant for what followed in the remainder of the 22 years of my tenure. I believe in 1980, Republicans won control of 55 seats in the Senate. Of course, not all of the seats were up for election, but the ratio was 55 Republicans to 45 Democrats as a result of the '80 elections. Thereafter, the ratio between the two parties, as I recall, never exceeded that. No party had more than 55 senators and for part of the time, the majority party had fewer seats, 53 seats for quite a while and then

there was the famous 50-50 Senate.

In light of the Senate cloture rule requiring 60 votes (of course, when I first came to the Senate, it was a two-thirds vote of all the senators voting and then it went to an absolute number of 60 votes), the close party division had a devastating effect on the majority leader's ability to promote an agenda. That might be good and might be bad, but it had a major impact on the way the Senate conducted its business. The majority leader would call up a piece of legislation and find that he could not bring it to a final vote, so then he would put it back on the calendar. This might happen several times on the same day, so that on any given day, the legislative staff could be quite at sea as to what the actual agenda would be that day. In terms of my office, that meant that the usual last minute rush to have floor amendments drafted might occur on multiple bills on the same day. This would create difficulties within the office to free up legal staff to help out the legal staff dealing with the immediate legislation on the Senate floor because no one knew what the immediate or pending legislative matters would in fact turn out to be. The 1980 change in parties, I think, marked the beginning of this era of very difficult preparation for Senate legislative business. That persists to this day.

**RITCHIE:** You mentioned going to draft amendments to bills that were already on the floor. Were there cases in which legislative assistants and others drafted amendments that they hadn't run through your office, and the legislation had to be improved upon somehow while the bill was actually being debated on the floor?

**RYNEARSON:** When a bill would come to the floor, several scenarios might unfold or all of the scenarios might unfold. One scenario would be that the opponents of the legislation would have worked out deals with the floor managers whereby certain legislative language would be found acceptable to be added to the bill. At that point, and this would frequently be late in the consideration of the bill, the opponents, and perhaps the managers also, would come to our office to have the compromise amendments drafted. Of course, they were in an enormous hurry because they wanted to seal the deal and get the bill passed.

In another scenario, the opponents of the bill would attempt to filibuster the bill by amendment. For that purpose, they would require the drafting of scores of amendments for the purpose of killing the legislation, either because the adoption of any of the amendments would then make the bill unpalatable to the proponents of the bill, but more likely because

they would consume unlimited amount of time and frustrate the will of the proponents to endure the onslaught of amendments. In that latter case, the amendments were frequently not very “serious.” They were serious in delaying the legislation but the actual changes they were proposing to make to the bill were not intended seriously to be adopted.

A third scenario might be where both proponents and opponents of the legislation had draft amendments, either drafted by lobbyists or by themselves, which they intended to offer when the bill would come up for consideration, but for reasons of paranoia, they did not want the Legislative Counsel’s Office to see the draft until the bill was actually on the Senate floor. These individuals, I guess, were under the mistaken belief that once they showed the document to us the cat would be out of the bag and their adversaries would know what they were up to. That was and is totally a mistaken tactic because we never shared that kind of information among adversaries or outside the proposing office at all. There was always total client confidentiality in our office.

I might forgive some of those individuals because they might have believed that once it was drafted that, although our office would not divulge the information, that they could not keep the information totally confidential outside our office once they had a finalized draft. There was a tendency that once something was drafted, even if the person who was behind the draft was not serious about it, the draft would assume a life of its own, that lobbyists would line up in favor of it, and a piece of legislation that a senator expected to go nowhere might start to have some traction. So there was that third scenario.

Then there was the “Oh, my God” scenario, where the bill comes up on the floor, either by surprise or well known with adequate notice. The legislative staff, since they were often involved in crisis management, would only focus on the bill once it had arrived on the floor. They would then call my office frantically for floor amendments. I was largely disgusted with the people who had adequate notice. It really showed which staff were well organized and which were not. It also highlighted which staff were newer. I just never could reconcile myself to why a legislative assistant with advanced notice that a bill would come up on the floor would then come to our office in the last hour or two of the bill’s consideration, unless of course, the staffer fell within one of the other scenarios that I described. Frequently, a staffer just had not done his or her homework to get the floor amendment drafted in advance. Whichever attorney in my office was the attorney primarily responsible for drafting work on a bill that was before the Senate, that attorney could expect

to be in a very frantic, hectic mode throughout the consideration of the legislation on the Senate floor.

**RITCHIE:** Would you ever get any rivalry between the staff of a senator's staff as opposed to the committee staff on the same bill? Were people coming from different angles who were worried about what was being done on the other side in the process?

**RYNEARSON:** There were considerable rivalries. In terms of Senate floor amendments, people would come to me and say, "We expect Senator X to offer a first-degree amendment to this bill. We want a second-degree amendment drafted for our boss, Senator Y, in order to make sure we have the first vote on this issue and in order to counter Senator X's policy with which we strongly disagree." This got to be quite a drafting feat because I might very well not be aware of Senator X's first-degree amendment and even if I were aware of it, I couldn't make that document available to Senator Y's staff. I had to prepare Senator Y's second-degree amendment as if I had no knowledge whatsoever of Senator X's first-degree amendment. So things could get very dicey, but I maintained that wall of confidentiality successfully, I believe.

Also, there were quite a few rivalries between the committee staff and the staff of members who were not chairman or ranking minority member of the committee. These rivalries could be with members who were not on the committee who were attempting to undo the committee's work, or it could be rivalries of sorts between the chairmen or ranking minority members' permanent staff of the committee and the personal representative staff of other members on the committee. In other words, the chairman might have one agenda, but the personal representative of a junior member of the chairman's own party might require some floor amendment be drafted in order that the junior member would get more recognition than otherwise. The junior members were frequently not content to just go along with what was referred to as the chairman's "mark," which referred to both the dollar figures that the chairman's staff had come up with and also the chairman's language. So there were rivalries within the committee.

There were also what you might refer to as pseudo rivalries, where a member contests something knowing, because of the member's junior seniority status, that they may not be able to prevail, but because they are facing reelection, they need to have something with their name on it. There were these rivalries in which the chairman and ranking minority member

would attempt to, essentially, throw the members a bone for their reelection campaigns.

There were also, of course, enormous party rivalries. One of the things that surprised me the most about the Senate, and I think was exacerbated with the close party ratios, was the degree of partisanship that I found in the Senate. I had naively thought that with members serving six-year terms, and a number of members coming from large states where the party divisions would be close, that there might be less partisanship than what I found. It was not unusual for our office to receive legislative drafting requests that were clearly designed to embarrass the other party, embarrass the party in control of the White House, or simply to undermine individual senators' agendas. Particularly if it became known that a senator was campaigning for the presidency or about to campaign for the presidency, there would be no end of staffers who would come up with clever legislative drafts to make that senator look bad. Conversely, the staff of the senator seeking the presidency would be attempting to burnish the senator's credentials through draft legislation. So it worked both ways. The Senate had an enormous number of rivalries, and I got to see a good number of them because it was not unusual for me to be drafting on both sides of the rivalry.

**RITCHIE:** Earlier, you mentioned that one senator would come to you or one staff would say, "We want a first-degree amendment." Another would say, "We want a second-degree amendment." Could you explain what those are and why one would adopt one versus the other as a tactic?

**RYNEARSON:** All amendments do one of three things. They either strike out text, insert text, or both strike out and insert text. When you do this directly to the text of a bill, that is a first-degree amendment. When you do it to the first-degree amendment, that is a second-degree amendment. But it is not in order under the Senate rules to do it to the second-degree amendment. Furthermore, under the Senate rules, the second-degree amendment gets voted on first. So if the second-degree amendment strikes out almost all of the first-degree amendment and inserts different language, the proponent of the second-degree amendment, if they prevail, will have totally knocked out the proponent of the first-degree amendment from modifying the bill in that place. My office received many requests over the years to prepare that type of second-degree amendment, which looks a lot like a substitute amendment, but is not quite a substitute amendment. It is referred to as a perfecting amendment. But it perfects, in this case, by obliterating the policy expressed in the first-degree amendment. That's the primary tactical advantage to doing it.



**RITCHIE:** But a substitute amendment, as you suggested, would completely replace the original amendment. What's the difference between a substitute amendment and a second-degree amendment?

**RYNEARSON:** The problem is that substitute amendments can be amended themselves. So what results is a very complex amendment tree, where one can lay down a substitute amendment to the entire bill, which under Senate rules is treated as original text for further amendment in two degrees. Or one can amend the perfecting amendments. On any given bill, eleven different amendments can be pending at one time. The majority leader in the later years of my tenure attempted to offer all the possibilities in order to fill up the amendment tree to prevent adversaries of the legislation from proposing their amendments. However, that still did not enable the majority leader to shut off debate because each amendment could be debated for an unlimited amount of time unless unanimous consent would be obtained. The majority leader could block amendments but still could not achieve cloture unless it were voted by 60 senators. The amendment process was a process that involved a lot of work, frequently at the last minute, and still did not guarantee passage of the legislation to which the amendments were drawn.

**RITCHIE:** I recall that Senator Lott was particularly interested in filling the amendment tree. For someone who is not in the Senate, or a new staff person coming in, how would you describe what the amendment tree is?

**RYNEARSON:** Well, the amendment tree is simply all of the possibilities of amendments that may be pending at the same time to a given piece of legislation that are permitted by the Senate rules. After you have filled the amendment tree, the only thing in order, if any amendment is in order, are those amendments, and they must be taken up for a vote in a certain sequence. For purposes of new staff, the best way to learn about this is to read the definitive work by the former parliamentarian of the Senate, Floyd Riddick, where he describes these possible amendments in great detail and provides charts so that you can learn the sequence of voting and the sequence of laying the amendment down. That's the best that I can do at the moment.

**RITCHIE:** In the House, when a bill comes up, the Rules Committee issues a rule that spells out the number of amendments it will have. The Senate doesn't have anything like that. Is the amendment tree comparable to what the House Rules Committee is doing

in defining the possible arrangement to a bill?

**RYNEARSON:** I would not say so, actually. I would say a more apt comparison would be with the unanimous consent agreement. The difference, of course, being that in the Senate you need unanimous consent. In the House, you merely need a majority vote to approve the rule that is laid before the House. The unanimous consent agreement usually deals with the same elements that the House rule deals with, namely how much time for debate is permitted for the overall legislation and for each amendment. The second element is what type of amendment is in order, i.e., must the amendment be germane to the bill or not?

In the House, I believe, as a general rule, nongermane amendments are not permitted in the rule that is adopted, but this is done on an ad hoc basis. In the Senate, what is more typical is, if a unanimous consent agreement is reached, the majority leader will specify the amendments that are in order by the name of the senator who would offer the amendment and by the subject matter. This list might be quite long and it might include amendments that do not pertain to the subject of the legislation. Then the unanimous consent agreement will state that relevant, germane amendments to these first-degree amendments will be in order. That's the way the consent agreement is typically structured. The problem in the Senate, of course, is that it is very difficult to arrive at these unanimous consent agreements that would actually provide for a vote on final passage of the legislation. On major legislation, many days or weeks might go by before the majority leader is able to hammer out a deal that would permit a unanimous consent agreement to be adopted.

**RITCHIE:** You mentioned the majority leader's role in this. Would you deal with the majority leader's staff or with the majority party secretary on some of these amendments? Or were you only dealing with committee staff and the individual senators' staffs?

**RYNEARSON:** We would deal with all the offices in the Senate that had legislative responsibilities, and we did a lot of work for the majority and minority leaders of the Senate. We would not draft the actual wording of the unanimous consent agreement. That was viewed as more of a function for the Office of the Parliamentarian. The parliamentarian, if anyone, would be consulted on the language of unanimous consent agreements. However, we would be the office that would be drafting the amendments that would be permitted under the agreement. It was always amusing to draft a hundred amendments to a piece of

legislation and then find a day or two later that a unanimous consent agreement was being adopted which effectively ruled 80 of these amendments out of order and narrowed the field. We often wondered why some of these consultations couldn't have occurred before we did the actual drafting, which is a very labor-intensive process. We try always to cross the t's and dot the i's, and you do that on scores of amendments that are not even being offered or could not be considered in order, and you want to gnash your teeth.

Part of the tactics for floor consideration by individual senators was to develop many amendments and essentially present them to the floor managers with one or two motives at work. Namely, "I've got all of these amendments, couldn't you find just one or two that you could accept?" Or, alternatively, the motive was, "I have the ability to extend debate here for days at end because I am fully prepared with these lovely documents prepared by the Legislative Counsel's Office and I'm willing to talk until the cows come home on these amendments." Whereupon, the floor manager might suggest, "Well, gee, we could accept one or two of these amendments if you withdraw the rest." Frequently, part of the unanimous consent agreement involved several senators agreeing to withdraw amendments that they had laid down before the Senate.

There was a lot of tactical considerations at work, but it did not ease the job of my office. If anything, it made our work a great deal more difficult. It was reflective, a little bit, of a trend that developed over the years in the Senate. That was, as a general proposition, toward the end of my tenure, senators and Senate staff were in the mode of drafting first and asking questions second. For whatever reason, it served them to have a detailed legislative draft in hand, even though they frequently knew that that draft would never see the light of day, or if it were offered, that it would never be adopted. The draft was serving a political function for negotiation with the senator's adversaries on that political policy issue.

This was something that I found was avoidable in a number of cases and that it was not avoided. That is regrettable. We too much got into the mode of adversaries throwing opposing drafts at each other instead of getting together in meetings and working out the differences before the drafting was actually performed. It involved a great loss of time in our office to prepare drafts that everyone knew were untenable. We did that faithfully. We are servants of the members and the committees, and we did that faithfully. But I believe it could have saved everyone, including the members and their legislative staff, much time if they could have gotten together and dealt with one another directly and developed the policy

jointly rather than developing the policy in isolation in the privacy of their offices and then finding that the drafts had no legs.

**RITCHIE:** Were there some senators that you found were more cooperative? I wondered about the Foreign Relations Committee. If you had a period when Charles Percy was chairing it, would that be different than a period, say, when a more confrontational senator like Jesse Helms was chairing the committee? Were there some that you would hold up as a model of someone who adopted the cooperative, rather than the confrontational, style?

**RYNEARSON:** I definitely believe that it did correlate with personalities and who the particular chairman or ranking minority member was at the time. It also correlated with what the overall political situation was between the committee and the White House, that is, whether or not the same political party controlled the White House. I believe the examples that you gave me generally worked out in practice in the opposite way. Chairman Percy had a fairly difficult time within the Committee achieving consensus for whatever reason. Chairman Helms of the Foreign Relations Committee did have a fair amount of success in achieving consensus. I'm not entirely sure why that was. I do recall that Chairman Percy had one markup that went for four or five weeks, where we met two or three days each week on the same piece of major legislation. Then in the later years of my tenure, markup sessions under Chairman Helms and Chairman Biden were frequently no more than a half a day in total on the same type of major legislation.

Clearly, what had happened in the case of Chairman Helms and Senator [Joseph] Biden as ranking minority member, is that they put their staffs to forming a consensus before the markup session would ever occur. The staff would meet for weeks or even months in advance of the markup behind the scenes, attempting to forge a consensus. That had the very beneficial effect that when the committee went public, it was not airing out its dirty linen in front of the public.

**RITCHIE:** Under the "sunshine rules," they had to do the markup in public, right?

**RYNEARSON:** That's right. It had a potential for a downside in that, when the staff were meeting in informal settings, people such as Legislative Counsel's staff or stenographers might not be present. I was very fortunate in that I was involved by the staff

either directly or indirectly with their informal meetings. In the case of the State Department authorization bill for fiscal years 1998 and 1999, I attended almost all of the informal staff meetings. In the case of the State Department bill for fiscal year 2003, the staff met and did not insist on my being present but fed me the results of their meetings so that I could be preparing draft legislative language for their further review.

There is this downside that when you go to the informal meetings that are not open to the public, the committee may be tempted not to have the appropriate Legislative Counsel present. That really detracts from the committee's considerations, although it saves the counsel scores of hours of meeting time, which most attorneys appreciate, and I came to appreciate. But I do believe the meetings are very important and that they do enable the staff to develop the legislation jointly without throwing individual, unviable documents at each other. I believe that committees, by and large, are receptive to doing that.

Where it breaks down is largely with the individual members who want to have their own piece of legislation drafted and are aware that the legislation is merely a talking piece, that it will not be enacted as is. This is an area where there might be some room for the members to get together with opposing members and have more staff consultations in advance of drafting. It might save them some headaches later on. Although it's great to have your name on a piece of legislation on which you are a big believer, it can also be a source of embarrassment if that legislation is not enacted or is later drastically changed. I believe that the members could do well by having their staffs meet more in advance to develop legislation.

**RITCHIE:** There is that old saying, "You can get a lot done as long you're willing to give somebody else the credit for it."

**RYNEARSON:** That may be too high a price to pay for some of the members. You asked about the Foreign Relations Committee. The periods where the Committee seemed best able to form a consensus among the staff and the members to present a public front seemed to be the periods when Senator [Richard] Lugar first chaired the Committee and also during the Helms and Biden chairmanships. When each of them chaired the Committee, they were able to work out a consensus, but the other chairmen during my tenure had a great deal of difficulty with that. A number of the markups were contentious when the other members were chairing the Committee.

**RITCHIE:** The markups went public in the early '70s, and since then they've been in public session. Some of the old timers regret that they don't do markups in closed session anymore. Do you think that doing markups out in the open with lobbyists being able to sit in the room, or the press being able to sit in the room, is a detriment, or can the markup work adequately under the gaze of publicity?

**RYNEARSON:** This is a tough question. Speaking selfishly as a draftsman, I believe things could go more expeditiously in one of the old executive session markups. The public does have a right to know, though. I don't believe there is any going back to the old executive session markups. I suppose that some sort of a mix could be employed where a matter of particular contentiousness might be discussed in executive session prior to an open session, but to have the amendments voted on in executive session, I think that day has passed.

The one thing I really found grating in the open sessions, and it might not entirely be solved in the executive sessions, is that in the open sessions there is a tendency for the chairman or ranking minority member to call upon the administration's highest ranking representative, who is sitting in the audience, to stand up and give a view of an amendment that is being proposed. I always found this offensive to the Senate's legislative function. I believe that the administration should have its opportunity to be heard in the hearing context, but when the actual markup would come, that would be time exclusively reserved for the members to speak. I suppose my concern is more a matter of form than substance because the administration could certainly phone in input and draw members away from an open markup to be chewed out or supported, as the case may be, by some official in the administration. Nevertheless, I thought it gave a bad appearance to the public to have twenty senators sitting around begging an administration official to give their position on an amendment. It's just the way I felt. But I believe the days of totally closed executive sessions are a thing of the past. We just won't see them again.

**RITCHIE:** One of the fears when they went to sunshine was that this would just force the discussions further back into the back rooms. The senators would discuss the issues in private before the actual markup. In fact, it appears to be the staffs of the senators now discuss the issues in private before it goes to the actual markups.

**RYNEARSON:** That's a very good point. It could be that it has deprived the members of a little bit of their opportunity to express themselves and it definitely has shoved things into the back rooms at the staff level. The bottom line is that the intent of having open sessions has been at least partially thwarted. As I said, it has the downside that it gives the staff the impression that they don't need to have appropriate counsel present because they are only talking about it at the staff level. In fact, they are making big decisions.

I guess I should also relate something that occurred to me at one of my early markups in the Foreign Relations Committee. That was that in the course of the markup, members called for a compromise piece of legislation to be drafted, a compromise amendment. The staff came to me to draft that right there in the markup session and the markup session was being televised. The cameraman followed the Foreign Relations Committee staffer around the room until they got to my seat. Thereupon, the cameraman proceeded to film over my shoulder as I drafted this compromise. Well, of course, as a young attorney, I was thrilled to have the attention. I also was mortified. My drafting practice throughout most of my career was to use a pencil and to use a liberal amount of cross outs and erasures. When I look back on it, I'm mortified that this was actually being filmed. I doubt the members of the Committee were terribly amused that I had attracted the attention of the television camera. In any event, that was the only time that that happened in my career. Those are some of the pitfalls of the open sessions.

**RITCHIE:** [laughs] Thank you. This is wonderful. It's sort of taking us behind the scenes of the open sessions, in a sense.

**End of the Fourth Interview**

## **FOREIGN RELATIONS**

### **Interview #5**

**Wednesday, May 14, 2003**

**RITCHIE:** Since you spent so much time working with the Foreign Relations Committee, and since last time we began comparing some of the chairmen and others on the committee, maybe what we might do is to proceed through the committee, the senators, the chairs, the staff that you worked with, chronologically, looking at the way it evolved during the years that you were here. Do you think that would be a reasonable way to proceed?

**RYNEARSON:** Certainly. I'd be glad to talk about that a little bit further. You can guide me on what further information would be of interest.

When I came to the Senate, the chairman of the Foreign Relations Committee was Senator [John] Sparkman. I believe what had happened was that a few months before, Senator [J. William] Fulbright had lost in a primary in Arkansas and either right before that primary race or shortly thereafter, he turned over the reigns of the committee to Senator Sparkman. Senator Sparkman was chair for about two years, and I did not observe him extremely closely as I was new at the time myself. The only impression I formed was that he was a fairly mild-mannered chairman and not what I would call a strong chairman.

**RITCHIE:** He was pretty elderly, too, at that time.

**RYNEARSON:** Yes, he was elderly. I believe at the end of the two years, he either retired or was defeated. I cannot recall now.

**RITCHIE:** He used to doze off occasionally during the hearings.

**RYNEARSON:** That does strike a chord of memory. He was followed by Frank Church of Idaho who, of course, was quite active in the foreign relations area and seemed to have more of an interest and background in it than Senator Sparkman had. Senator Church was famous for the Church-Cooper Amendment during the Vietnam War and also for his investigation of our intelligence agencies operations overseas. Senator Church, I believe, was hampered a little bit in his chairmanship by the fact that he, too, was up for reelection two years after he assumed the chairmanship. When the Soviet Combat Brigade in Cuba



issue arose, he felt a need to take a strong position on it. As I said earlier, I believe that that had the effect of undermining chances for Senate approval of the SALT II Arms Control Treaty. I believe Senator Church would himself have admitted that his own chairmanship did not have the record that he would have liked.

At that time, there were several senators on the committee who exerted enormous influence. Both Senator [Jacob] Javits and Senator [Clifford] Case were active members of the Foreign Relations Committee in those first four years that I served the Senate. They had enormous individual reputations in the foreign relations area. I do recall that I attended committee markups in which both Senators Javits and Case were able to forge compromises by their command of language. I believe both were attorneys. I know that Senator Javits was. This was quite impressive to me at that time to see the compromises being forged through the discussion among the senators. This was something that became more of a rarity as time went on. I think that was a function of the changing dimension of committee markups and the fact that these various long-term senators had passed from the scene.

In 1981, of course, party control in the Senate changed and Senator Percy of Illinois assumed the chairmanship of the committee. Senator Percy was well versed in foreign relations, very interested in those matters, very gentlemanly, and unfortunately had a somewhat weak chairmanship. It may just be that the international scene and the increasing partisanship would have made it very difficult for any chairman at that time. Nevertheless, Senator Percy was chair for four years until he, too, was defeated, I believe, in a Republican primary in Illinois in 1984.

**RITCHIE:** Do you think that one of his problems was because of differences with the Reagan administration, which was more conservative or more hardline than he was on some of these issues?

**RYNEARSON:** That may have played a part. I think also that whenever the chairman is of the same political party as the occupant of the White House there is a tendency to defer a bit more to the executive branch's formulation of foreign policy. Every president asserts sweeping powers in the foreign affairs area. What I observed over the years is that the same party as the president's in the Senate will be very supportive of executive prerogatives. The party not in power in the White House will be very assertive of congressional prerogatives. It doesn't matter which party is which, or I should say the parties

may reverse course as the occupancy of the White House changes. This has always been a point of both amusement and consternation to me, especially in the area of war powers. The parties seem to flip flop on their attitude toward the War Powers Resolution and congressional powers in the war area depending on who occupies the White House. This seems to me to be much too serious an issue for those sorts of changes in policy.

**RITCHIE:** Previously, from the 1940s to the early '70s, there was more bipartisanship in foreign policy. Senators like Javits and Case were liberal to moderate Republicans who tended to support Democratic presidents on foreign policy issues, and most of the Democrats had tended to support Republican presidents. They didn't think differently, at least on those issues. But from the 1970s on, there was an increasing breakdown of bipartisanship. Do you think that accounts for some of the flip flopping in the latter period?

**RYNEARSON:** That may very well be the case. I do believe that another element in the mix was that the committee obtained a bipartisan staff, I believe, in the late 1970s or 1980-ish. I don't remember the exact year. I do recall receiving a phone call from the minority clerk of the committee demanding to have a copy of a bill that I was reporting out for the committee. Those documents, in the past, always went to the chairman's staff without any controversy whatsoever. I remember being somewhat shocked at this assertion that I should duplicate my work for the minority staff. I did resist that on the theory that the bill was being reported out under the name of the chairman and it was really up to the chairman to decide what sort of courtesies he wanted to extend to the minority staff in the form of previewing documents that were being prepared. Generally, the chairmen were very open to sharing documents with the minority in subsequent years, but I do remember that incident which would have occurred right about 1980 or '81.

I do think that the closeness of the party ratios in the Senate did have an impact on the Committee. The Committee, when I first came to the Senate, consisted largely of what we would refer to as fairly liberal senators of both parties and there was something close to a consensus within the Committee on what the Committee's foreign relations outlook should be. As the party ratios tightened in the Senate, the Committee obtained senators from more of the extreme ideological ends of the spectrum, more very liberal senators and more conservative senators. Probably the impact was felt from the more conservative senators who obtained membership on the Committee. It became increasingly difficult to obtain a consensus within the Committee. In fact, it became difficult to obtain a quorum at

Committee meetings. In the early '80s, it was not unusual to wait an hour or two for members to come to the Committee for the meetings. I also seem to recall that a number of meetings were scrubbed entirely after having been scheduled and the public showing up for them. Those are my memories regarding the partisanship in the Committee. I do believe that as the Committee became more divided that that also weakened the Committee's ability to carry its legislation through to Senate passage.

**RITCHIE:** You mentioned that we were at the end of Senator Percy's term. He ran for reelection on the grounds that if he was defeated, Senator Helms would become chairman of the Foreign Relations Committee—he made that a campaign issue in Illinois at the time. I'm not sure if there has ever been a campaign race in one state which was designed to keep a senator from another state from becoming chairman of a committee. When the dust settled and he was defeated, it was actually Senator Lugar who chaired that committee, since Senator Helms had campaigned on a pledge that he would chair the Agricultural committee.

**RYNEARSON:** Well, I had forgotten about Senator Percy's campaign, but I did certainly remember that Richard Lugar assumed the chairmanship, I believe, in January of 1985. Senator Lugar was quite a strong chairman, in my opinion. I remember early on in his chairmanship, he called a meeting in which some of the junior senators proceeded to give long-winded speeches bordering on tirades on one foreign policy question or another. I remember that Chairman Lugar sat very stony faced and looked straight out at the audience and at the first opportunity, he called the meeting to an end. He, apparently, was not amused to have his meetings taken over by other senators pushing agendas with which he disagreed. As a draftsman, I was very supportive of the chairman's actions because I did not relish sitting in these meetings for unproductive hour after hour. After all, I had the obligation of serving the entire Senate, and while I was present at a committee markup, non-committee members would be calling my office demanding draft legislation, and I would come back from these meetings with a mountain of work to be done, and I would find that I was suddenly quite backlogged. Anything that Chairman Lugar could do to make the meetings more productive and shorter, I was all in favor of that. As time went on, it became apparent to me that Senator Lugar was forging a consensus behind the scenes, and these meetings did become more productive and shorter.

Senator Lugar, I believe, felt that the committee should speak with one voice or close to one voice. My observation in my congressional career is that a committee chairman is

most influential when he or she can achieve that consensus. One of the problems that was plaguing the Foreign Relations Committee after the chairmanship of Senator Fulbright was that the committee's legislation was meeting more and more resistance when brought to the Senate floor. I believe that Senator Lugar had a temporary effect of reversing that trend and that occurred for his brief chairmanship which ended in January of '87. He was somewhat controversial, however, in that he did a quite unusual thing in connection with the Senate's consideration of the Comprehensive Anti-Apartheid Act of 1986. Senator Lugar was, I believe, trying to impose sanctions against South Africa but perhaps not as draconian as some senators wanted. I do recall that there was an occasion where the conference report on an anti-apartheid bill was sitting at the desk of the Senate and Senator Lugar did not want the Senate to proceed to consideration of that particular drafted conference report. So he went into the well of the Senate and actually removed the conference report from the desk, which had the parliamentary effect of precluding the Senate from considering the matter since these were considered the official papers on that legislation, and the Senate cannot act without the official papers. Senator Lugar's action and the parliamentarian's accession to that act got the parliamentarian into an enormous amount of trouble with Democratic senators, and I believe some of the hard feelings over that persisted for years afterwards. In any event, the Senate did pass, and there was enacted, the Comprehensive Anti-Apartheid Act of 1986 with Senator Lugar's approval, and I worked quite closely with his chief counsel, Rick Messick, in preparing that legislation.

I also did several other pieces of major legislation for Chairman Lugar during his chairmanship, and I found that his staff was very easy to work with, and knowledgeable. They wanted to work in a very collaborative way, and I believe that that is essential to drafting effective legislation.

After Senator Lugar's chairmanship, Senator Pell of Rhode Island assumed the chairmanship. Senator Pell had had a very distinguished background in the foreign relations area. He had been a Foreign Service officer in Eastern Europe in what was then Czechoslovakia, I believe. However, much of his senatorial legislative accomplishments had come in the domestic area, particularly in the education field. Senator Pell had certain issues that he was particularly interested in. He did make a mark in those areas. He was very interested in environmental matters overseas. He was also very interested the preservation of Tibetan culture and political autonomy, which, of course, was greatly in danger and still is by the actions of the Government of the Peoples' Republic of China.

Outside of his particular areas of interest, Senator Pell was less effective. He was probably overall a weak chairman. Senator Jesse Helms was ranking minority member at the time. I believe part of the difficulty in the Committee was that Senator Pell wanted to maintain a polite, gentlemanly relationship with Senator Helms. But Senator Helms, of course, had very strong negative views on Senator Pell's agenda. The two could not be more different ideologically. I'm not sitting here to say whether one is more correct or another, but the upshot of their relationship was that they could not forge a consensus between the two of them. Not being able to forge the consensus, I believe Senator Pell was reluctant to have a major confrontation within the Committee.

This went on for the remainder of the years until the Republicans assumed control of the Senate again in January of 1995. At that point, Senator Helms and Senator Lugar had a nasty confrontation over which one of them should assume the chairmanship of the Committee. Senator Helms had more overall seniority within the Senate than Senator Lugar, but Senator Lugar had more seniority within the committee and, of course, had chaired the committee for two years. Well, Senator Helms won that confrontation. I believe the issue was decided in the Republican Conference by the entire Republican membership of the Senate.

In any event, Senator Helms assumed the chairmanship. He proceeded to push a very aggressive agenda. One of his key objectives was to reorganize the State Department by abolishing three foreign relations subsidiary agencies and folding them into the State Department. Those agencies were the United States Information Agency, the United States Arms Control and Disarmament Agency, also known as ACDA, and the United States Agency for International Development.

I was drawn in right from the beginning to do drafting for the new chairman. In fact, I was approached in December of 1994 after the November elections but still before the Republicans had taken control of the Committee to begin drafting the reorganization of the State Department. The Helms staff also gave me a number of other high priority matters to draft, among those were what later became the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, also known as the Helms-Burton Act. I also was involved in writing extensive conditions for treaties as they would arise. Chairman Helms was not initially successful with many of his priority items but, during the course of his chairmanship, he did get most of those items enacted into law. As time went on, he forged a very good

working relationship with Senator Biden of Delaware, who served as ranking minority member on the Committee. Their two staffs collaborated extensively and did hammer out legislation that could be approved by the Committee without dissent or almost without dissent. I believe, over all, that Senator Helms had an effective and a strong chairmanship.

Then, in 2001, when Senator [Jim] Jeffords switched parties in May or June of that year, and the Democrats assumed control of the Senate, Senator Biden became chairman of the committee. Senator Biden had been a member of the committee for roughly twenty years and was, and is, extremely knowledgeable in the foreign relations area. His area of particular interest seems to be Europe and Russia, but his knowledge was in depth in all areas of foreign relations. He attempted to maintain this good working relationship with Senator Helms, and I believe Senators Biden and Helms continued with that. I do believe that the staffs had more disagreements on policy during Senator Biden's chairmanship. This may be due to Senator Helms' staff feeling that, with a Republican President in the White House, they needed to take a harder line and not accede so easily to Senator Biden's staff.

In any event, I believe it was still a productive period in the Committee's history. Of course, right before I retired, Republicans obtained control of the Senate once more, and Senator Lugar assumed the chairmanship inasmuch as Senator Helms had retired. So that is my long and tedious, or as Shakespeare would say, "my brief and tedious," history of the Foreign Relations Committee leadership.

**RITCHIE:** Given the various chairmen, was there much continuity of staff? Did people tend to stay and make careers on the staff in the Committee, or did you find that there was constant flux and wholesale change with the different chairmen?

**RYNEARSON:** I guess the answer would be about 50-50. I noticed particularly on the Democratic side that some Democratic staffers remained on the staff for years. On the Republican side, there seemed to be much more turnover. Perhaps that's because the Republicans had never gotten entrenched on the committee. Particularly, conservative Republican senators had not gotten entrenched on the Committee until the 1980s. The Committee did maintain a professional staff of clerks and assistants and I know that several of those are still on the Committee staff, including individuals whom I first met in the 1970s. But, overall, what I would say, is that the Committee had a mixed arrangement where there was some continuity, but there was also quite a bit of change in certain policy positions on

the Committee's staff. This was particularly evident when George W. Bush assumed the presidency in January 2001. A number of Republican staff went to positions in the executive branch at that time, including the former chief of staff of the Committee, Steve Biegun, who went directly to the National Security Council.

I generally found it easier to work with people who had some prior experience in the Senate. One of the banes of my job was having to start at the beginning with new staff. I enjoyed doing the training, but it was a time-consuming matter and there often arose quite a few misunderstandings of how my office worked in the initial stages of dealing with new staff.

**RITCHIE:** Did you find that you worked as much with the various subcommittees of that committee, the chairman of the subcommittee, or was your work mostly with the chairman of the full committee staff?

**RYNEARSON:** That's an interesting question because, at the beginning of my tenure in the Senate, the Foreign Relations Committee had a subcommittee that dealt with foreign aid, and that subcommittee had the responsibility for originating the Committee's foreign aid authorization bill. This was considered, at the time, to be the Committee's major legislation. It was considered by the Committee on an annual or biennial basis. The subcommittee dealing with foreign assistance actually marked up the legislation, and so we would have committee mark-up at both the subcommittee and the full committee level. This ended either in the late '70s or when the Republicans took control in January 1981. I cannot remember the exact point.

From that point on, no subcommittee of the Foreign Relations Committee has had legislative jurisdiction. The subcommittees could hold hearings, but they could not mark up legislation. As a result, the subcommittees became largely fora for bringing public attention to particular foreign relations issues. Even that was not entirely successful because the membership of a subcommittee might consist of only three or four senators, and it might be difficult to get full television coverage of a hearing in which only one senator might be present. However, the Committee has had some successful subcommittee hearings, but as time went on, when particular public attention was sought to be drawn to a foreign policy issue, the hearings would be held at the full Committee level. This is a long answer to say that I don't believe the Committee's subcommittees are terribly effective, but they do enable

senators to specialize and focus on a particular area of the world or a functional topic. Most of the subcommittees are organized around regions of the world.

**RITCHIE:** Well, does that mean, then, that most of the requests that your office would get from the Foreign Relations Committee would essentially come from the chairman and the ranking member, rather than from the other members of the committee?

**RYNEARSON:** I received drafting requests from every member of the Committee. Not surprisingly, when a senator was chairman of a subcommittee on Asian matters, I might receive more requests on Asia-related legislation from that member than other foreign policy matters. But I would not be receiving the requests from the subcommittee *per se* because there was nothing that the subcommittee could do with my work products. However, the legislation that I was requested to draft that appeared to be matters that would be put on the agenda of the Committee would be legislation requested by the chairman's staff or the ranking minority member's staff. I could easily tell what matters were of higher priority in terms of the Committee's possible consideration of those matters.

**RITCHIE:** That raises a question that I've had. You mentioned in the past that you tended to take things on a first come, first serve basis as things came in. They say that "all senators are equal, but some senators are little more equal than others," and chairs of committees and ranking members and the senior members tend to exert more influence. Would you then, if you had a request from a junior member of the committee and a request from the chairman, make the chairman's request your major priority?

**RYNEARSON:** Yes, but not for the reason that you infer. First off, although I said our general rule was first come, first serve, that was not the entire rule. The entire rule is that committees get priority over non-committee work and then, furthermore, that certain matters, like conference reports, floor amendments, and reporting bills and resolutions, take priority over individual members' requests for bills and resolutions for introduction. This is a pecking order that has been worked out by our office with the Senate Rules Committee. Therefore, if I received a request from both the chairman and a junior member of a committee at the same moment in time, I would naturally do the chairman's work first because, in effect, I knew that I would be doing the committee's work, and the committee's work took priority. With respect to an individual request from a senator who happens to sit on the committee, I could not assume that that would be the committee's work, that it would



ever rise to the level of the committee's agenda. Certainly, the junior member of the committee was always free to get the chairman's staff to call me and tell me that the junior member's drafting request was, indeed, the committee's business and should be treated as a priority matter over non-committee business. But I doubt they would ever have said that the junior senator's request was a higher priority than the chairman's own request. What I'm saying, in sum, is that in prioritizing these requests, it was not a matter of clout so much as it was what was the institutional basis for the consideration of the matter to be drafted.

This also applied to some extent regarding the leadership in the Senate. Since Senate floor action takes priority within our office over the mere introduction of bills and resolutions, if the majority leader or minority leaders' staff would call us and inform us that they intended to proceed to the consideration of a matter on the Senate floor, it would be natural that we would give that higher priority than a member whose request involved only the introduction of the matter and not the Senate's consideration of the matter.

**RITCHIE:** So the closer a bill came to completion, the higher it was in terms of priority. If it was on a conference committee, it was on the next step toward enactment. If it was on the floor, it was approaching it. If it was requested by the committee chair, it was probably going to be reported out, but if it was requested by a junior senator, it had a long ways to go before it went through the process.

**RYNEARSON:** That's exactly right. I never in my career ever told a senator, whether they were in the leadership or chairman of the committee or in a non-leadership position, that I could not work on their request involving a conference report, which might soon go to the President for signature or veto, or that I could not work on their request for a floor amendment to a pending matter, because I had to work on a bill or resolution for introduction. That would have made no sense at all and the Rules Committee of the Senate recognizes that.

**RITCHIE:** You mentioned the Rules Committee a couple of times. What is the role of the Rules Committee in the type of work that your office does?

**RYNEARSON:** My office does not have a much different relationship with the Rules Committee than with any other committee. The Rules Committee certainly does not have the power of the House Rules Committee to develop and pass a rule governing the floor

debate on legislation. But the Senate Rules Committee does have power with respect to the internal operations of the Senate and, like any other office in the Senate, we are subject to its strictures. I was not privy to the discussions on the prioritizing of legislation and I frankly don't know when that occurred. It was a matter governing consideration by our attorneys throughout my entire tenure in the office.

Let me also add that, on any given day, I might take in ten or more drafting requests. Every Senate staffer wanted their item done first and would try all sorts of arguments, usually over the telephone, to attempt to get me to give their legislation special treatment. This irritated me no end. I would have thought that the Senate staff would have found it in their long-term interests to try to learn what the priority rules were in my office and to accept those rules. Nevertheless, they always resisted. The only way that this worked in practice was that I was a very fast drafter and a number of the requests were fairly short and could be done in the same day. I tried very hard, very diligently to accommodate all senators, and it was rare that a senator's staff had to wait very long for my drafts. In other words, I essentially made the pecking order that the office had developed a moot point by trying to get to everyone's work expeditiously. I never took an absolutely rigid view of the first come, first serve policy. That is to say, I never took the view that I could not do anything on a later-in-time request until I had fully completed the earlier-in-time request. Frequently, what I would do when a later-in-time request came in is that I would take a quick look at it and do what I needed to do to get it into our staff assistants' typing pool, so that the basic draft could begin to be typed while I continued to focus on, edit, and fully polish the earlier-in-time request. That is the only way, in my view, that I could have gotten through the week's work without major confrontations with the senators' staff.

Sometimes the Senate staff could be quite hostile about having to wait any amount of time for their drafts. I do believe that this is an attitude that has to change because the legislative workload of the Senate, in terms of drafting, is increasing each year on almost a geometric basis, while the number of drafters is remaining relatively constant. At some point, someone is going to have to wait or they are going to have to get better prepared before they approach the office.

It is becoming increasingly the case that the office has to do multiple versions of the same piece of legislation. This seems to be a trend that is mushrooming with the further development of word processing. In other words, as it becomes easier and easier to edit a

document using computer technology, the number of requests for draft legislation is increasing. Furthermore, the number of not-well-thought-through initial drafts are increasing. It is not unusual for an attorney in my office to be doing twenty or thirty versions of a piece of legislation perhaps before it even enters the public domain through introduction. This wreaks havoc with the first come, first serve rule because it seems as if the draft is not out the door but a short time when it is being returned for revision. The individuals who want it revised are entirely unsympathetic to the fact that you've taken in another drafting request in the intervening period. Rather, they claim that each revision should be treated as part of their initial request and that they should have priority on that basis.

The workload situation is getting quite difficult. I'm not sure that the senators appreciate it, because, at the end of the year, the Senate perhaps has enacted the same number of laws as it enacted twenty years earlier but the amount of drafting that has gone into those laws and the length of those laws is drastically different than what it was twenty years ago. In fact, thinking about the time of the late '70s, the early 1980s, a long piece of legislation from me would have been something in the order of twenty pages, more or less. When I retired, a long piece of legislation would have been two hundred pages. It is an entirely different world in terms of the length of legislation and what goes into that legislation before it becomes enacted into law.

**RITCHIE:** The question that comes up in connection with the scheduling and the amount of work that was dropped on you is: What was your day like? Was it a fixed-time day, or did you have to stay as late as the Senate stayed, or were you here whenever the Senate needed you? How could you manage all of this?

**RYNEARSON:** The Office has hours but that does not mean much. My obligation was to take care of my clients' needs, and my clients were the committee staffs and the Members' personal staffs and, of course, the Members themselves if they directly wanted to request my services. It was not unusual for me to come in early or stay late to serve the clients. There was no overtime but, nevertheless, I was being well compensated, and it was known by all of the attorneys in my office that it is their responsibility to serve the needs of the Senate staff. From time to time what grated on the attorneys was whether a particular need had to be done with the priority or the urgency that was being requested. It was not unusual for our office to take in many drafting requests late in the day. In fact, the phone seemed to ring most insistently at these times of the day. Right at the beginning of the day,

all during the lunch period of the day, and beginning around four o'clock to six thirty or later, we would be besieged with requests. We would, of course, receive requests all through the day, but those were the heaviest periods.

We should be forgiven, but we wanted to strangle a number of Senate staffers who called right at six o'clock because we knew in a variety of these cases, they could have made the request earlier in the day. In defense of other Senate staffers, I found that the typical day for a Senate legislative staffer would involve almost constant meetings and it was only in the morning, at lunchtime, and at the end of the day that they were out of the meetings. Nevertheless, I felt on many occasions that the Senate staff could have made their requests at times when I could have served them better.

The office did have a system of "late night" attorneys under which each night a different attorney would be designated to stay as late as the Senate remained in session. Usually the "late night" attorney was relieved by the attorney whose subject area was the pending business of the Senate. Like the other attorneys, I took my turn as "late night" attorney and also stayed late whenever foreign relations or immigration legislation was the pending business of the Senate. In addition, I would, of course, stay late to complete drafting assignments.

Although I did stay late on many occasions, I never had the kind of physical stamina that permitted me to work until eleven each night for a number of consecutive nights. I was always convinced that if I stayed extremely late on a particular night that I would pay for it the next day in my effectiveness. The fact that I stayed very late one night would not excuse me from being present in the office at 9 a.m. the next day. In other words, the Legislative Counsel always expected us in promptly the next day. I did have a number of those extremely late nights but I tried to limit them. I do remember one night when I assisted another attorney in the Office drafting a conference report at 3 or 4 a.m. I remember on one occasion where I worked to report out a bill and I worked until about 2 a.m. in the Office and got home and wasn't home but a few minutes when the phone rang about something in that bill. I also remember a couple occasions when I worked so late that it was past the time for the running of the Metro and, although I usually drove into the Office, on those two or three occasions I had opted to take the subway, and I had to get a ride from one of my Foreign Relations Committee staffers, Ed Levine, in order to get home. Perhaps the most vexing thing about a late night was that I frequently didn't know that I was going to work late until

five thirty or six at night of the very day. So I had no way to plan for it.

My preference, whenever I had any choice, was to come in early to work. I found that when I was working past eight or nine o'clock at night that my eyes would be so tired that I would begin to make little clerical and technical mistakes that I wouldn't otherwise have made. I preferred to come in early when I was fresh and probably did my best work in the 7 a.m. to 10 a.m. time range, particularly so since the phone would not be ringing so much. It is so difficult to edit drafts when you are being pulled away by telephone calls. You really need to concentrate. That's about all I can tell you on that.

**RITCHIE:** The average session of Congress has been described as an accordion. There are long stretches when it opens up and then periods when it closes and everything is condensed and the pace picks up. Was that true in your office where there would be long stretches in which there wasn't a lot of work, or was the work fairly steady during the year?

**RYNEARSON:** The general rule was that we did have periods of both great intensity and slowness in the Office. This was particularly the case in the early years of my tenure. However, as the years went on, it became very intense for most of the year with increasingly few periods of slow times in the office. Probably the slowest time legislatively in the Office was in mid August, which is entirely understandable because the Senate has maintained its four or five week recess every August that I can remember. There were also, when I first started in the Office, slow periods in election years in the fall and winter, but these have largely disappeared partly because there seems to be more and more lame duck sessions of Congress and partly because the Senate staff will get drafts going in the winter before the session fully starts. There is a greater reliance on the office during those periods now than when I started more than twenty-six years ago in the Senate. This has been very difficult on the legal staff and the secretarial staff of the office. Some of the periods that we go through are absolutely outrageous in terms of their demands on the staff, physically and emotionally, including the disruption it causes to our families.

One of the ways in which attorneys were recruited in the early years of my tenure was to tell them that, yes, we would have some very difficult weeks, but we would also have some very slow weeks where things could even out. Those slow weeks are increasingly a thing of the past and are not being seen and there is a real danger of burn out of the staff, particularly the legal staff. After the Congressional Accountability Act became law, the

secretarial staff were considered hourly wage employees, and our secretarial staff very rigidly held to that. If you needed secretarial assistance late at night, we probably had to pay overtime to a secretary, although the Legislative Counsel tried to arrange the hours of one secretary each day so that she would be available past six o'clock. The Office also received the services of GPO detailees who would come in later in the day and set type for us into the evening hours. On any given evening, there was probably work being performed in the Office, and in terms of the year, the slower periods were diminishing. The workload was becoming quite intense every week by the time I retired.

Let me mention one other thing regarding the Senate's schedule, the Senate would take a one-week recess just about every three or four weeks. Our Office would be deluged with drafting requests for bills and resolutions for introduction in the two days immediately prior to the Senate taking the recess. In other words, senators wanted to introduce large numbers of bills and resolutions just as they were leaving town. This made that last week prior to their departure enormously stressful for reasons that never had to do with the Senate's pending business. This was not precisely the case when I first came to the Office. I believe the Senate added one or two recesses in the springtime that the Senators were not taking when I first came to the Office. The upshot of this was to insert another week or two in the spring that was enormously stressful on the Office.

Also, as computer technology came into vogue, it must have dawned on the senators that they could obtain more bills faster, and so I believe a statistical study of the progression of introducing bills would show that more and more bills were introduced on a single day immediately before recess. Sometimes, the number of bills and resolutions introduced would exceed a hundred on a single day. I really wish that this could have been spread out in some way.

**RITCHIE:** One of the trends that you mentioned was that the larger bills got much larger in the decades that you were here. Was the fact that there were more pages in the bills an indication that they were lumping more individual bills into one larger omnibus bill? Or was it an indication that there was more of a trend toward micro-management, that they were being much more specific about things that they were demanding that the executive branch do?

**RYNEARSON:** Well, I think there were several factors that contributed to the length of the bills. The first is, as you suggested, it became increasingly more difficult in the Senate to consider major legislation during the course of the year as my service progressed. The result was that omnibus and longer bills were being passed at the end of the session, which really constituted several bills being packaged into a single bill. It was only at the end of the session that an agreement could be reached that these several individual bills could be passed as a package. There was the consolidation of bills, and computer technology enabled us to consolidate bills more easily than previously. So the computer technology might have driven that to some extent, although I think the major impetus of it was the fact that the Senate was increasingly deadlocked and gridlocked during the course of the year and could not reach agreement on bills until the end of the session.

Also, it occurred to Senate staffers, with computer technology available, that they could include in their legislation more and more findings of fact, which are expressed in resolutions as whereas clauses. It was not unusual for a Senate staffer to try to pack a bill with findings or a resolution with whereas clauses, the information in which would be largely derived from that staffer's longtime research, perhaps even a doctoral dissertation. This absolutely irritated me because none of these findings or whereases had any legal effect except in the remote situation where a federal judge, being unable to find any evidence of legislative intent, would refer to a finding, but that was extremely rare and totally inapplicable in the case of simple and concurring resolutions, which were never adjudicated in the courts. I remember doing resolutions containing more than fifty whereas clauses telling you about all sorts of information about the state of the world. Whenever statistics were employed, I particularly cringed because either the statistics would be wrong or in the course of doing the legislation, the statistics would have to be revised because the situation would be changing on a daily basis. If you were referring to the number of people suffering from HIV/AIDS or the number of deaths in a particular tragedy, these would be numbers that, not unexpectedly, would be changing. The legislation would be returned to me on virtually a daily basis to change numbers and facts, but none of it, with the exception that I noted, would have any legal bearing on the application of the legislation. Furthermore, all of those findings and whereases could have been inserted alternatively in the senator's remarks on the Senate floor when the legislation was being introduced or considered. I believe that prior to the computer age, that is where one would have found that information. During my tenure, it became in vogue to insert that information into the text of the legislation.

Also, I surmise that there might have been some senators and Senate staffers who were attempting to impress, if not their constituents, specific lobbying groups that might wish to make a contribution to the senator's reelection campaign by essentially recycling the lobbying groups' own material in the legislation into the form of these findings and whereas clauses. Or perhaps the Senate staffer merely wanted to impress the lobbying group because they might seek employment with them at some future time. In any event, these whereases and findings did have the effect of lengthening the legislation significantly.

Now, another factor in the growing length of legislation was simply that, with the availability of computer technology, my Office was able to do a more sophisticated draft. That is to say, we were able to do draft legislation that was cosmetically more readable, but in doing that, we employed more margins, more indents, more headings, and this had the effect of lengthening legislation a bit. Although it lengthened it, the overall product was much more transparent than some of the old drafted legislation, which read more like a stream of consciousness and was very hard to use as a reference work.

The style that we employed, which we referred to as "tax style," with the headings and the multiple indents, was originated in the House of Representatives by our counterpart office by the Legislative Counsel there, Ward Hussey, who was the chief draftsman of tax legislation. He developed this style, encouraged our office to use it, and then, I believe, our office employed it more rigorously than the House office, which never did decide on an absolute, uniform manual of style. Our Legislative Counsel, Frank Burk, made a point of getting the attorneys in the Office to agree on a style manual during his tenure in the office.

**RITCHIE:** You mentioned earlier about the Government Printing Office sending over printers who would set type, and I assume that was for the copies of the bills that would go on to the floor. Did computers eventually replace the typesetters, or were they still setting them in type all the way through?

**RYNEARSON:** I misspoke. By setting type, I meant that these GPO detailees would come over and they would do word processing on computers, but largely what they were doing was typing large quantities of text, which were largely unedited by the attorneys, although they did type edited text as well. Where they were most helpful is, if we received late in the day a large quantity of text, we could have them prepare that text before we would get into the editing the following day. We had two GPO detailees, who would work until



midnight and were very helpful to the office.

**RITCHIE:** Going back to the issue of micro-management, earlier on you raised the point that Senator Helms wanted to merge the informational agencies and the AID into the State Department. The State Department was resistant initially, and that was not their idea to do this, or at least it was not the administration's idea, it was the senator's idea. When you have a senator who wants to do something that the administration doesn't want to do, does that increase the pressure to write the bill in such a way that there are no options? Are things spelled out in perhaps more detail than they would be on other occasions?

**RYNEARSON:** I don't believe you can generalize on that. Certainly when the executive branch and a senator are in conflict on legislation, the legislation could take any number of forms. It could be written in a more generalized way, knowing that executive branch input will be required at a later point. Or it could be written in a very specific way in hopes of enacting it and giving the executive branch very little discretion to undermine the legislation they oppose. Or it might be written in a very specific way in order to embarrass the President and impose something the President finds unpalatable that he has to exercise a veto. Presidential vetoes of legislation were not always dreaded by Senate staff. They were sometimes the goal of the Senate staff.

I was largely in the dark on motivations. Senate staffers would try to disguise their motivations even in the confidential setting of my office. I just tried to do each drafting request in the best and most sophisticated way that I knew how, not knowing what might be enacted. I just wanted to do the best job possible.

In the case of the reorganization of the State Department, I know that the Foreign Relations Committee staff went down to the White House and talked to President Clinton directly about the legislation. I'm told he appeared very sympathetic to the reorganization, and I also know that whatever impression he gave them, his State Department continued to fight to keep the legislation from being enacted. I believe the president ended up using a veto on it the first time it was presented to him. However, the Foreign Relations Committee went back to the drawing board and, this time, the administration showed more interest in cooperation, and they sent their State Department attorneys up to Capitol Hill to try to provide input on the legislation. I remember sitting down with the State Department attorneys at a big session of the Committee staff, where we hammered out technical changes

in the legislation. It was enacted in 1998, in November of '98, almost four years after I first was engaged in drafting on it. The Agency for International Development was not abolished, but the other two agencies, USIA and ACDA, were abolished on a delayed basis and their functions were folded into the State Department. This was one of the more technically complex matters that I worked on during my service in the Office.

**End of the Fifth interview**

## **APPROPRIATIONS**

### **Interview #6**

**Friday, May 23, 2003**

**RYNEARSON:** This, perhaps, has been a digression, but I was thinking about my early days in the Senate. The staff director of the Appropriations' Subcommittee on Foreign Operations that dealt with the foreign aid spending bill each year, Bill Jordan, required that I be present on the Senate floor when his legislation was being considered. In other words, he required that I be on the Senate floor for the entire duration of the debate, which customarily went on for hours and hours and perhaps several days. In those days, on the Senate floor, there were these large, leather chairs, very comfortable, that the staff sat in, and the overall atmosphere on the Senate floor was almost that of a large living room.

I remember sitting on the Senate floor and being very comfortable, although a little annoyed that I had to spend the time there, which could be a bit tedious because I was not working continuously. I remember what a different atmosphere it was then than it is now in the post-introduction-of-television age, where there are these benches up against the wall, and the staff are required to sit behind a decorative fence on these benches. You cannot do that for a very long time without being quite uncomfortable. So the entire Senate floor has taken on a bit more of a greater aspect of formality, and not quite as user friendly from the staff standpoint, as it was in my initial years.

**RITCHIE:** Those were in the dark ages before television.

**RYNEARSON:** That's right.

**RITCHIE:** It literally was a lot dimmer in the chamber than it is now that you've got the bright TV lights that are on all the time.

**RYNEARSON:** The color scheme was entirely different, too. As I recall, the color scheme was basically a yellow, brownish cast, and now we've gone to the blues and buffs. It is a very different appearing chamber.

**RITCHIE:** You were talking about the Appropriations Committee. Everything that happens up here really goes through two committees. One to be authorized by a standing

committee, and then to the Appropriations Committee—if they don’t appropriate any funds, nothing is going to happen to it. What was the difference in terms of working with the Appropriations Committee as opposed to working with, say, the Foreign Relations Committee?

**RYNEARSON:** Initially, the Appropriations Committee staff at the subcommittee level wanted to engage me in a much more detailed way than the Foreign Relations staff. In those days, when you would prepare a committee draft bill and send it down to GPO to be printed as a preliminary draft, it would come back from GPO replete with typos and other clerical errors because GPO was setting the text from scratch. Whoever was doing it down at GPO didn’t know the foreign aid program from a hole in the wall. This meant that each draft that came back from GPO had to be carefully proofread and corrected by the Appropriations Committee staff.

I was called upon to be present at these so-called “proofreading parties.” It soon became apparent that I had a little sharper eye for this than the committee staff. So I spent countless hours with the Appropriations Subcommittee on Foreign Operations staff, scrubbing up these drafts until we had a clean text that the subcommittee committee could use to report to the full committee. This is perhaps a long-winded way of saying the Appropriations subcommittee had legislative jurisdiction and had an obligation to report legislation but in the case of the Foreign Relations Committee, as I mentioned earlier, that jurisdiction was conveyed to the full committee and lost by the foreign aid subcommittee in Foreign Relations.

I worked very closely with the Appropriations Committee staff and the subcommittee staff director, Bill Jordan, who hung a dollar bill on the wall behind his desk, was very much a micro-manager and was greatly feared by both other congressional offices and within the executive branch. He wielded considerable power and he sat in some of the primest real estate in Washington overlooking the Mall on the first floor of the Capitol Building. In any event, he wanted me very much involved, and I tried to give terrific service to him and the subcommittee.

A few years later when computer technology came on board for the Appropriations Committee, the Committee’s staff had a sudden loss of interest in my services. They wanted very much to control the phrasing of drafts and once they had the ability to easily correct

clerical errors in their bills, my role became more of a secondary role, someone they would call up when they got into a particularly complicated drafting situation or someone they would refer other senators' staffs to for preparation of floor amendments to Appropriations bills. This annoyed me a little bit because I thought the Appropriations Committee could benefit from using more of my services.

A few years after that, the Subcommittee on Commerce, State, Justice seemed to discover me, and I had a very good working relationship with both the Republican and the Democratic staff of that subcommittee. They would e-mail me rough language or fax me rough language that they were considering and request my expertise in polishing it up. I think I made a contribution there in preparing better drafted provisions for the Commerce, State, Justice Appropriations bill. I guess, in sum, my services for the Appropriations Committee seemed to be a bit uneven, whereas the Foreign Relations Committee used my services in the same manner, more or less, throughout my tenure.

There are also two other things that should be mentioned, the one is that the Senate Appropriations Committee, at varying times, felt constrained by the drafting idiosyncracies of the House Appropriations Committee. The House and the Senate have had a historic debate over whether the Constitution requires all appropriations bills to originate in the House or whether the Senate may originate appropriations bills. Not surprisingly, the Senate sticks up for its own prerogatives. The Constitution is either unclear on the subject or it supports the Senate position because the Constitution only refers to the House having the power to originate revenue bills. An appropriation bill is definitely not a revenue bill. However, as a customary matter, I am not aware of the enactment of any appropriation bill that originated in the Senate but, interestingly enough, in the 1980s the Senate began to seriously consider producing and passing Senate-originated appropriation bills.

I was involved in preparing one of the first of those. In 1981, at the request of the Appropriations Foreign Operations Subcommittee, I prepared from scratch a Foreign Operations appropriations bill. That is, a bill that was not amending a bill originated in the House. I've forgotten whether the Senate actually passed that bill or not but, at some point, the Senate conceded the point to the House and enacted the House bill containing some of the provisions of the bill that I had worked on.

The reason I remember this is because when I was able to do an entire appropriation bill from scratch I was able to undue many of the drafting idiosyncracies of the House appropriators. That gave me a lot of gratification, but I doubt that it did anything to improve the chances of compromise with the House. I did that, of course, with the full knowledge and blessing of the Senate Appropriations staff but, I believe, they realized, in the end, that this was not scoring any points with the House appropriators. From their standpoint, it was an unnecessary bit of contention with the House. From my standpoint, I believe that appropriations bills are generally poorly drafted, and if they were to be litigated, there would be enormous litigation problems in a number of the provisions.

The use of provisos, specifically, is a questionable drafting technique because it leaves the reader unclear as to whether the language of the proviso is meant as an exception to the preceding language, or whether it is an independent thought, or a condition on the preceding language. That can make an enormous amount of difference. If X number of dollars are being appropriated for a certain purpose provided that something is done, it leaves it unclear as to whether the money is, in fact, not appropriated at all if the proviso is violated. I believe there has been some litigation on this point but, I believe, the litigation is always narrowly tailored to the question at hand and has not persuaded the appropriators to change their drafting technique.

**RITCHIE:** Do you think these House idiosyncracies were just customary? Were they just used to doing it that way, or was there some intent behind it?

**RYNEARSON:** Well, I believe it's a mixture. I believe there were Appropriations staff in the House during the 1970s and '80s, at least, who were unbending in their approach to preparing appropriations bills. Part of that was probably either that that was the way they had learned it, or it might have been an ego thing. Or it might have been intentionally done to be somewhat ambiguous in the hopes that they could, in fact, turn appropriations bills into something more than the appropriation of money, into bills that would direct the operations of the executive branch in ways that the authorizing committees thought were exclusive to their committees.

Also, of course, there came to be a major dispute between the Appropriations Committees and the authorizing committees on the subject of earmarks. During my tenure, Senator Byrd was quite adamant that authorizing committees should not be earmarking their

legislation, that it was the sole prerogative of the Appropriations Committee to set what was known as “floors” to the use of dollars in a spending bill, that the authorizing committees were limited to setting “ceilings” on the use of dollars, but not to establish floors. This was quite a contentious question between the two committees because the power to earmark is one of the great powers or exercises of the power of the purse. To strip the Foreign Relations Committee of the power to earmark was to strip it of some considerable power. Typically what happened is that the Foreign Relations Committee would initially write earmarks and then as the legislation came closer to Senate passage, it would turn the mandatory floors into permissive floors and thereby acknowledge the power of the Appropriations Committee. That was my experience with the Appropriations Committee and how it interacted with the Senate Foreign Relations Committee over the years.

**RITCHIE:** There has been a debate over whether or not you can legislate on an appropriations bill. Did that come into your purview at all when you were drafting some of these amendments to appropriations bills?

**RYNEARSON:** It was a major consideration in drafting floor amendments. Senate staff, generally, wanted to express the most mandatory and directory language possible. We received many requests to legislate on appropriation bills. Under the Senate Standing Rules, Rule XVI, general legislation is not in order to be offered in the form of a floor amendment to an appropriations bill. However, the point of order needs to be asserted and, in some instances, the members would simply ignore the fact that general legislation was being offered.

Also, later on in my tenure, general legislation was offered to an appropriations bill by Senator Kay Bailey Hutchison. The chair ruled the amendment out of order, whereupon the ruling was appealed to the entire body of the Senate, which is the right of a senator to do. The Senate, by a majority vote, reversed the ruling of the chair, and thereby for a considerable time of three or four years or so, permitted, by precedent, general legislation to be offered to appropriations bills. Then that precedent was eventually reversed, and the standing rule of the Senate resumed its effectiveness.

This was a matter of no small importance to my office because if any piece of general legislation could be offered to an appropriations bill, that meant that there was no limit to the number of issues and floor amendments that might be drafted or requested to be drafted to

an appropriations bill. Typically, as I said earlier, floor amendments would be requested very late in the “game.” We would be doing floor amendments with major implications for the direction of the executive branch on very late notice. It put a lot of stress and pressure on the office since we prided ourselves in making sure that no senator was turned away from being able to offer a floor amendment. So the ruling on resuming the ban on general legislation was probably a relief to me.

**RITCHIE:** I’m sure to the Senate leadership as well. [laughs] So when you were dealing with appropriations amendments, it wasn’t strictly a matter of dollars. It was often a matter of policy working its way into the appropriations before it went on to the floor amendments. It was actually in the text of the bill itself.

**RYNEARSON:** That’s right. I put in dollar figures in conjunction with legislative language but, frankly, I was always wary of preparing documents with dollar figures because I knew that they almost always changed. They were just an invitation to be changed, which would require my further revision of the document.

I was absolutely agnostic as to what dollar figures were put in. Occasionally, a client would ask me what dollar figure I thought would be appropriate, and occasionally I would be asked what deadline should be imposed. I always demurred to those requests. It was none of my business what dollar figures or deadlines were inserted in the draft. I was always concerned with the legislative language. You might say that my interest in a document was totally different from that of my clients. Not surprisingly, they were very interested in dollars and what that dollar amount would be, whether it was at the authorizing level or the appropriations level.

I was not at all interested in that. I knew that it was not for me to express an opinion on. What I was interested in was how something was going to be drafted so that it could be implemented, so that it would be internally consistent, that it would pin accountability on the appropriate official in the executive branch, that it was transparent enough that it could be readily understood by those who had to interpret it, and also, of course, whether it amended the appropriate law, whether it was it was constitutional, and whether the legal citations in it were correct. Those were my concerns and, generally, the Senate staff, if they were interested in this at all, they were interested in it only secondarily.



**RITCHIE:** I've read a lot of the mark-up sessions of the Foreign Relations Committee back in the 1960s when they were closed sessions. They were pretty frank about raising the dollar figures because they knew that the House was going to pass a lower dollar figure, and they assumed that when they went into the conference committee they would split the difference. It was almost like a game. That indicates that the conference committee has a particularly powerful role in any appropriations matter. Did you work in a conference committee as well with the committee beforehand?

**RYNEARSON:** I did a lot of work in conference committee at the authorizing level, but very little at the appropriations level, except in my initial years when Bill Jordan and Jim Bond were staff directors on the Foreign Ops Subcommittee. In those years, I participated in the deliberations on the conference reports for appropriations bills.

Throughout my tenure, I was involved at the conference level for authorizing pieces of legislation. I prepared several conference reports, either exclusively or with participation by my counterpart in the House Legislative Counsel's Office. In my last few years in the Senate, my counterpart in the House and I seemed to have a system where we would alternate the responsibility for preparing the conference report on the State Department authorizing bill. That was quite a long bill and it really involved a lot of work by whoever was preparing the conference report.

Of course, by preparing the conference report, I mean assembling it in accordance with the policy directions of the Senate and House staff. I had no discretion to invent policy in conference committee reports. But I believe I did make quite a contribution in assembling the reports because it could be quite a technical feat when you are merging two bills of a total of 400-500 pages into a single conference report of 200-300 pages. One had to be completely versed in the content of both bills. It was not always a matter of taking a provision from the House and then taking a provision from the Senate and just locating those provisions. Rather, the organization of the two bills might be somewhat different. I had to devise a third new organization of the legislation, and there were provisions that were compromise provisions that had to be written either in whole or in part from scratch. This was quite a time-consuming and complex matter.

What made it even more difficult was that I believed I had to get it perfect because the next step was an up or down vote, without further amendment, on the conference report

in the House and Senate. Usually the conference report would be agreed to and go to the president for the president's signature or possible veto, but that was somewhat rare. Whoever was participating in preparing the conference report believed that that document would be the way in which the final law would appear. One could not make careless errors, although I certainly don't claim infallibility. The conference report required a degree of scrubbing that the other stages in the legislative process did not require of legislation. Although we always tried very hard to get it technically correct, at the earlier stages, one knew that there would be clerical and technical errors cropping up into the documents.

**RITCHIE:** I remember once when the House passed the bill in which one of their staff members' telephone numbers was in the text of the bill. It had been printed in it when they passed it. They had to repeal the telephone number, or something to that effect. It was a little bit of a flap at the time.

**RYNEARSON:** That was very famous, and I believe it occurred in President Reagan's famous law in 1981, the so-called Reconciliation Bill to cut spending. The law was quite long and a telephone number did appear in the conference report. I can say on the record that that was not my doing. [laughs] It was quite a matter of consternation among the congressional staff.

**RITCHIE:** Last week, we talked about chairs of the Foreign Relations Committee and how things changed, and you've talked a lot about the staff of the Appropriations Committee. Did you notice that there was much change in the way things were done, depending on who chaired the Appropriations Committee or who chaired the subcommittees that you were dealing with?

**RYNEARSON:** In the case of the Appropriations Committee, I would say that there was a certain amount of continuity or appeared to be. The chairs, as I recall, of the subcommittee—well, memory fails me a little bit but I do remember that Senator [Robert] Kasten of Wisconsin was chair of the Foreign Ops Subcommittee for most or all of the years of the Republican control of the Senate in the 1980s. Afterwards, Senator [Daniel] Inouye was chair, and he was also chair of that subcommittee, I believe, before Senator Kasten. I'm sure they had different personal styles, but the Appropriations Committee seemed to have a little more coherence and continuity than the Foreign Relations Committee leadership or the Judiciary Committee leadership.

I think this relates to the power of the committee itself. Every year the committee must pass on the spending laws of the United States. The committee knew that it had the last word on this within the Senate, which gave the Senate Appropriations Committee enormous power. The committee was zealous in guarding its prerogatives and asserting its prerogatives, and this seemed to be the case regardless of whether the committee was chaired by a Republican or a Democrat. Also, of course, for many years during my tenure, Senator Byrd was either chairman of the full committee or a high-ranking senator on the committee. He asserted Senate prerogatives constantly and Appropriations Committee prerogatives, whether he was chairman or not. So there was a certain continuity, I believe, in the way the committee conducted its business.

The main change that I saw from a leadership standpoint was that as the years went on, the Senate was more inclined to prepare original Senate legislation appropriating money and allow the Senate to take votes on that and then offer the entire Senate bill as a complete substitute to the House bill that would come over. “Why was this done?” you probably ask. I believe it was done for two reasons. As the budget process became more contentious during my tenure, it took longer in the year before the House could actually pass its bills. This enabled the Senate to be doing something while we awaited House action. Secondly, and perhaps more importantly, by offering the Senate legislation as a complete substitute to the House legislation, as a matter of Senate rules, it put the entirety of the House and Senate legislation into the conference committee as a matter for reconciliation or resolution.

Earlier in my tenure, in the late ‘70s and, I believe, customarily, for many years before that, the Senate would await the House passage of the legislation and then would only amend certain provisions of the House bill leaving other provisions untouched. This is what the Legislative Counsel’s Office in the Senate, my office, referred to as “cut and bite” amendments or perfecting amendments. The effect of doing cut and bite amendments would be that only those provisions of the House bill that had been amended by the Senate would be in conference committee subject to resolution. The unamended provisions of the House bill would be provisions that had the approval of the Senate and therefore were not in dispute. This made conference committee reports quite interesting because they would amount to page upon page of resolutions of individual provisions in the House bill, which would be numbered for purposes of reference. The conferees would have to focus on very specific provisions. But, as I said, during the 1980s the Senate changed the system and the new system remains the current practice. That would be the major change that I would see

that the Appropriations Committee leadership in the Senate implemented during my tenure.

**RITCHIE:** When you attended those conference meetings, did you notice if personalities played a big role? Did it make much difference who was making the arguments?

**RYNEARSON:** As I mentioned earlier, I saw Senator Humphrey actually change minds, I believe, in a Foreign Relations authorizing committee of conference in the Carter years. Generally, when you attended a conference committee, when the members were present, you did not see a lot of minds changing. These meetings were open to the public, and the members were pretty much expressing the views of the chamber that sent them to the conference committee. At the staff level, which became increasingly the case as the years went by, one could see compromises being forged, and the members would meet more or less on a pro forma basis. That was my observation in conference committee.

**RITCHIE:** Did you find partisanship becoming more of an issue in appropriations?

**RYNEARSON:** I believe partisanship became quite an issue regarding the budget and budgetary matters beginning with the Reagan years. Prior to that, the budget did not seem to be such a matter of controversy. I believe that had to do with the enactment with the Congressional Budget Act of 1974 and the new procedures that were being instituted and the fact that during the Reagan years the U.S. ran up large budget deficits. Of course, President Reagan wanted to put more of a focus on the level of spending. Budgetary matters, generally, became more partisan as the years went on. But within the Appropriations Committee itself, I thought that the committee maintained a surprising amount of consensus and unanimity. I have to admit, frankly, that after the early '80s, I did not have quite as close up a view of their deliberations as I did in Foreign Relations and Judiciary.

I should say as a little bit of a digression, you asked earlier about committee leadership, and there was a very dramatic effect within the Judiciary Committee on which party controlled the committee. The agenda would change dramatically within that committee. But whether the Republicans or the Democrats controlled the Judiciary Committee, in the later years, from at least the mid-80s on, deliberations within that committee were very polarized, very partisan. In fact, working relationships at the staff level within the committee were generally quite poor.

One exception to that, however, was the Judiciary Subcommittee on Immigration. Whoever would chair that subcommittee made very vigorous efforts to reach out to the ranking minority member on that subcommittee. I believe there was a realization that immigration law was generally so contentious within the Senate and within the full Judiciary Committee that the subcommittee had to have something approaching a consensus on immigration matters. It is also, of course, a very technical area, and the senators on the subcommittee and their staff were a little bit more versed in the complexity of the law than outside of the subcommittee. Senator [Alan] Simpson was chairman of that subcommittee with Senator [Edward] Kennedy having been the previous chair. They worked well together when the roles were reversed. Then Senator Kennedy assumed the chair when the Democrats resumed control of the Senate. Senator [Sam] Brownback and Senator Kennedy worked well together when they alternated roles as chair of that subcommittee. That was the exception within the Judiciary Committee. Generally speaking, the Judiciary Committee staff and members were quite at odds with one another.

**RITCHIE:** Everybody wants something from the Appropriations Committee across the board. There seems to be a lot more of, “You scratch my back and I’ll scratch yours” that permeates the Appropriations Committee in a way that maybe just isn’t there for almost any of the other committees.

**RYNEARSON:** The power of the Appropriations Committee, of course, stems directly from the Constitution, which requires that no money may be drawn from the U.S. Treasury except pursuant to an appropriation. The Appropriations Committee realizes that it either is the last word in enacting the thirteen appropriations laws or is the last word in the enactment of a continuing resolution combining some of those appropriations bills. One way or the other, the U.S. government will run out of discretionary spending power at the end of the fiscal year, unless extended.

The authorizing committees do not have that same amount of legal power. They are not specifically referenced in the Constitution. Their power, if any, derives from the expiration of legal authorities in statute that need to be extended. There is a requirement in the Senate rules that an appropriation bill cannot be considered unless subject to prior passage of an authorization or pursuant to the president’s budget request. But that requirement can be waived. Also, there are some statutory requirements that require an authorizing measure to be enacted into law in the foreign aid area and in the State

Department budget area before money can be appropriated. Those provisions have also been waived. Since the general rule is that the last Act of Congress in time prevails, if the appropriators are the last in time, they can enact any sort of waiver of a requirement that they are supposed to be subject to. The Appropriations Committee staff have enormous power through the vehicle of the appropriations law.

**RITCHIE:** One other question about the conference committees concerns the relations between the Senate and the House. Do the two bodies go in equal, or does one exert more authority than the other, or does it just depend on the circumstances?

**RYNEARSON:** Well, it does depend on personalities, as you suggested earlier. Some conference committees are run on a more collegial basis than others. Generally speaking, though, the head of the conference will be one of the chairmen of the committees of jurisdiction over the legislation. The interlocutor with that chairman, i.e. the head of the other chamber's conferees, will be the corresponding chairman of the appropriate committee of jurisdiction. This generally means that the discussions in conference between the heads of the two delegations will be collegial because the chairmen of the appropriate committees want to maintain a working relationship that transcends the actual conference committee setting.

However, there were differences in the way the two chambers were represented. The House was able to send many more conferees to conference than the Senate. This was just a function of the fact that the House committee would be a larger committee. The House chamber is a larger chamber. There were more members who were active players in the legislation on the House side. This did not give the House any advantage in terms of voting. Each chamber's delegation has an equal say in the final phrasing of the conference committee report. But it did mean that there would be more House members present, generally, at the meetings. There were certainly more House members whose signatures were required on the conference report. This gave the House frequently a little bit of an advantage over the Senate conferees, I thought.

The House conferees could afford to specialize more than the Senate conferees, so that an individual House member could be the world's greatest authority on a particular provision in dispute between the two houses, but it was rare that that was the case with a senator. Of course, the Senate delegation had an equal right to form the conference report

as the House delegation, and they could ignore the expertise of the House conferees. Sometimes, of course, this expertise was expertise in quotes. A House conferee might know more data about a particular provision, but that didn't mean that the conferee's judgment on what was best for the country regarding that provision was any more valid than the judgment of the Senate conferee. Occasionally, however, I thought it gave the House conferees an edge because there is always a twilight area where the members perhaps don't know what is the right course of action, where things are murky. If a House conferee had more data on the subject, they might be able to change the mind of a Senate conferee. So that was my view of the interaction among the members.

Remember what I said earlier, that as the years went on, it appeared that there was less and less formal interaction among the House and Senate conferees. Rather, the real hard work was being done at the staff level or, at least, the staff would tackle the minutiae of secondary issues at innumerable meetings, sometimes with administration officials present, to try to work out compromises on the secondary issues and then leave the big issues for the members of Congress to resolve at a final meeting of the conferees.

**End of the Sixth Interview**

## IMMIGRATION LEGISLATION

### Interview #7

Monday, June 2, 2003

**RYNEARSON:** I was interested in seeing a dissertation that discussed the early years of the Senate [Roy Swanstrom, *The United States Senate, 1787-1801*, S. Doc. 100-31 (1988)] in which it was mentioned that it was rare for individual senators to introduce bills. Rather, what they would do is make a motion to establish a committee for the purpose of considering a law to be drafted. Not only that, their motion would include occasionally a list of the members they wanted to sit on the committee. Of course, the system has changed very dramatically since that time. Most legislation is introduced by individual senators and referred to an already established “standing” committee, although we do have, still today, what are known as original bills and original resolutions that are the creation of committees only.

I was mulling that over. It seemed to me that the circumstances in which we get the original legislation nowadays is usually when the chairman of the committee is trying to act as a broker among senators who have introduced legislation on the same general subject. The chairman does not want to tip his hand prematurely by introducing his own piece of legislation, but rather wants to let the various members introduce their bills, have them referred to the committee and then the chairman will forge some sort of compromise that the committee will report out as an original bill. This also occurs in the situation where the executive branch has a major piece of authorizing legislation, an authorization of appropriations, that is routinely considered by a committee and which tends to be a rather major piece of legislation because of the enormous budgetary impact it has. In that case, the chairman of the committee may introduce a bill upon the request of the administration that was drafted by the administration but will not, in any other way, tip his hand as to how he wants to fashion that legislation. He will then let the committee consider the matter and report out an original piece of legislation.

**RITCHIE:** Did you get involved with that tactic?

**RYNEARSON:** Yes. I was involved when the Foreign Relations Committee considered its major pieces of legislation authorizing appropriations for the State Department or for the foreign aid program. I would be called upon by the chairman’s staff to work on



the bill that would be reported out as original legislation. I would also work with the other members of the committee to offer amendments within the committee to what was referred to as the chairman's "mark," which is the baseline legislative language and dollar amounts the chairman was setting forth for the consideration of the committee. As years went on, these markup sessions tended to be increasingly pro forma. The staff would work out much of this before the senators even met. Then when the markup meeting would occur it would last less than three hours, sometimes less than two hours. But some votes would be taken to finalize the legislative language.

**RITCHIE:** So did you enjoy that dissertation on the early Congress?

**RYNEARSON:** I have to admit the only part I've read so far is the part on the committee action.

**RITCHIE:** What I found interesting is that he brings up issues that happened two hundred years ago in which there are a lot of echoes of what the institution does today. It has changed in some respects but, in others you look and you realize, well, that's when they started doing essentially what they're still doing.

**RYNEARSON:** I think this is a period that we can benefit from studying. I was particularly amused to find that an individual senator was not permitted to introduce a bill under the original Rule XII that governed these matters unless the senator obtained a majority vote from the Senate and the Senator provided a one-day advance notice of his intention to seek a majority vote for the introduction of the bill. Of course, under our ability to filibuster motions, this would nowadays practically prevent most senators from being able to introduce bills. I had to laugh because it would certainly cut down on the amount of legislative drafting of introduced bills, which has been quite a heavy workload for my office. Of course, even in the early days of the Senate, as I have understood it, members refrained from filibustering, even though they did not have the cloture rule, which is now in Rule XXII. But apparently, there must have been such an element of comity in the early days of the Senate, and the Senate was so much smaller as an institution, that senators could obtain a majority vote to start the legislative ball rolling. This is one reason why I believe that a 50-member Senate, consisting of one Senator elected from each state, would allow the Senate to operate more in keeping with the original intent of the Founding Fathers.

**RITCHIE:** We've talked about your experiences with the Foreign Relations Committee, the Appropriations Committee, and the Armed Services Committee. You've also mentioned that from time to time that you worked with the Judiciary Committee on immigration issues. I wondered if we could talk about the type of work that you did for the Judiciary Committee, and the chairmen and staff that you've worked for during your time in the Senate.

**RYNEARSON:** When I came to the office in 1976, one of the first assignments that I received was to assist a more experienced attorney, but still quite a junior attorney, in the preparation of private immigration bills. At that time, the office was using these assignments as a way to develop drafting skills in its newly-hired attorneys. I initially was not too pleased to be doing this. I had the idea that the less private legislation the Senate considered and enacted the better our society would be.

Over the years, I changed my view somewhat. I came to see that most legislation has some private bent to it. There are individual groups that are lobbying for legislation. It is sometimes an intellectual challenge to draw the line between a purely private piece of legislation and a purely public piece of legislation. Perhaps more importantly, as I came to read about the cases that prompted the introduction of the private immigration bills, I came to see that there were a number of genuine hardship cases involving individuals who had been treated poorly by the Justice Department. I became somewhat more sympathetic to providing a legislative remedy for those individuals. In any event, I had no choice. I drafted those bills with all the same expertise and professionalism that I could bring to any piece of drafting. That was my initial contact with immigration drafting.

I had very little contact with the Judiciary Committee itself until about 1981 or '82. In the late '70s, it appeared to me that the Judiciary Subcommittee on Immigration was not engaged in preparing major immigration legislation. There had been a major change in the immigration law in the late 1960s emanating from the 1965 law. I believe that when I first came to the office, the Senate was in a relative lull in considering immigration matters. I certainly know that the question of illegal immigration did not have the same prominence in our public policy debates in the 1970s that it was to have in the 1980s.

Also, there was another attorney in the office who came after me, who was given some initial assignments to work with the Judiciary Committee, Catherine Clark Mosbacher,

who handled legislation dealing with what was to become the Refugee Act of 1980. When she left the office, I obtained her entire portfolio in the immigration area, including working with the Judiciary Committee. This occurred in 1981 or 1982.

At that time, Senator [Alan] Simpson was the chairman of the Subcommittee on Immigration. He was most interested in making a major reform of immigration laws and he brought in a private attorney, Arnold Leibowitz, to help prepare a complete overhaul of the Immigration and Nationality Act, which was originally enacted in 1952. There had been a thirty-year period in which this act had become somewhat out of date and its inadequacies were quite well known by the practicing immigration bar. My role was to assist Arnold in preparing a draft bill that rewrote the Immigration and Nationality Act. We did that but, for reasons that are not entirely clear to me, this was soon a dead letter. Instead, Senator Simpson went with a more selective approach to changing the immigration laws. That approach still involved quite major reform. Eventually, it was enacted as the Immigration Reform and Control Act of 1986, known by its acronym as IRCA. IRCA made it a criminal offense to knowingly hire illegal aliens in the United States and it also provided an amnesty program, which was known as legalization, to enable many currently illegal aliens to adjust their status.

Senator Simpson worked quite closely with Senator [Edward] Kennedy regarding his major reform efforts. The two of them seemed to get along quite well, and their staffs seemed to get along quite well, also. It was something of a model of how the parties can form alliances on specific legislation. Later on, when the Democratic Party took control of the Senate, Senator Kennedy would be the chair of that subcommittee. He also maintained a very good working relationship with his minority counterpart. Initially, I believe, that was Senator Simpson. Then it became Senator Spencer Abraham of Michigan. Then when the Republican Party again took control of the Senate, Senator Abraham became the chair of the subcommittee and Senator Kennedy became the ranking minority member. Later, Senator [Sam] Brownback of Kansas became the chair with Kennedy the ranking minority member. In 2001, when Senator [Jim] Jeffords switched parties, Senator Kennedy resumed being chair of the subcommittee. At all times, it seemed that the chair and the ranking minority member had a pretty good working relationship, which is not to say that they didn't have policy differences, but there was a certain collegiality between the staffs of the two senators. It was not unusual for a representative of both senators' staffs to come to my office jointly to request drafting assistance.

The matter was different when the legislation went to the full Judiciary Committee. Matters were much more contentious at the full committee level. It became readily apparent to me that the committee membership was quite polarized between the ideological extremes within the Senate at that time. I'm referring to the mid-to-late '80s and all the '90s. Of course, immigration policy, generally, is quite a contentious issue. The committee, perhaps any committee membership, would have been divided on immigration policy. However, it did make the enactment of major legislation quite difficult. This was reflected in the contentiousness of markup sessions.

I remember one piece of immigration legislation, what later became the 1996 IIRIRA Act [Illegal Immigration Reform and Immigrant Responsibility Act]. The full Committee of the Judiciary had very long and numerous markup sessions on the matter. Then when the legislation went to the floor of the Senate, the debate went on for at least two weeks continuously. Late in this period of debate, Senator Kennedy proposed a minimum wage amendment to the legislation. That was, of course, a nongermane amendment, and I'm sure it was not a pleasant development to the managers of the legislation. So immigration legislation was quite a contentious matter.

I should also add that I believe, generally, over the years, the polarization within the Judiciary Committee has become more pronounced. This was, at least in part, attributable to the deep divisions within the committee on consideration of judicial nominations. The most famous case, of course, was the case of the committee's consideration of President George H. W. Bush's nomination of Clarence Thomas to be an associate justice of the Supreme Court. Of course, as we too well know now, he was accused of sexual misconduct with a former employee. This took on quite a partisan tone as his nomination was considered. When he was confirmed by close to a straight party-line vote, there was a lot of bitterness which remained within the committee and I think still remains within the committee more than eleven years afterwards. These party divisions on nominations did not help the consideration of immigration legislation, although I had no role whatsoever in the Judiciary Committee's consideration of judicial nominees.

**RITCHIE:** But you could sense the ideological divide when you sat in on the markup sessions?

**RYNEARSON:** Yes, absolutely. Also, I sensed that the chairman and the ranking minority member for many years, Senator [Orrin] Hatch and Senator [Pat] Leahy, who rotated the positions, did not get along at a personal level, although I am certainly not privy to their social interaction. But it appeared that the tone that they expressed in their committee meetings indicated a lack of a friendship between them. If my observation is correct, it would explain, in part, what I view to be a bad working relationship between the majority and minority staffs at the full committee level. I stress, at the full committee level. It was not unusual for the majority and minority staffs to come to our offices for drafting assistance separately for the purpose of preparing very dramatically different proposals that, if they were to be enacted, would have to be enacted through some sort of compromise. It appeared at many times that the staffs, rather than dealing directly with each other, would be throwing legislative documents at each other.

My office was caught in the middle. Of course, we tried to do a professional job for each side, but it gets very difficult when both sides are coming to you with a deadline looming. You know you're drafting legislative language that will end up in the garbage can and that you will have to be drafting something different at an even later stage. You just wish that the staffs could have gotten together so that you could draft the legislation with a bit more deliberation and with more time so you could do a more sophisticated job of the drafting.

**RITCHIE:** Staffs tend to reflect the personalities of the senators who are the chair and the ranking member. It makes a big difference if those two are cooperative or not. I think about Ted Kennedy who got along well with Orrin Hatch despite their vast ideological differences, and who was able to work with Sam Brownback and others. On most issues, they wouldn't have voted alike, but he was able to create some working relationships that would not have existed if other senators had been in that same situation.

**RYNEARSON:** I did generally find that the staffs reflected their members in terms of their ability to work cooperatively with one another. Occasionally, you would find a very mild-mannered senator employing a tougher staff and, even more rarely, a tougher senator employing a very friendly staff. But generally, the staffs did reflect the members. Unfortunately, in the Judiciary Committee, there were two strikes against the committee's effectiveness: the failure of the leadership to form personal relationships that could carry over into the business relationship, and the fact that policy in the fields under the jurisdiction

of the Judiciary Committee, the so-called social issues, were so contentious during my tenure in the Senate. Probably the differences in policy were more important than the failure to create a personal relationship. But there were both elements at play there. I believe the combination hurt the effectiveness of the Judiciary Committee enormously.

**RITCHIE:** Sometimes the personality can triumph over the policy. Someone who has impeccable conservative or liberal credentials can compromise and bring over their colleagues. Others just can't do it. They can't find any common ground or a creative solution to a stumbling block.

**RYNEARSON:** I did see personality triumph over policy differences in the Foreign Relations Committee with the relationship between Senator Helms and Senator Biden. One wonders whether the policy differences within Judiciary were just too great for any chairman and ranking minority member to fashion a consensus.

**RITCHIE:** It seems to be true that the Judiciary Committee in both the House and the Senate that the parties deliberately put Members on those committees who reflect the core of the party and don't share any common ground with the other side.

**RYNEARSON:** I think that is true. The social issues are issues that have strong lobbying groups associated with them. I believe the parties are under a lot of pressure once they take control, or even in minority status, to demonstrate to the special interest groups their undying commitment to the issue being promoted by the special interest group and to put hardline Members on the committee. It just makes it very difficult for the Judiciary Committee to be effective within the entire Senate because there does seem to be a correlation in both the House and the Senate between the ability to get through the chamber legislation in a given field and the consensus or lack of consensus within the committee of jurisdiction for that legislation. A committee that is fully unified is much more likely to get its legislation enacted.

**RITCHIE:** What were the thorniest issues that you confronted when you were dealing with immigration legislation? How would you go about dealing with issues like that?

**RYNEARSON:** Generally, in immigration law, everything was contentious. Perhaps the area of greatest contentiousness was how to handle illegal aliens. Two questions arose really, that was to what extent, if at all, should the United States legalize or give amnesty to illegal aliens who have resided in the United States for an extended period of time? A second issue related to that is, does our immigration law provide an adequate enough quota for the admission of aliens? Those two general issues provided any amount of controversy and took the form of many pieces of legislation. In 1996, Congress enacted IIRIRA (the Illegal Immigration Reform and Immigrant Responsibility Act), which had as its purpose to tighten up the immigration laws to make it more easy to deport illegal aliens by providing less resort to the courts for illegal aliens, and it did a number of other things as well. What I've told you is a gross simplification since the law is about a hundred to two hundred pages in length.

**RITCHIE:** I know that you made major contributions to the immigration bills. You've mentioned that you had more input, to some degree, in terms of the drafting of that bill, and that at one point you wrote an immigration bill.

**RYNEARSON:** I drafted many immigration bills. In the early years of my tenure, it seemed that the final enacted law would reflect more of the House legislation than the Senate, at least in terms of the technical drafting, perhaps because my counterpart in the House Legislative Counsel's Office, Ed Grossman, was more senior and had done more immigration law drafting. I did work a great deal with all of the senators who were chairmen and ranking minority members of the Immigration Subcommittee. Their bills were very technically complex, and it was a real challenge to draft, but I was pleased that I was called upon to do that. In the immigration area, I've always felt that immigration law has such an immediate impact on the lives of individuals that it gave me a high degree of satisfaction that what I was doing had that sort of impact. Some laws you draft you never know whether they are going to be fully implemented or applied, but Congress has the plenary power to make immigration law. Unlike in the foreign relations area, the President has no constitutional undelegated power to regulate immigration. Whatever I wrote in the immigration field, I had the belief that it would have a very direct impact on people's lives. Sometimes that was not always the impact that I would have liked, but I did believe that I was doing something to enable the Senate to work its will. As the years went on, I believe more of my work entered into law, and in the post-9/11 period, I did have a very direct impact on the language of the Border Security and Visa Entry Reform Act of 2002. I did have an impact there, but

I wouldn't say that it was greater overall than the impact I had in the foreign relations area because probably more of my foreign relations work entered into law as I phrased the provisions, and also there was a more collegial atmosphere at the full Foreign Relations Committee level, which made it a lot easier for me to work with the full committee staff.

**RITCHIE:** In recent years, there has been a lot of turnover in the staff. New people have to be broken in all the time. When you've worked on an issue like immigration, or on foreign policy appropriations, over a period of twenty years or so, what advantage does that kind of experience give you when the next bill comes up? In other words, are you able to steer the staff by saying, "They didn't do that the last time," or "It didn't work here," or "This is why it was done this way before"? Can you bring a sense of continuity to the drafting of a new piece of legislation?

**RYNEARSON:** Yes, the Office of the Legislative Counsel serves a very important purpose as the institutional memory of the entire Senate in the preparation of legislation. I certainly could pass on, and did pass on, to the staffs things that I had learned from previous legislative battles. Some of the things that I passed on were of the most rudimentary nature. As each new staffer would come on board, they would have to learn what the difference was between a bill and a resolution and that every bill and resolution is required to carry an official title, which expresses the purpose of the legislation, and so forth. In other words, they would have to learn from scratch how legislative vehicles are structured and which vehicles would go to the president for review and which ones would never go to the president. Like every attorney in my office, I would be teaching very basic information about legislation to almost all of the new legislative staff, whether they were on committees or the staff of individual senators.

I enjoy teaching and the teaching aspect of it did not bother me, but what always annoyed me was that staffers who were hired to perform legislative duties knew so little from day one. I believe this got worse as time went on. It seemed as if the Senators' offices and the Senate committees would not instruct their own staff in any of the basic information. I do believe that this is a great failing of the Senate as an institution because every minute that I spent explaining what a bill is was a minute that I could not devote to actually doing the drafting for that person. So it came at the expense of doing drafting, and we were always dealing with very tight deadlines for preparing the legislation. To the extent that I had to teach during that short window, it was at the expense of research for my drafting and the



phrasing of the drafts. Certainly one could expect that our office would have to convey very technical information, but it was surprising the amount of basic information that we needed to convey on a daily basis.

**RITCHIE:** Would you find on an issue like immigration that there would be a few staff members who carried over and who were involved in each of the subsequent laws or, essentially, did you deal with a new group of staff each time an immigration bill came up?

**RYNEARSON:** Well, with respect to the Subcommittee on Immigration, the staff would appear to change roughly about every four or five years. One could develop a relationship over that period of time with a staffer. With respect to the Committee on Foreign Relations, there were some Democratic staffers that I continued to work with over almost my entire career, just a handful. The changes in the staffs at the committee level sometimes correlated with the change in the chairmanship. A staffer would remain with a chairman until the chairman retired or lost the chairmanship for some reason. That could be a number of years.

Generally, within the Senate, the legislative staff turnover was occurring on a one to two-year rate of frequency. This would occur even with some committee legislative staff. This vexed me no end. It just seemed so tragic to the institution of the Senate that it was losing its legislative staff at that rate. It definitely impacted the Senate's ability to function. The legislative staff were constantly in an amateur status or a learning status through no fault of their own. I blame the individuals who were hiring such inexperienced staff. Perhaps it had to do with the amount of compensation that was being offered. Perhaps it related to the Senate's really arduous working hours that it was difficult to find mid-career or senior-career individuals to be hired by the Senate.

In any event, the legislative staff of the Senate were on average quite young during my tenure. I do believe, objectively, that the average age of the legislative staff was getting younger during the course of my tenure. It was not unusual to encounter legislative staff twenty-two, twenty-three, twenty-four, twenty-five years of age.

I believe that in the last few years Senators may have recognized some of these problems because in recent years there has been a tendency for Senators to bring over legislative fellows from Federal agencies to be part of the staff. These would usually be

individuals in the mid-career range, individuals in their thirties and forties, who had some expertise in a field of public policy-making. That had its advantages, but it also had disadvantages because it seemed to me that the legislative fellows did not know anything more about the legislative process and legislation than the young LAs that were being hired. In some instances, the legislative fellows knew less. Although they might be great experts in a field of public policy and have that advantage over the young LAs, they were no better versed in knowing what it took to get a bill passed and enacted into law than the young LAs. So if this is a deliberate technique being employed by Senators currently, it is not a completely satisfactory approach. I do believe the Senate needs to either hire somewhat more experienced individuals or to provide better in-house training for individuals in the legislative area.

**RITCHIE:** One issue that comes up regularly is the intent of Congress on particular legislation. I assume that one of your jobs was to make legislation as self-evident as possible, to clarify issues. But aren't there some times in drafting legislation when, in fact, both sides can't quite agree as to what anything means? Are there situations in which senators essentially will pass legislation which they interpreted differently?

**RYNEARSON:** The whole subject of legislative intent I find very interesting. First off, I needed to know what the intent of the legislation to be drafted was. I spent a lot of time trying to elicit legislative intent from the Senate staff. But that aside, even though I tried to make things as clear as possible and not subject to interpretation, interpretive situations would inevitably arise. In fact, it is the case that the majority of the cases argued before the Supreme Court are cases that revolve around questions of interpretation of the statutory language and are not cases about the constitutionality of the statutory language. Interpretation would come up because try as Congress might, Congress could not anticipate all fact situations in which an enacted law might be applied. There were, of course, instances where Congress deliberately intended to make the language obscure. I was very much opposed to doing that. I felt that to do that would be a reflection on the statute being poorly drafted. Certainly, when Congress writes a legislative provision that is ambiguous on its face, and there is more than one possible interpretation, Congress is acting very irresponsibly. What's the point of going all through the legislative process to enact a provision if you don't know which of two or more interpretations of the provisions will be implemented?

However, in cases where provisions are written vaguely, it is a little closer call. There are instances, many instances, where Congress did not want to get into the details of how a provision would be implemented, so it left the provision vague, trusting that the executive branch would arrive at the appropriate detailed implementation of the provision. That, I find to be a legitimate approach to drafting, but it was an approach which was done only occasionally because, generally, the legislative branch and the executive branch distrusted each other so much.

I should just say that it varied. There were times when that was done. We had a sentence that we wrote that directed the head of a federal agency to prescribe regulations to implement the legislative provision. We used that sentence quite a bit. But what we always tried to stay clear of was ambiguity in the text. I'm sorry to say that there were Senators who deliberately wanted sentences ambiguous.

**RITCHIE:** Because that was the last resort? They couldn't get it passed unless it was ambiguous?

**RYNEARSON:** Yes, basically, when a Senator sought ambiguity it was because they could not muster a majority vote or a filibuster-proof vote for their provision. It was more important that they have a provision, any provision it seemed, on the subject, than no provision. I wouldn't say that this happened a great deal, but it did occur and was always something of which draftsmen did not approve.

**RITCHIE:** Were you ever consulted after the fact when people were trying to find out what a law actually meant?

**RYNEARSON:** Yes, I was. This might arise in two contexts. We were constantly amending laws that we had previously written, so legislative staff would want to know what our interpretation was of the existing provision. I was called upon frequently to give verbal opinions on the interpretation of already enacted statutory language.

I remember at least one instance where I was asked for an opinion in order to settle a dispute between the legislative and executive branches. Unfortunately, I had no recollection and was totally unhelpful. It involved what became famous or infamous in the foreign relations area as the so-called [Larry] Pressler Amendment. Senator Pressler had

been involved in writing a provision to impose sanctions on Pakistan in the case of Pakistan being involved in the proliferation of weapons of mass destruction. The sanction prohibited the U.S. government from the transfer of military equipment to Pakistan if Pakistan were found to be in violation of the provision. A dispute arose between Congress and the President on what the word “transfer” meant, whether “transfer” would cover the commercial export by a private company in the United States of military equipment. Those exports required Federal Government licensing, so Senator Pressler and others in the Senate argued that “transfer” covered (and, hence the provision prohibited) commercial exports of military equipment as well as Government exports of military equipment. The executive branch did not agree.

A lawyer at the Library of Congress, Ray Celada, was called upon to do an analysis of the legislation. Ray contacted me for my opinion, and I believe he also called my House Legislative Counsel counterpart. Neither one of us could recollect the intent, at the time, except to say the word “transfer” in its plain meaning, is a very broad term and probably should be construed as prohibiting both types of activities. You asked me earlier if I could advise new staff on things I had learned previously. Well, one thing I advised the newer staff was to avoid the word “transfer” and to be specific in what they intended. This was something that occurred and recurred in various forms throughout my tenure. I could steer staff to have them avoid certain pitfalls.

I should say also, regarding legislative intent, that as the years went on, it became more and more difficult to ascertain what the legislative intent was with respect to a particular law. The reason for that is that the Senate had increasing difficulty passing major legislation except by bundling the legislation at the very end of the year into an omnibus appropriations bill. The result was that frequently legislative history that would have been written in association with the enactment of individual bills never got written. The conference report accompanying the omnibus appropriations bill would either be quite cryptic or totally silent on what the legislative intent was on one of its packaged provisions. I do believe that the Senate is losing a great deal in not having these matters fully written down.

Now, of course, there is an enormous controversy within the Federal judiciary about the degree to which legislative intent should be relied upon in interpreting statutory language. The most outspoken member of the Federal judiciary on this subject, Justice Antonin Scalia,

is quite disdainful of legislative intent as found in reports and floor debates and conference reports. I have to say that I share a lot of his skepticism about legislative histories. I witnessed very sloppily written committee reports which supposedly explained the legislative intent of the committees.

In fact, I remember specifically that in one Foreign Relations Committee report regarding the State Department Reorganization Bill there was an explanation given of a provision that was just the contrary to what the legal effect of the provision was. I ascribed that to just a mistake, not an intentional misrepresentation, but committee reports were prepared frequently in a very hurried way. To rely on that for legislative intent is a very doubtful approach.

Also, committee conference reports, although they tended to be written in a more deliberate way, over the years they have generally seemed to tell you less and less about the provisions being reconciled. They've become increasingly cryptic. They'll say that the Senate receded from its provision and agreed to the House provision, or vice versa, with very little additional information provided. The conference committee report would be the report one would normally give the greatest amount of weight to since it would be approved by the two houses on an up or down vote. I do share the skepticism of some judges in the reliability of legislative intent, although I do believe it does play a role. There are certain circumstances that just cannot be interpreted without reliance on legislative intent. The Senate is progressively losing the ability to reduce its legislative intent to writing.

**RITCHIE:** To go back to the beginning of today's session, you talked about your first experience with immigration bills, which were all private bills. We've mentioned how subsequently the legislation has gotten bigger, and bills have gone omnibus. In the late '70s, there were a lot of private immigration bills. Greg Harness, the Senate Librarian, used to collect those with the most unusual names of the people the bills were written for. My sense is there is very little of that now. What's happened with all the private legislation over time? Is that true that they have diminished considerably? Was that done deliberately as part of the various reforms of legislation that you were involved in?

**RYNEARSON:** Well, the introduction of private immigration bills has diminished. I can think of two explanations for it, but there may be more of which I am not aware. One explanation is that the Senate Judiciary Committee adopted a rule, which stated, in effect,

that for the introduction of a private immigration bill to obtain immigrant status for an individual to have the effect of keeping that individual from being deported, the Judiciary Committee would have to express an interest in that legislation and request from INS a written report on the case involved. In other words, it used to be the case that the INS as a matter of courtesy would stay the deportation of an alien upon the mere introduction of a private immigration bill for that individual without the necessity of the bill becoming law. But now, the Judiciary Committee must actually express an interest in that case and request a written report for INS to extend that courtesy.

The other thing that possibly explains the dearth of private immigration bills is, I believe, the House changed its rules to make it more difficult to take up private bills of any subject matter. But your observation is quite accurate that there has been a decrease in the number of introduced private immigration bills.

**RITCHIE:** In the Abscam investigation, didn't they use private bills as a means of seeing whether Members would accept funds in return for agreeing to introduce them?

**RYNEARSON:** You're absolutely correct. That was a scandal that involved the introduction of private bills. Concerns of this nature made me unhappy about drafting private immigration bills when I first came to the office in 1976. There had been some feeling that there was a lot of corruption in the private immigration bar. I never witnessed any of this. I never witnessed any corruption that made its way to the Senate. But the area of private immigration bills was an area that some Senators tried to avoid for this reason. I recall in my last few years in the Senate that occasionally a Senator's staffer would tell me that the Senator almost never would introduce a private immigration bill, but in this particular case the inequity and the hardship was so great on the individual they felt that the Senator needed to introduce a bill. So there was an awareness in at least some of the Senators' offices that this was a delicate matter not to be done at the drop of a hat.

**End of the Seventh Interview**

## INTELLIGENCE-RELATED LEGISLATION

### Interview #8

Tuesday, June 24, 2003

**RITCHIE:** Since we've looked at your dealings with the Foreign Relations Committee and the Appropriations Committee, I thought we should talk about the Intelligence Committee. About the time you came here, that committee was established as a select committee, a permanent select committee. What kind of relationship did your office have with the Intelligence Committee?

**RYNEARSON:** Well, we did perform legislative services for the Select Committee on Intelligence, and that means that we did do legislative drafting for that committee. The principal difference was that the committee had a somewhat limited legislative jurisdiction and, of course, it had the absolute need to protect its information from a classified standpoint. In terms of the former, it meant that we generally confined our drafting to helping the committee prepare its annual authorization of appropriations legislation, which also contained some programmatic authorities for the Intelligence Community. That legislation, interestingly, was a little different from other authorizations because the committee never wanted to disclose the dollar amounts involved on the public record. They had a neat little trick of cross referencing from their statute into a classified schedule which contained the actual dollar figures. I never saw any of the classified schedules, although I had a security clearance up to the Top-Secret level. It was not necessary for me to see the dollar figures, and I never sought to see them. But I was always interested by this device that we used to cross reference into the classified document containing the dollar amounts. This was a piece of legislation that I handled annually for about twelve to fifteen years until I transferred my responsibilities on intelligence law drafting to another attorney in the office to free up some of my time.

During that twelve or fifteen-year period, I did meet with the Intelligence Committee staff, usually in my office, to develop their legislation. I never recall attending a markup session in their own offices. The sessions were not open to the public, as I recall. I suppose I could have insinuated myself into one of those sessions, but it never became necessary to do that. The Intelligence Committee, having a smaller legislative workload and operating largely in secret, seemed to be a lot better organized and prepared than the staff I dealt with

on other committees. It was generally a pleasant experience for me to work with staffers who were so well prepared that they could give me well written and well organized documents, from which I would do the legislation.

One of the staff directors with whom I worked, Rob Simmons, later became a Member of the House of Representatives from Connecticut. I had a good working relationship with Rob while he was staff director of the Intelligence Committee. I later worked with the general counsel of the committee, Britt Snider, who was also easy to work with. I had some good working relationships with top staff on the committee. But the drafting demands were relatively limited during the period that I did drafting for them. Of course, that changed after 9/11, but I was no longer having direct responsibility for intelligence law drafting at that time.

The other thing I might mention about drafting for them is that they had a Senate resolution, which was the charter for their committee, which not only established the committee but also provided the procedures under which non-committee members and staff could view classified information through the offices of the committee. That resolution is known as S. Res. 400. It's quite a unique Senate resolution. It is a resolution that occasionally required subsequent amending. So that was part of my drafting responsibilities, as well. That was generally my experience with the Select Committee on Intelligence of the Senate.

**RITCHIE:** Did you find that committee was more bipartisan in operation than other committees with which you worked?

**RYNEARSON:** I think so. It is a little bit difficult to judge because while I was drafting their legislation, there was usually just one or two committee staffers with whom I would be dealing. It seemed as if they were speaking on behalf of the entire staff in their representations to me. There was none of this business that I encountered with other committees where I would be approached both on the majority and the minority side. I do seem to recall that there were some staff on the committee there by dint of serving the minority member, but there seemed to be a great deal of consensus within the staff before they would bring up legislative proposals to my office.

The other thing that should be noted about the committee is that by terms of the



Senate rules, the chairmanship of the committee must rotate periodically and in fact the entire membership of the committee rotates. I remember entirely new members of that committee every four or six years, it seemed. I guess this had the advantage that if there was any Members' staff you felt you couldn't work with very well that they would pass off of the committee after a while. But, of course, it could work the other way around, that you would lose staff and Members you thought were quite good in that role. It is the single committee of the Senate on which one will find the most frequent rotation of Members and leadership. Actually, I feel that that is not only appropriate, but it is something that the other committees could learn from.

**RITCHIE:** Did you detect much difference in the committee depending on who chaired it? They ranged from Barry Goldwater to David Boren, Bob Graham, and Richard Shelby.

**RYNEARSON:** I did not have that much of a closeup view of the way the Members operated to say with any great assurance. I do believe the fact that the information with which they were dealing was classified put a certain stricture on all of the them and modified all of their behaviors so that there was a little bit more uniformity in their conduct and behavior than you might find on other committees. I do know that they were more or less assertive with respect to the Intelligence Community and that there were differences among them in how assertive they wanted to be or how critical, I should say, they wanted to be of the operations of the Intelligence Community. In that respect, they differed.

**RITCHIE:** Some of the leaders in the intelligence community started out on the staff of the Intelligence Committee.

**RYNEARSON:** That's true. In fact, one of my clients is now the head of the Intelligence Community, the Director of Central Intelligence, the DCI, George Tenet. I did not work a great deal with George, but I do remember that some of my earlier drafting efforts were for him on the Intelligence Committee.

**RITCHIE:** Probably the biggest intelligence flap of the time that you were here was the Iran-Contra scandal. Were you involved in drafting legislation for that investigation?

**RYNEARSON:** Yes. This was in the winter of 1986 after the Democratic party had

won control of the Senate, and Senator Byrd was now, I believe, the majority leader again of the Senate. He had the desire to establish an Iran-Contra Investigation Committee that would look into the way the Iran-Contra transactions had been conducted. To refresh everyone's memories, there was a sale of missiles to Iran and the proceeds of that sale ended up in the hands of the insurrectionists in Nicaragua, the so-called Contras, whom the United States government was prohibited from funding by virtue of the Boland Amendment in statute. Congress wanted to get to the bottom of how the money ended up in the Contra hands and why we were selling armaments to a state sponsor of international terrorism, Iran. It was ostensibly for the release of certain hostages, but it raised legal and policy questions that Congress wanted to investigate.

Senator Byrd asked my office if it would provide an attorney to assist Senator Byrd in developing that legislation. The Legislative Counsel asked me and a somewhat more junior attorney, Bill Jensen, to attend meetings for the drafting of the Iran-Contra Investigatory Committee. I thought that the way Senator Byrd handled the drafting sessions was quite exemplary. He also invited one or two attorneys from the Congressional Research Service to be present and also one or two attorneys who had been involved in the Watergate Committee. Specifically, there was a James Hamilton present who at that time was an attorney in private practice. And Senator Byrd assembled part or all of the membership or the proposed membership for this investigatory committee. I remember Senator [Paul] Sarbanes and Senator [Howell] Heflin being present and also Senator [Daniel] Inouye, who later was the chair of the committee, as I recall.

All of the staff I mentioned and the Members assembled in a big conference room. We went through the various technical and legal issues that had to be addressed in establishing such a committee. We were not discussing the merits of the investigation or what the investigation might uncover or what the position of Congress should be regarding the activities being investigated. We were concerned with the scope of the investigatory committee and some of the administrative and technical issues that always need to be addressed when a committee is established. Besides the fact that Senator Byrd had cast his net broadly to have the benefit of the expertise of many different individuals, what I thought he did especially well was that he basically locked us up together, brought in sandwiches when they were required for lunch, and effectively told us that we were not to leave until we had made progress on the legislation. As I recall, that required two very long meetings.

My role was to lead the discussion by putting before the group the various drafting options and by having the Members provide us draftsmen with their policy decisions. I took a fairly prominent role in leading the discussion, but I had no role in making any policy decision. Nevertheless, I was pleased in my role and remember being complimented on it by some of the attorneys present. It's one of my drafting products of which I'm most proud, completely without regard to the substantive matters at hand. I'm not making an endorsement of the investigation or how the investigation was actually conducted. But I'm proud of the drafting product in establishing the committee. Later, I did get to attend just one session of the investigation at which Oliver North happened to be testifying in the old Caucus Room in the Russell Building, so I have a very vivid memory of that investigation.

**RITCHIE:** Congress investigates all the time through standing committees or special committees. Why did it take so much effort to get that resolution started to do the Iran-Contra? What were the problems that you were facing?

**RYNEARSON:** Well, they were not so much my problems. I'm sure there was the political problem that the administration did not want to be investigated regarding its activities. I imagine that the Republican party in the Senate was reluctant to have an investigation at least initially. But it was such a publicly discussed issue, such a controversial issue, that I imagine that even though the Republican party could have blocked the investigation through normal filibuster techniques, that they saw that it was not in their interest to do that. The resolution establishing the Iran-Contra Investigatory Committee was adopted early on in the new session of Congress. That would have been most probably in January of 1987.

From the draftsman standpoint, as with any committee, the question is, "What is the scope of the committee's activities?" This, too, was a controversial question of sorts. You're always trying to strike a balance between on the one hand casting your net broadly enough to include all the activities you want to cover and on the other hand casting it so broadly that you invite criticism for conducting some sort of a witch hunt investigation. So the Members had to decide those issues. The only thing that I could do was raise questions about what activities were to be covered by the scope of the committee.

There was probably also a question about how this temporary committee should interrelate with the permanent standing committees that would normally have jurisdiction over

those matters, the Select Committee on Intelligence, the Foreign Relations Committee, the Armed Services Committee, the Appropriations Committee. I'm sure we found a way to try to assuage the concerns of the permanent standing committees of the Senate. Most likely we did that through the membership of the committee, but my memory is a little bit hazy on how we solved that problem.

**RITCHIE:** The other part of the equation was the House of Representatives, which wanted to hold its own investigation. They ultimately created a joint committee. How did that factor into your concerns?

**RYNEARSON:** I'm not sure. Did they create a joint committee or just a parallel committee on the House side?

**RITCHIE:** They met jointly, but I don't know if it was called a joint committee or not. I remember an enormous dais that was built to hold all the Senators and House Members together.

**RYNEARSON:** That's right. That does ring a bell now. I only saw this once in person. That may be why I'm a bit hazy on it. I believe what happened is that the House created a similar committee, perhaps even "ripping off" some of the text of the Senate resolution, but doing it as a House resolution, and the joint meetings were either arranged informally or perhaps there was a sentence in the resolutions that recognized the right of the chairman to call joint meetings with the committee from the other body. But I believe as a purely technical matter, it never assumed the status of being a joint committee. That would have required the use of a concurrent resolution to establish the committee, and it would have meant that the committee would not have been established unless both houses had come to a final vote on the concurrent resolution. I don't believe Senator Byrd wanted to delay the establishment of the Senate committee. That's my recollection on that.

**RITCHIE:** You mentioned that you were drawing on some of the experiences of the Watergate Committee. What lessons did you learn from your experiences on Iran-Contra? In other words, what would you recommend to others involved in setting up investigations in the future?

**RYNEARSON:** The principal recommendation I have is to copy Senator Byrd's

arrangement for drafting sessions wherever possible. I restrict that not just to the establishment of investigation committees but in terms of any general legislation. I believe to the extent that the Members can bring together the views of one another and the expertise of the staff at a combined meeting or meetings, however many it takes, that you're saving yourself in the long run. A stronger document emerges from these meetings than if you are drafting all alone without the input of other Members. In other words, it was just a more coordinated effort. I do believe that Members shy away from this in part because they feel that they want to start out with the strongest position possible on a subject of legislation. They're hoping that the forcefulness of their position, or what we might call the extremeness of their position, will intimidate the opposition into making concessions.

However, I think that only explains part of the lack of coordination. I think, generally, legislation is not coordinated early on because it involves a lot of work to coordinate. You've got to get the Members available in Washington on the same day, or their staffs with appropriate authority to make decisions together on the same day, at the same place. It is a difficult matter to do that. But I do believe that it pays dividends, usually, in the long run to handle legislation that way. Parenthetically, and not surprisingly, it's easier on the draftsman because the draftsman is not drafting multiple, untenable drafts on the same subject, drafts that would end up in the garbage pail. Although I know that being easy on the draftsman is not a high priority with the Members, it is something that the Members should do in their own selfish interests. To the extent that the legislative draftsman is focusing on a single draft and not six different drafts, all being unviable, the draftsman can produce a more sophisticated piece of drafting, and is less likely to commit technical or clerical errors, simply because there is less paperwork that is being juggled, and the draftsman can concentrate better on the draft at hand. I do think it is a process that pays dividends for the Members, their staffs, and for the legislative draftsmen involved.

**RITCHIE:** You mentioned that, in setting up an investigative committee, they have to have the freedom to investigate, but there also have to be some restraints so that they don't embarrass the institution in the long run. What kind of restraints can a resolution impose? Does it deal with subpoena power or does it deal with jurisdiction? How do you define what an investigation is going to be in the initial resolution?

**RYNEARSON:** Well, you have named two of the grounds of possible constraint on an investigatory committee. The primary one, of course, is jurisdiction. Into which matters

does this committee have power to investigate? A lesser matter is whether the committee will have subpoena power or not. That is a very important tool. The question is really whether you want to confer that tool upon the committee. More often than not, that tool is given to the committee, but it needs to be specifically addressed in the legislation establishing the committee.

I guess there might be some other constraints, as well, on the committee. The next most important one would be, what is the time period of this committee? When does the committee sunset? Of course, they all sunset unless your intention is to establish a permanent, new standing committee of the Senate. That is something that I don't believe I ever established. But an investigatory committee is going to have a sunset. Usually, the sunset date will be a specified number of days after the due date of the final report that the committee is required to submit. So the two operate in tandem.

Also, in terms of constraints, the number of Members that are authorized for the committee and how those Members are to be appointed is a form of potential constraint. Usually, appointments are vested in the President Pro Tem upon the recommendation of the majority and the minority leaders of the Senate. What you end up with is a negotiation between the majority and the minority leaders for a list of Senators who they believe can get along on the committee. Each leader, in essence, can veto the selection of the other leader. Sometimes the way it is drafted, each leader makes a recommendation separately from the other leader, so I don't want to leave the impression that they must always negotiate. The President Pro Tem, in this situation, is acting largely as the appointing agent but not as the person who decides upon the membership.

**RITCHIE:** You've mentioned that one of the concerns about your office was the readability of statutes. Having just discussed how carefully a statute like this or a resolution would be drafted for very specific purposes, what is the importance of readability and has it changed at all in the drafting of legislation in your time?

**RYNEARSON:** I took great pride in producing readable drafts. I know the other attorneys in my office did as well. I believe the office has a very good reputation in this regard. It has only gotten better with the adoption of our uniform style, where we try to provide headers for each new paragraph or thought, which makes it easier to locate text within a piece of legislation. What I had mentioned to you earlier about readability was

basically a reaction to two comments that one would occasionally hear in the Senate or in society at large. That was, number one, “Why aren’t the laws written in plain English? Why are they written in legalese?” The second comment that one would hear is, “Writing law must be like making sausage.” This, of course, is an old maxim or adage that I have heard so many times, I am absolutely sick of it. I’d like to give my reaction to both of these comments, if that is all right.

Regarding the first one, about why can’t the laws be written in plain English and why are they written in legalese, I never considered that I wrote legalese. I believe that there is this truth at the core of this criticism, the awareness that legislation is not recreational reading. I never treated either my writing or other attorneys’ writing of legislation in a recreational way. I would not read it by my bedside at night before going to sleep. It was not something I read for fun or for a good time. However, I don’t think saying that means that the legislation was written poorly or not in acceptable English.

I do think that criticisms can be made of legislation, generally, that it is boring to read and that it is frequently complicated. However, there are very good reasons why that is the case. It is boring largely for two reasons. The first is that Federal courts have a rule of statutory interpretation that different words must be intended to have different meanings. For example, if I’m writing a piece of foreign relations legislation and I use the word “country” or “foreign country” in one sentence, but then in the next sentence, I use “nation” or “foreign nation,” it is arguable that a court might construe that I intended a somewhat different meaning in that second sentence from that term I had in the first sentence. It was the practice of my office to adhere throughout a document to the same terminology. This, of course, makes things very boring. You do not get a change of pace in your reading.

The other thing that contributes to the boredom of legislation is that a certain degree of formality is required by virtue of the document being a prospective law in the making. Instead of saying, “The Defense Secretary,” I would write, “The Secretary of Defense.” That is the individual’s title. If you’re ever to use a governmental title, I would think you would use it in a statute. So there was a degree of formality that was and is required. Also, we would never use contractions or slang in statutes. One also had to be careful about using colorful words or words that had double meanings or multiple meanings. Avoiding those words made statutes very boring to read.

In terms of the other element, the complexity of statutes, generally speaking, I have to plead guilty that I wrote some very complex statutes. But there are very good reasons, as well. The reasons were largely outside of my control. First off, we have had more than two hundred years of statute writing, and it is somewhat difficult to find a legislative area upon which no statute has ever been drafted. What we are usually doing in the enactment of new law is we are refining earlier law. We may do that by adding additional exceptions or by adding additional requirements or conditions. What I'm getting at here is that policy making has become increasingly complex. The draftsman is stuck with the policy that is being presented for drafting. This does add to the complexity of legislation.

The other reason for the complexity is that there are always two ways of making changes in law when an earlier law addresses a similar subject. That is, one can rewrite the entire law from scratch to incorporate the new changes. This is called restating the law. Or one can refer back to the law in individual sentences and provisions and strike out, insert, or strike out and insert, new language. Our office was trained to take the latter course in most instances. The reason is simply that there is a political imperative in doing it that way. If one had ten changes to make to the 300-page Immigration and Nationality Act, one would not rewrite the entire Immigration and Nationality Act to incorporate the ten changes even though that would be a more readable approach to take. The reason one wouldn't do that is that it would reopen every provision in the Immigration and Nationality Act that had been subject to a political squabble earlier. The Members themselves would not want to reopen provisions that are not being amended. So I find that, with respect to the criticism by some Members that amendments to existing law are difficult to read, the Members have dirty hands in making that sort of criticism. They would be the last individuals who would want to reopen unamended provisions.

I believe that our office made great strides in making the legislative language as readable as possible. One of the things that I spent a great deal of time with in my writing was to eliminate the various terms of jargon that my political scientist clients kept trying to get into statute. Many of my clients were either trained in political science or they were lawyers. Both groups were guilty of providing me with memoranda for drafting that were highly unreadable. This was typical of the experience that my colleagues had in the office. I believe the office played a very important role in making the statutes more readable and more transparent.



One of the common errors that our clients would make is that they would never want to pin accountability on federal officials. We would receive drafting proposals that were addressed to the government at large, that the government would have the obligation to do, “x, y, or z.” Well, that sort of language would make it possible for the entire government to escape accountability. So one of the common things that we did in the office was to shift the accountability from a bureaucracy to the head of a federal department or agency. This is the appropriate thing to do in law because when you bring a lawsuit against the government, you are not suing the government at large, but you are suing an agency head in his or her capacity as a head of that agency with the appropriate jurisdiction. To make a long story even longer, I believe the criticism that we could write better was unfounded. We never used Latinisms or the common legalisms that are taught in law school. We put a great deal of emphasis in creating definitions wherever possible whenever a term was used in a specialized way. In short, we wrote in plain English.

Let me say something about the comment that, “Legislation writing is like sausage making.” I believe that has some applicability at the policy level, but not much applicability at the drafting level. I certainly understand that when you compromise the policies of Senator A with Senator B that you run a real risk that the policy is diluted or that it is a bit of a patch work item. But I found that, generally speaking, these compromises occurred on a limited number of provisions so that there would be numerous legislative provisions of an administrative or technical cast that did not require compromise. They might constitute the bulk of the text that was being enacted into law.

Secondly, even on those controversial provisions that required compromise, a good draftsman could find ways to present the final product in a coherent and readable text. Now, the policy might not make any sense. Or it might just be deferring to a later day a true resolution of the dispute. But it did not mean that the statute had to be written poorly or clumsily, and I believe the record of our office was very good and that we did not create that much sausage in our writing.

There were occasions where the compromises were occurring late at night, and we had limited time or authority to make technical changes in the compromise that was being arrived at. So there were some provisions that we were party to that I’m sure we wish we could have written differently. Also, as I mentioned in an earlier interview, the Appropriations Committee staffs of both the House and the Senate were very firm in the way

they wanted provisions written, even so far as to direct that the provision be written in a non-transparent way. As the agent of these staffers, we were obliged to comply. However, in the course of my career, the provisions that I'm mentioning are a relatively small percentage of the ones I drafted.

Generally speaking, I think that I drafted very readable legislation. Now, some individuals say, "We want legislation that can be read by Mom and Pop down at the drugstore when they're getting their coffee in the morning." Well, Mom and Pop may very well have trouble reading some of the legislation that I wrote, but I believe that they could read it if they wanted to study it. The words that I used were plain English, basic words. I studiously avoided highfaluting words or words that smacked of jargon. Having said that, Mom and Pop down at the drugstore were not the primary audience to which the document was addressed. It was most likely that a statute would be used by a judge, by an administrator of a federal agency, or by an attorney in private practice. Or used by an attorney for a federal agency, but I count them as administrators. It is that readership to whom we were primarily addressing our statutory writing. I believe that there was the irony that, in order to get to that specialized readership, it had to be approved by non-lawyers and non-administrators, as well as some lawyers in the Senate and the House.

**RITCHIE:** Well, you as a draftsman were involved in the initial stages. It goes through the committees, it goes through the floor, it goes through the conference committees. The sausage can get added as it's going along. You talked about the internal consistency in a bill. Did you monitor bills to make sure that the language was consistent, "countries" and "nations" and other issues? As amendments were added, did you have any role in making sure that the bill wasn't internally inconsistent?

**RYNEARSON:** I did monitoring and more. My office was involved in every stage in the legislative process up to and including the preparation of conference reports. If I prepared a bill for introduction where the word "country" was used by me throughout, and then someone offered a committee amendment introducing the term "nation," I would be involved in reporting that piece of legislation out from the committee and I had authority to make the technical correction of changing the word "nation" back to "country." Similarly, in conference, I could examine what the Senate had passed and if someone had offered and gotten adopted an amendment on the Senate floor that used the word "nation" in the preparation of the conference report, I could change it to "country."

Of course, I was drafting many of those amendments in committee and on the Senate floor, so I could make sure that the word “nation” was not used. But I did not have total control of the amendment process from a technical standpoint the way I did at the point of introduction, reporting, and in conference. So the amendment process introduced a wild card where technical errors could be made and were frequently made. My job was constantly to be cleaning up the legislation as it advanced through the legislative process. My job also involved a little bit of deconstruction of the legislation. In other words, you would draft a bill and go to committee, and the amendments that were offered, even the amendments written by me, might change the policy so significantly as to produce a different bill. I was in the process of constructing and deconstructing or reconstructing the legislation at three stages, at the committee stage, on the Senate floor, and at the level of compromise in conference committee.

Of course, the greatest pressure of all three was at conference committee because I knew that this was the last chance to get the legislation in a clean text before it became law. The President had only two choices, to approve or disapprove the legislation. This is something that most people may not realize, but the President has no clerical correction authority. If Congress submits the legislation to the President with the text printed upside down or with words misspelled, the President has to make the decision whether to approve or disapprove the entire text, but he cannot make a correction to the text.

The only recourse we had after conference, if the legislation had not yet been enrolled for submission to the President, was we could adopt what was known as an “enrollment correction resolution,” which was always a concurrent resolution to direct the Enrolling Clerk of whichever House of Congress that was doing the enrollment to put the text right side up or correct the spelling or indentation or punctuation of the conference report. After the Enrolling Clerk did the enrollment and the president signed it into law, the only recourse would be to enact a whole new law to make corrections in the law just enacted. No one wanted to do that. It became harder to enact technical corrections to previously enacted laws as the years went on because the staff were so overworked and so bitterly divided on party lines that they did not want to revisit the technical errors of earlier written statutes. Even concurrent resolutions for enrollment correction are somewhat infrequent because there is a certain embarrassment factor that an enrollment correction resolution is needed.

If the correction required was merely clerical, I would simply alert the Enrolling

Clerk, who has authority to make those types of corrections.

**RITCHIE:** Did you also have any kind of peer review inside your shop? You were making these corrections, sometimes it was late at night under a lot of pressure. Did anybody else read over the bill or were you alone responsible for a particular piece of legislation you were on?

**RYNEARSON:** In the last few years my office, especially under the current Legislative Counsel, Jim Fransen, has encouraged peer review on every document that is amenable to having another attorney read it. However, there were and are circumstances, late at night or under severe deadlines, where peer review is impractical, and we have to rely on the attorney having a sharp eye and being very professional and methodical to eliminate errors. We also have the great advantage that with computer word processing, we can spell check documents, we can search for certain commonly made errors and eliminate all of those errors pretty quickly and consistently. For example, if I knew I had a document in which the terms “country” and “nation” were used interchangeably, and it was a long document, I could just search for one term or the other and direct the term to be changed throughout the entire document.

I would say that, generally speaking, the documents produced by the office contained fewer technical and clerical errors now than ever before. This is particularly amazing because the documents are, on average, longer documents. Our office has a very good record in producing either mistake-free documents or documents that are largely mistake free. The legislative process has as one of its benefits the fact that we can go back and correct mistakes until we get to the point where we are producing a conference report.

**End of the Eighth Interview**

## WAR POWERS AND SEPTEMBER 11, 2001

### Interview #9

Tuesday, July 1, 2003

**RITCHIE:** The Constitution itself is ambiguous and open to great interpretation as to what it means on various issues. One of the most ambiguous is the question of war powers. A lot of that has to do with definitions as to what is the role of the Senate specifically and the Congress in general versus the President in the war powers of the United States. Could you talk about that in light of what we discussed earlier?

**RYNEARSON:** I certainly would be glad to talk about it. It was one of the areas that I was most interested in. As I mentioned in an earlier interview, my interest in it can be traced back at least as far back as my internship in the House of Representatives during the Vietnam War. The War Powers legislation that I was involved in came after the famous War Powers Resolution of 1973, as that slightly antedated my tenure in the Legislative Counsel's Office. However, that resolution became a constant source of dispute between the President and Congress. President Nixon had vetoed the joint resolution, and it was enacted over his veto. So the executive branch view of the Resolution was not favorable initially and it continued to be unfavorable.

Specifically, no President since the enactment of the Resolution ever acknowledged that all of the provisions of the Resolution were constitutional. The requirements in the resolution for reports upon the introduction of U.S. armed forces into hostilities were always evaded by Presidents. In other words, Presidents would submit the report required by the War Powers Resolution, but they would not acknowledge that they were submitting the report under a legal obligation. Rather, they would take the position that they were submitting the reports as a courtesy to Congress. The way they would do this is, in the message of transmittal of the report, the president would state that he was submitting the report "consistent with" the section in the War Powers Resolution requiring it. I believe it was section 4(a).

Congress and the President did this dance around the War Powers Resolution from the very beginning of its enactment and throughout my tenure. This became most obvious during the times where Congress did specifically authorize hostilities at the time of the first Persian Gulf War and at the time of the war on terrorism and the war against Iraq, what we

may call the second Persian Gulf War. On all three occasions, Congress specifically enacted a joint resolution authorizing the hostilities, but the President would never acknowledge that he was bound by the War Powers Resolution to comply with its provisions.

Several Senators in the '80s and '90s sought draft legislation to amend or repeal the War Powers Resolution and, in the case of repeal, usually to replace it with something different. Two of the common areas of reform that were suggested were to first, strengthen the requirement for consultation between the President and Congress and, second, to try to make the War Powers Resolution enforceable through the use of the power of the purse or through expediting litigation in the Federal courts.

**RITCHIE:** Considering the war powers controversy between the executive and the legislative branches from your experiences, do you think it will ever get resolved? There seem to be strong differences of opinion, despite the War Powers Resolution, as to what the Congress' role should be in terms of military operations overseas.

**RYNEARSON:** Well, I tend to be an optimist on this subject. Although the struggle between the executive and legislative branches over war powers emanates from the Constitution and, thus, is built into our system of government, I do believe that the War Powers Resolution can be improved upon to take account of some of the concerns that have arisen over the years. Specifically, people have questioned the enforceability of the War Powers Resolution, especially in the aftermath of the Supreme Court case of *INS v. Chadda*, which invalidated the concurrent resolution mechanism of disapproval that existed in a number of laws, including the War Powers Resolution. Although attorneys are quick to point out that *INS v. Chadda* was only a one-house veto case, the reasoning of the case is so broad as to strike down all congressional veto procedures that are written in terms of simple or concurrent resolutions.

I was part of efforts over the years to amend the War Powers Resolution. They seemed to gain some momentum in the 1980s and the early '90s. What comes to my mind is the situation that occurred in the Persian Gulf in 1987, where Kuwaiti oil tankers were being damaged by mines placed in international waters and the United States began to convoy oil tankers in the Gulf. Several senators expressed concern about whether that would involve us in the war between Iran and Iraq. Then in the early '90s, with the policy of the Bush administration to go to war to restore the independence of Kuwait, there was a major

vote in the Senate on whether to authorize the President to engage in hostilities.

I was involved in drafting a number of pieces of legislation in both situations. In the earlier situation, the upshot of our efforts was a bill that was the product of Senator Byrd's thinking on how to improve the War Powers Resolution. I did a considerable amount of drafting to assist Senator Byrd in his work on that. In the case of the first Persian Gulf War in 1991, I assisted Senator Nunn's staff in developing an alternative to a flat-out authorization of hostilities. That amendment was not adopted by the Senate, but it was a very close vote. In each case, I'm not indicating what my policy view was on the matters, but I felt very privileged to be handling matters of such importance and urgency. The Byrd bill was never enacted into law, and it does deal with several of the nagging legal questions that have been raised against the War Powers Resolution, and is a good resource for other reformers in the future.

Later on in the 1990s, we had the air war against Serbia, in order to expel Serbia from Kosovo. The Senate and the House did not enact any legislation authorizing hostilities in that case. Instead there were non-binding resolutions that were adopted. I felt that Congress had missed a major opportunity to be a player in that situation and had abdicated its Constitutional responsibilities.

Later, of course, with the 9/11 attack and our war in Iraq, the administration felt a need for congressional authorization for hostilities, first for a war against terrorism and then for the invasion of Iraq. I did some drafting in that connection, but not the items that were actually enacted into law, although I gave some legal advice that may have been taken for one or both of those. In any event, I was always very interested in this particular area of drafting and always gave it my highest priority when it would come across my desk, simply because of the nature of the subject matter. It was a subject that had engaged me since the 1960s, so I felt very comfortable with dealing with it.

Also I should mention that Senator Biden had a major piece of legislation in the 1990s, which he labeled the Use of Force Act, which also attempted to make reforms in the war powers area. I provided drafting assistance to Senator Biden's excellent counsel, Brian McKeon, for that legislation, which also has not been enacted into law.

So what I get out of all of this is that there are a number of potential reforms that are possible for the War Powers Resolution, some of which have already been drafted up and introduced as legislation. The question is whether the time will be politically correct for the enactment of these reforms. Since the party that occupies the White House is not too favorably disposed towards making the War Powers Resolution effective and enforceable, there tends to be a substantial number of senators at any one time who do not feel that it is in their party's interest to go ahead with war powers reform. So it may require a situation in the Senate where the party not occupying the White House controls a supermajority of seats in the Senate in order to override a presidential veto and achieve reform in the war powers area.

**RITCHIE:** The only reason why the War Powers Resolution passed in the first place was because Richard Nixon's popularity had fallen even within his own party, so they were able to enact it over his veto. That requires a two-thirds majority.

**RYNEARSON:** That's absolutely correct. So we shall see how it plays out. I do believe that Congress has a very important constitutional role to play in this area, and unlike some others I do believe that Congress has the legislative jurisdiction necessary to enact regulation of the exercise of the war power through Congress' Article I, section 8 powers, including the Necessary and Proper Clause power. I do believe that Congress has constitutional authority to enact legislation in this area. The tricky part is getting legislation that is flexible enough that it takes account of the needs of the President in this area.

**RITCHIE:** You began this discussion by making reference to the Chadha case in the Supreme Court, and I wondered how much do people drafting legislation think about what the courts have already ruled, and what the courts might be likely to rule? How much does the ultimate power of the judiciary play in terms of the strategy when a bill is being written?

**RYNEARSON:** I think it plays a fairly significant role. The draftsman, I guess, has a bias in favor of drafting constitutionally valid provisions. So if the case appears to be a close one that the Supreme Court has not yet ruled upon, the draftsman may merely point out the legal arguments for and against the constitutionality of the provision, but not express a strong view. In the case where the Supreme Court has already issued some significant rulings, or tipped its hand on how it might rule in the future, I was not reluctant to advise my clients with respect to those cases. I found that my clients, the Senate staff, were very



attentive when I raised constitutional law objections to what I might be asked to draft. Generally, they would withdraw the provision or modify the provision to bring it within constitutionally accepted parameters. Occasionally, they would insist that I draft constitutionally invalid provisions for political reasons.

The *INS v. Chadha* case was a very important case from my Office's standpoint because it was a broad ruling that invalidated one of the major tools that Congress was using at the time to regulate executive action. In its aftermath, what became necessary was to apply so-called "fast-track" or expedited procedures to joint resolutions or bills that would still be subject to presidential veto, but which would at least enable Congress to make a fast up or down decision on something the executive branch had done or was contemplating doing. My Office had a lot of work over the years in developing appropriate fast-track procedures for bills and joint resolutions, but, as a result of *INS v. Chadha*, we could no longer apply those procedures to simple resolutions or concurrent resolutions that never go to the President for review.

Another case that significantly impacted us was the *Buckely v. Valeo* Supreme Court case, which invalidated commissions of mixed executive branch-legislative branch membership where the commission was attempting to exercise executive branch powers. This was a subject about which the Senate staff were perpetually confused and were continually crossing the constitutional line in their drafting proposals. My Office usually was paid attention to when we discussed the implications of that Supreme Court case.

And thirdly and finally what I might mention is that in the foreign relations area the Supreme Court has indicated that the Congress does not have legislative jurisdiction to direct the diplomatic communications of the president. The Supreme Court case that is usually cited in this regard is *United States v. Curtiss-Wright Export Corporation*. Although the discussion by the Court on this subject was only dictum in that case, a number of Supreme Court cases have cited that case favorably. So it is almost a settled matter now that Congress cannot legislate to direct the executive branch regarding its communications with foreign governments. This was a question that arose on almost a daily basis in my drafting requests.

**RITCHIE:** One of the issues that has come up before the Supreme Court is the question of legislative intent. Justice [Antonin] Scalia has argued that you can't tell what the legislative intent is because there are so many legislators and they have so many reasons. Do

you think that a bill stands on it own in terms of its language or do all of the speeches, and reports, and other materials contribute to our understanding of what the intent of the law was?

**RYNEARSON:** Well, this is a very difficult question, and despite my experience over the years it's one that I have not completely resolved to my own satisfaction. I tend to be very sympathetic to Justice Scalia's view on this insofar as I have seen what we might call "bogus legislative history." By that I mean, we have seen committee reports that are sloppily put together and which may actually misstate what the legislation says. I can think of one specific instance in which the Foreign Relations Committee reported out legislation on the reorganization of the State Department and the accompanying committee report in one paragraph actually said the opposite of what the legislation said. I also think that there is a legitimate criticism to be made about an over-reliance on the floor statement of one, two, or three Senators with respect to legislation upon which close to one hundred Senators will have voted. What is the legislative intent of the body when all you are looking at are the statements of a small fraction of the body?

A conference committee report, on the other hand, is I think a very different matter. It is the last stage in the action of the Congress, unless the legislation is returned by the President, but it is still the last stage for the writing of the legislative text. If the conferees say that the text is intended to mean such and such, I would give great weight to that, because the conference report is only subject to an up or down vote. Presumably, approval of the conference report implies approval of the statement of managers accompanying the conference report. So I do believe that legislative history is useful in that case at least, and also I think in the case where the committee report accompanying legislation specifically addresses the meaning of a provision that does not change in the course of the enactment process. I would think that the committee's statement should be given some weight there. But, generally speaking, I believe that legislative histories tend to be incomplete and not conclusive on what Congress intended. And I do believe that legislative histories should never be used to reverse the plain meaning on the face of the statute.

That's basically my view on legislative histories. I should add that, in any event, good legislative histories are becoming increasingly harder to establish because of the propensity of the Senate and the House to enact omnibus legislation at the end of the session, packaging a number of bills into a mega-bill. In the course of doing that, legislative histories

are either non-existent for many of the provisions or are highly suspect because you do not get a statement of managers that specifically reviews each of the provisions in the omnibus bill. Only the statement of managers, in my opinion, is worthy of great weight in the field of legislative history.

**RITCHIE:** The Supreme Court is the ultimate arbiter of what is constitutional and what is not in terms of legislation. Have there been any instances where you felt that the Court got it wrong? Where you felt badly that something you had worked on was overturned? Or where you thought that the Court might have misinterpreted something?

**RYNEARSON:** Well, there was one case that bothered me a little bit that I recall. That was a case where I believe it was not the Supreme Court but a lower Federal court that interpreted a statute in which Congress attempted to regulate the PLO observer office in New York City that observes the activities of the United Nations. What the court said in effect was that Congress in the enactment of the legislation had not made it crystal clear that the regulation of the PLO office was to supersede our treaty commitment under the United Nations Headquarters treaty. In other words, the federal courts have developed a rule of statutory construction in which it is necessary to specifically say on the face of the statute that Congress is superseding a treaty in order for it to have that legal effect. In the case of the legislation enacted by Congress, I believe Congress had overridden “any other provision of law,” and that was found not to be sufficient by the federal court. Well, since treaties are law of the land, I believe that the Federal courts might have taken an overly formalistic approach to the legislation. That is one case that comes to mind. There might be others when I have more time to mull over it. I was mainly concerned with what the court had soundly decided for purposes of my drafting parameters, and not so much about close cases and controversial cases.

**RITCHIE:** Did the Legislative Counsel’s Office work with the Legal Counsel’s Office in the Senate at all, in terms of either asking them for advice or giving them advice when they were defending the Senate in court?

**RYNEARSON:** Generally, there was little interaction between the two offices because the functions being performed are so different. But occasionally the Legislative Counsel himself would receive a call from the Legal Counsel’s Office for some legal advice. This was quite rare. I believe that I received two or three calls over a period of years from

the Legal Counsel's Office to provide legal advice. The spheres of activity of the two offices were just so different that there was not much occasion for interaction.

There was more interaction between our Office and the American Law Division of the Congressional Research Service. We were frequently referring clients over to the American Law Division in order to have some of the legal questions that required extensive research handled over there, because we simply did not have the human resources and the time to do extensive legal research. By "extensive" I mean something that might involve days of work. Also, we had a number of clients who were very confused and we always felt highly constrained not to lead the clients down a particular road. But the Congressional Research Service can handle that more easily because they can talk in terms of what legislative proposals have been made in either House of Congress, with respect to a particular issue. I found that they helped to clarify the thinking of the clients, who would then later come to our office for the actual drafting.

This interaction worked both ways. Congressional staff would go first to the Congressional Research Service on many occasions, and CRS would say: "You are now in a position for drafting and you should go call up Art Rynearson or someone else in the Legislative Counsel's Office to have the actual drafting performed." Or occasionally the congressional staff would raise a technical question or a question of statutory interpretation upon which the CRS employee felt inadequately prepared to deal. In that case, they would suggest that the congressional staffer call someone in the Legislative Counsel's Office. I would say that the interaction between CRS and the Legislative Counsel's Office was a daily occurrence, although not every attorney dealt with CRS every day. But someone in my Office would be interacting with a CRS analyst every day.

**RITCHIE:** You've had several decades of experience with the Legislative Counsel's Office. Looking back at it, how would you say that office changed the most in the years that you were associated with it?

**RYNEARSON:** It changed in several ways, but primarily what I think of when I think of the Office is how stable the Office was in what it did and how it performed its job. So in terms of the big picture, the Office changed very little. But in some other ways, there were significant changes that I'll mention. The primary one was that the Office was both the beneficiary and the victim of the information technology revolution.

When I first came to the Office, the Office was using typewriters and had a typing pool. The Legislative Counsel assured me that as an attorney I would never actually have to type myself, that the typing pool would be more than adequate to take care of my needs. And they were excellent. We would draft a preliminary draft on a yellow, plain piece of paper and mark it up to the point where we were satisfied with it, and then it would be retyped onto a white Senate bill, resolution, or amendment form, which we stockpiled in the Office. It was rare—or I should say infrequent—that we would do more than those two drafts on any piece of legislation. But beginning in the late 1970s, we started going to a computer system of word processing, resulting in the attorneys doing a great amount of word processing themselves. This changed the way in which we did our work quite significantly. It became a lot easier to edit our work and this was a two-edged sword. It both enabled us to do a higher quality of work and to do a greater quantity of work in the same period of time. In other words, we got a lot more productive. Statistically, the number of drafts that we did increased each year on almost an exponential basis.

The downside to it was that the word processor relieved the Senate staff of some of its pressure to fully think through what was being drafted. There became a great temptation to draft first and ask questions second. This was very bad from the draftsman's standpoint, because we were in the business of crossing the "t"s and dotting the "i"s. For us to produce a draft that is only half thought through is an unprofessional undertaking. The attorneys were constantly pressing the Senate staff to try to think through the matters, but it was like butting your head against the wall. Some of the Senate staff were dealing with us at such an early stage in the legislative process that in many instances they just didn't know what they wanted. And there were other developments on their end which promoted this lack of certainty. The upshot was that by the time I retired it was not unusual for a draftsman to do ten, fifteen, twenty, thirty documents on the same piece of legislation at the same stage in the legislative process. In other words, before the bill would be introduced, the draftsman might have done that many revisions of the draft. Or before the bill was reported from committee, the draftsman might have done that many revisions. Or before the conference report was filed, the draftsman might have done that number of revised documents.

This put a great deal of stress on the Office, because there was this sense that one was never done with a client, that not long after the draft left the office it would be returned. The draftsmen felt that we should not be monopolized by a single client because of our obligation to serve the entire Senate, that at some point we must move on to another client. But the

clients never understood this and they felt that we owed them a “drop-of-the-hat” response, so this did put a great deal of pressure on the attorneys in the office.

In addition, there was one development in information technology that particularly affected my Office. In 1986, a decision was made to have my Office use “Xywrite,” the same computer word processing software as was being used by the Government Printing Office (GPO). The use of Xywrite by the office had two advantages. First, draft bills, resolutions, and amendments printed from Office printers would look exactly the same as if they had been printed by GPO. In other words, they appeared to be the finished product. The second advantage was that GPO was no longer needed to key in the text of draft legislation produced by my Office. Until that time, GPO was needed to re-key the text of each of the drafts. This resulted in countless numbers of clerical and typographical errors being made after the legislation was drafted by our Office. It also meant that my Office was continually involved in “cleaning up” the typos made by GPO when we next encountered the legislation.

So the switch to Xywrite saved us all this trouble, but it had one major drawback. Now there was an incentive for every piece of legislation drafted for the Senate to be printed on our printers. The other Senate offices did not use Xywrite software, yet they desired their draft legislation to look as authoritative and as aesthetically pleasing as the drafts printed in my Office. The result was that we started to receive many requests that were little more than printing requests. In handling these requests, we were frequently told not to improve the phrasing of the drafts. It seemed to these Senate clients that if the drafts were “pretty” enough then they must be drafted properly. This was a great waste of our drafting skills and was very shortsighted. It also gave the Office an enormous amount of work that in earlier years would never have come to the Office.

You raise the question of what were the changes, and I’ve only spoken about the information technology revolution. There were other changes. The Office grew somewhat in size. Not drastically, but with some significance. When I started, the Office had a legal staff of fifteen attorneys, and currently it has a legal staff of approximately twenty-seven or twenty-eight attorneys. This was not a large increase in terms of the corresponding increase in the workload. But it was a significant enough increase in the personnel of the Office to change somewhat the “family” atmosphere that we had in the Office to a little bit more of a bureaucratic atmosphere or a somewhat more impersonal setting. That was very regrettable. It simply became logistically impossible to assemble everyone in the Office and

their significant others in a social setting. And it was the social setting in the early years that I think helped to form the collegial atmosphere of the Office.

Another change that occurred in the Office was that we adopted a uniform style in drafting and this improved the overall quality of the work that we were doing. That was generally promoted by our Legislative Counsel, Frank Burk. It was a very good development for the attorneys. Previously, the attorneys adopted the style of the law which they were amending, but with the uniform style we routinely put in provisions that reflected that style. The style was a more transparent style. It was replete with headings that made our work more easy to use. So it was a good development in the drafting area.

Another change that occurred in the Office was the development of teams within the Office. When I first came to the Office, there was one attorney drafting in one large subject area, with no overlap with other attorneys. This had the deficiency that if the attorney were sick or out of town or engaged in a meeting out of the Office, the Office was deprived of the expertise in that area. Frank Burk as Legislative Counsel wanted to remedy that situation. He created teams within the Office that covered even larger subject matter areas, but where the team members had an obligation to pitch in for absent team members. This did not work entirely as it was drawn up because each team was responsible for so many drafting areas that it was very difficult even within a team setting for a single attorney to have the requisite expertise that was represented within the entire team. So the Office to this day still tends to field individual attorneys who are greatly more experienced in a particular area of drafting. But the team system did have the advantages that I noted, and so I would give it a mixed review. Those were the principal changes within the Office over the years.

**RITCHIE:** How about changes in the institution of the Senate as a whole? What were the most significant changes you saw in those years?

**RYNEARSON:** Well, let me mention several, and then you can choose any that we should talk about in greater length. The one change I've already discussed involving information technology impacted the entire Senate, not just our Office. Another change was the increasing partisanship within the Senate as the party ratios tightened during my tenure. A third change is generally the weakening of the Senate's informal mechanisms for controlling its membership—the somewhat weakened power of both committee chairmen and Senate leaders. A fourth change I would say was the bloating of the legislative staffs within

the Senate and also the legislative agenda of individual Senators. And I suppose a fifth change would be the greater reliance by the Senators and their staffs on the legislative input of outside groups.

**RITCHIE:** That gives us a pretty full agenda to discuss. Actually, I think all of those are worthwhile discussing. We could discuss them in the order that you've suggested. You've already mentioned the impact of information technology on your Office, but how did you see it affecting the Senate as a whole?

**RYNEARSON:** Well, the one point I might make there, in terms of the impact of the information technology revolution on the legislative process, is that it enabled Senate staff to essentially contract out legislation, to e-mail drafts of legislation to special interest groups, to legal advisers' offices in the various federal agencies, to law professors spending sabbaticals in Mongolia. I'm being facetious, but what it did was it made it a lot easier for the Senate staff to seek the input of outside individuals and groups. That of course is something that is not *per se* bad, but it led to some bad practices, I thought. As I mentioned earlier, there was a tendency to draft first and think about what the draft should say later. The ability to attach drafts to e-mails only exacerbated that tendency.

Also, over time, the special interest groups tended to hire their own attorneys to do drafting, and the interaction of the Senate staff with the special interest groups led to almost a contracting out of the legislative function to the special interest groups. Of course, the special interest groups could never achieve the level of technical skill that resides in the House and Senate Legislative Counsels' Offices so that these drafts would usually find their way back to our Office, but in some cases the critical legal questions and even some technical questions had been resolved outside of our Office and we were instructed not to make changes. So this process was a limiting process on the ability of our Office to adequately serve the Senate.

**RITCHIE:** When you talk about special interests, were the large corporations more likely to have their own draftsmen, or was this across the board with environmental groups and others?

**RYNEARSON:** I would say generally that it was across the board, that there was such an infusion of money into the lobbying process that most groups were able to hire their



own attorneys to attempt to perform some of these functions. Of course, some of the legislative drafting was attempted by the legal offices within the federal agencies, but their work was automatically suspect when it arrived on the Hill. The Senate staff was not very deferential to that. The Senate staff was much more deferential to the legislative drafting of special groups generally than they were to the federal agencies. They would come to us with the special interest groups' drafts and would be somewhat appalled to learn of the deficiencies in the drafts. Sometimes they would be receptive to our making major changes, and other times not.

I also mentioned the increasing partisanship within the Senate and I do believe that was largely the function of the electoral results during my tenure, that the parties achieved a much greater parity within the Senate and each party entertained reasonable expectations that it might take over control of the Senate after the next elections. So I think this added an element of difficulty in the interaction between the parties. It also came as something of a shock to me to see the amount of partisanship, because I had entertained the thought before my employment in the Senate that there was a greater degree of independence from party pressures within the Senate. The lesson that I learned in the course of my tenure was that, although there might be a degree of intellectual independence from the party positions within the Senate, there is a great desire by Senators to be in the majority, for a variety of reasons but perhaps the most important reason is to control the chairmanships of the committees, and the hiring of staff for the committees, and to direct the agendas of the committees. This not only gives a Senator a greater chance to influence the legislative outcome in the Senate but it also gives the Senator higher visibility within the nation and his or her state. So one lesson I learned was that these chairmanships are highly desirable and the only way they can be obtained is if your party is in the majority in the Senate. It gives every Senator a vested interest in not embarrassing their party by their actions within the Senate.

**RITCHIE:** You said that they want to be chairmen, but you've also indicated that there was a general weakening of the chairmanships.

**RYNEARSON:** That's my third point, that although the chairmanships have power and are desirable, perhaps more from a public relations standpoint, the powers of the chair and the Senate leaders are somewhat diminished from what they were years ago. They are diminished politically because freshmen Senators can go on television and achieve a certain degree of stature and it makes it harder for the chairmen and the leaders to enforce discipline

on freshmen Senators. Also I think that the amount of money that is required nowadays to run a campaign means that Senators have to seek private donations to a large degree and they may not be quite as dependent on the party apparatus and they're certainly less dependent on the campaigning assistance that can be provided by the Senate leadership and the committee chairmen on their behalf. So the incentive to defer to the committee chair and to the leadership is not as present as it once was.

Also, as each committee went to a bipartisan staffing arrangement, what you tended to have, in terms of the minority party, was a committee within a committee. This to some extent undermines the chairmen's power. The reforms that were enacted in 1970 and 1977 do give the minority some additional rights within the committees that they did not have. So I would say that there has been an overall weakening of the committees and the Senate leadership. It's really a very involved question that we could spend a long time discussing. There have been more filibusters over the years and that has thwarted the power of the majority leader. Also, the inability of the authorizing committees to get their legislation enacted during the course of the year because of the budget disputes within the Senate has weakened the chairmen of the authorizing committees.

So I do believe that there has been a weakening, and I'll mention that just the other day, in my retirement, a Senate committee chairman said to me: "I waited years to become chairman of the committee, only to find that the chairman's powers are not what they once were." That's a paraphrase but it's very close to what he said to me.

The next thing I mentioned in terms of change was I believe that the Senate has generally gotten a bloated legislative staff and bloated legislative agendas. When I interned in the House in 1969, there was one legislative assistant who handled almost all of the legislative work for the Congressman. Nowadays I understand there tend to be three or four legislative assistants in a typical House office. In a typical Senate office there may be six or eight legislative assistants, with a legislative director supervising the legislative assistants. This became necessary, I suppose, because there was some pressure on each Member of Congress to have a more expansive legislative agenda. There could be a variety of reasons for that. It could relate to the interaction of the Member of Congress with the special interest groups, or there may be other reasons. It may simply be that in this information age Members feel more obliged to have their own legislation in each of the major issue areas.

In any event, the Members began to hire more legislative staff. This had the negative result that each legislative assistant tended to have less authority to make decisions on legislation. In fact, I found that many legislative assistants seemed to have no authority to make decisions on legislation. They were acting merely as messengers or spear carriers, and doing some of the grunt work for the office in the legislative process, but not having the authority to make major decisions. Of course, the Member of Congress has to have the ultimate authority, but years ago administrative assistants and legislative assistants felt so familiar with the Members' thinking that they could make technical decisions without an immediate need to refer the matter up the chain of command. Now there is a longer chain of command and the legislative assistants are farther down it.

This is an unfortunate development, I think, for the Senate. It makes the Senate more bureaucratic to less effect. The legislative staff having less authority feel as if they need to know less about the legislative process. I believe this slows down the ability of the Senate to act.

Finally, I guess I mentioned that I believe to some extent the legislative function of the Senate is in jeopardy of being contracted out, and that the Members are losing their ability to act as trustees and to apply an independent review of the legislation the way I believe the Founding Fathers intended. The Senate feels a greater need to be responsive to special interest groups than previously because the Senate is much more in the spotlight, much more on the hot seat regarding its actions. Although the Senate retains the ability to check the House and to act as the saucer, cooling down the cup, it does not seem to be adequately performing the function that the Founding Fathers intended, that it apply an independent eye to the legislation. The irony is that the Senate probably reflected the polity of the country better than the House over my years of service, because the country has been very closely divided on major issues. These divisions go back a number of years and continue to this day, and to some extent were reflected in the presidential election of 2000 and the 50-50 Senate of 2001. So, on the one hand, the Senate has become a more representative body than the House, but, on the other hand, by that very nature it has become less of what the Founding Fathers intended, and less independent and able to serve as a trustee for all of the American people.

**RITCHIE:** To what do you attribute these changes? What were the major forces that have caused this?

**RYEARSON:** Well, unfortunately, I do believe that the demands of electoral politics have been a cause of it. There is a need while campaigning to go on television. Television is very expensive. A Senator's campaign for reelection must begin soon after the Senator's last election in order to raise the amount of funds necessary. So I do believe that the fact that Senators feel that they are constantly in a campaign mode is one of the reasons why they feel they cannot exercise as much independence in the legislative process as they might like.

Another factor is simply the way the political landscape has unfolded over my tenure. The Republican party has become a stronger force politically within the country, both at the presidential and the congressional level, so there is a closer divide within Congress than you found in the late '50s, all of the '60s, and early '70s. There was a period there for about twenty years in which the Democratic party dominated with supermajorities in the House and the Senate. The fact that that has changed has meant that there's more pressure to win every seat for the party to either retain control of the Senate or capture control of the Senate.

Finally, I guess, the information age, generally, with the televising of the Senate and the easy access of constituents to their members by e-mail has made the Senate a more accessible institution. And by making it more accessible, it has broken down some of the Senate's capacity to achieve an independent look on the legislative process.

**RITCHIE:** This is still a body that depends largely on individuals, some of them larger than others. I wondered, looking back over your decades up here, who were the most memorable people that you've worked with?

**RYNEARSON:** There were quite a number. I was generally impressed with every Senator that I came in contact with, but I interacted directly with only a fraction of the Senators. As a group of individuals, in terms of their achievements and overall intelligence, I had great respect for Senators. There are several that stand out, I suppose. Senator Byrd is one, not only for his love of the institution and his knowledge of the rules of the institution, but because he took the time to read the legislation that I drafted. In the early years of my tenure, I was struck by Senators Javits and Humphrey. Their abilities and influence within the Foreign Relations Committee were very impressive. Later on, in my career, I was very impressed with Senator Lugar's leadership within the Foreign Relations Committee. I was also impressed by the ability of Senator Helms and Senator Biden to work together to make the Foreign Relations Committee a stronger committee. I thought Senator [Dale] Bumpers

was a marvelous debater and orator who didn't need to use notes. But it's very difficult to single out individual Members.

Interestingly enough, I thought the intellectual abilities of Senator Daniel Evans of Washington were quite great, even though he served only one term in the Senate and I had a relatively short view of his abilities. Also I thought that Senator Nunn was absolutely sharp as a tack and very able. Senator Mitchell as majority leader, I thought, had the type of general temperament that you look for in a leadership Senator of either party. He seemed to have an interesting mix of firmness to the party line and also collegiality within the Senate. Those are the Members that spring to mind, but I'm sure there are others that I have left out inadvertently, and I apologize to them.

**RITCHIE:** It is hard in a body of so many members, and so many different types, to pick out the best, and for what qualities.

**RYNEARSON:** Let me also mention that Senator Nancy Kassebaum, perhaps because she had been a former Senate staffer herself, she was just a very good person to interact with from the staff standpoint. She was very appreciative of staff assistance and very friendly with the staff, as I'm sure were others with whom I had no contact. But I remember her especially for being very amiable.

**RITCHIE:** An increasingly large number of Senators have had some staff experience themselves: Senator Daschle; Senator Lott; Senator Kassebaum as you mentioned; Harry Reid was on the Capitol Police; Susan Collins was a staff person; Mitch McConnell started as a staff person. That's now part of the vitae of a large number of members.

**RYNEARSON:** I'm giving you a somewhat distorted answer regarding Senators because the only Senators I knew were ones who required a lot of foreign relations or immigration drafting. Senator [Edward] Kennedy, I might mention, throughout my tenure in the Senate seemed to hire a very experienced staff, and that made my job a lot easier. Although I did not interact with him directly but once, I remember having a very good working relationship with his staff, as well as with Senator [Sam] Brownback's.

**RITCHIE:** Getting closer towards the present and towards your retirement from the Senate, the 21<sup>st</sup> century opened with a lot of turmoil in the events of September 11 and then

the closure of this building for three months because of the anthrax attack. Did those events affect your Office in any way?

**RYNEARSON:** Those events affected our Office very profoundly, and affected me very immediately in a business sense besides the obvious personal impact. In terms of the Office, our Office was closed for a week because of the traces of anthrax that were found in the mailroom of the Dirksen Building. The Senate continued to meet during the time that the Dirksen Building was closed, so my Office was obligated to continue to provide drafting services for the Senate while we were out of an office. This was very difficult because of the unique computer technology that we have in our Office for word processing, where we are able to print legislation so that it appears just the same way as if it were printed by the Government Printing Office. We share the same word processing application as GPO. The Office attempted to solve this problem by detailing some of our employees to share the Enrolling Clerk's office over in the Capitol, and also assigning some of our employees down to the Government Printing Office building during that time.

The Office was evacuated on 9/11, about 10 a.m. that morning, as I recall. I could see the smoke from the Pentagon out my office window. So I will never forget that day and how I attempted to walk as far away from the Capitol building as possible initially, because of the fear of additional attacks. Then, just four days later there was a bomb scare in the Senate, and the Senate was evacuated again. So at a personal level, it made all of us in the Office concerned for our personal safety and of course concerned for the country.

In terms of my business activities, the very next morning after September 11 I drafted, on my own initiative, a declaration of war. I had the feeling that I might be asked to draft such a document on an urgent basis. I was about three-quarters of the way through the drafting of that document when an important Senate staffer showed up at my doorstep wanting exactly that type of document. It's about the only occasion that I can think of in my tenure in which I drafted something in advance of a request. Of course, I could not do anything with the draft without the blessing and authorization of a Senate office, but I felt the need to start drafting that. We did not enact a declaration of war, but we did enact an authorization for the President to engage in hostilities against the terrorists responsible for the 9/11 attacks, or countries aiding and abetting the terrorists.

**RITCHIE:** To whom was the declaration of war addressed? In each of the previous declarations of war, there had been a country that we were going to war with. What did you do when you writing this one, against a group rather than a country?

**RYNEARSON:** I was pioneering new ground. The only thing that you could do would be to try to declare war against the terrorist organization or countries providing sanctuary to members of that organization. You're absolutely right that this is different. It has different legal implications depending on which statute referring to declaration of war we're attempting to apply. It may be for that reason that a declaration of war was not enacted and that there were many legal implications of this not all of which had been fully explored.

**RITCHIE:** All of the emergency powers that are invested in the President once you declare war, in particular.

**RYNEARSON:** We quickly shifted gears to an authorization of the use of force, rather than a declaration of war, so I can't tell you how this would have unfolded totally.

**RITCHIE:** The Senate Historical Office had calls from a leadership office about declarations of war, and they were initially convinced that there had been a declaration of war against the Barbary Pirates. They thought that would be a model. We had to tell them that even though the U.S. went to war against the Barbary Pirates, we never declared war against them. It wasn't until the War of 1812 that we actually enacted a declaration of war.

**RYNEARSON:** There have only been five declarations of war I believe: 1812, the Mexican-American War, the Spanish-American War, the First World War, and the Second World War. That is the sum total, and I reviewed all of those declarations of war to see how they were phrased. It was not the first time in my tenure that I had drafted a declaration of war, actually.

**RITCHIE:** When was the first?

**RYNEARSON:** Well, I'm actually a little bit hazy on that. I might have done it with respect to Iran at the time of the Iranian hostage crisis. That was probably the first time that I had occasion to look at the phrasing of declarations of war. In any event, when you authorize the use of force with very few strings attached, the wording seems to be closely

coordinated with the executive branch. Since Congress had enacted an authorization of the use of force in the case of the first Persian Gulf War, that, I believe, was used as something of a model for the authorizations of war against the 9/11 terrorists and the war against Iraq. With respect to those authorizations, I had a fairly small role to play, except in both the first Gulf War and the second Gulf War I drafted up alternative language to the authorization of the use of force, for Senators Nunn and [Carl] Levin, respectively, to offer as amendments. I did feel privileged that I was able to participate in some way in the Senate's consideration of those matters, although again I'm not indicating how I would have come out from a policy standpoint. But I do believe that it was appropriate that the Senate and the House consider those matters and have a full debate on it.

I was disappointed that in the case of the 9/11 use of force resolution that there was not a longer debate on that. It's not that I had any doubts that we should respond, but I felt it probably deserved a fuller debate than the amount of time that was expended on it.

**RITCHIE:** When you think about the amount of debate before the first Persian Gulf War, by comparison to the 9/11 resolution and the second Iraqi war resolution, they didn't spend as much time, and not as many people spoke on the issues.

**RYNEARSON:** I think the Senate debate on the first Gulf War was one of the Senate's finest moments in my tenure, because all one hundred Senators were present and each one seemed to accord the matter the seriousness which it deserved. My only regret from that debate is that the vote ended up being more or less a party-line vote. On a matter of that grave importance to the country, it is regrettable that it comes down to a party-line vote. But the debate was probably the best debate that I heard in my tenure in terms of the level of preparation of the Members and the issues that were discussed.

Going back to how 9/11 impacted my Office, it impacted me virtually every hour of my working day after 9/11, because virtually every piece of legislation that I drafted after 9/11 until my retirement at the end of January 2003 was 9/11-related. I was involved in drafting legislation to remove the legal barriers to providing aid to Pakistan. I was involved in providing additional aid to Afghanistan. I was involved in a variety of immigration law changes to attempt to tighten our border security, culminating in the enactment of the Border Security and Visa Entry Reform Act of 2002. My Office also provided legal assistance to the Senate regarding what response measures the Senate might take in the event of any future



attack. So after 9/11, the agenda of the Senate changed and as the Senate's agenda changed, my own workload changed to reflect it. It was a very busy time and a very stressful time because I did not want to let anyone down and I felt that everything that was 9/11-related was high priority, which meant that my entire workload was high priority. It was difficult to prioritize within my workload. So it did have a very profound effect on me personally and professionally. I know it will continue to have that effect within the Office for a long time to come.

**RITCHIE:** Did that contribute to your decision to retire in 2003?

**RYNEARSON:** It contributed to my decision to stay in the Senate longer than I perhaps was inclined to do. I had given some serious thought about retiring in early 2002, but after 9/11 I immediately rejected that option. My decision to retire was based largely on the feeling that I had served an entire career, that my family has had some health crises that continue, and that I wanted to have more time to spend with my beloved wife, Mary Linda Ryneerson, but not particularly the 9/11 matter. Just the opposite.

**RITCHIE:** What kinds of plans do you have for your retirement? Are you going to continue to do anything relating to the legislative drafting career that you had in the Senate?

**RYNEARSON:** Well, I told the Foreign Relations Committee in my last week as an employee that I intended to rest, write, and teach, in that order. I got a lot of laughs from the Members. I'm not sure why, maybe it was because I had the audacity to say that I would actually be resting for a while. As it has turned out, I think the sequence may be a little bit different. I've actually done some teaching or training just a week ago involving the legislative process. I hope to do more of that. My Office was the institutional memory of the Senate in the area of legislation and the legislative process. I think it is very important that this knowledge not be lost and that it is passed on. So I hope to continue to have training and teaching opportunities. Somewhere along the line I'd like to do writing, because it was really the writing that attracted me the most to my Office. I love to write and I hope I'll be able to have the discipline in retirement to do some writing, both in the area of legislation and in history, and perhaps some creative writing.

**RITCHIE:** Well, you have a unique perspective on this institution as you've demonstrated in these interviews, so I hope you will write. I know we'll have your books on

our shelves when you do.

**RYNEARSON:** It's been my privilege to talk to you about my career, and I hope that others will be able to get some little insight that will be of benefit as a result of the interviews. Thank you for listening to me.

**End of the Ninth Interview**

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**APPENDIX A—STATUTORY CHARTER OF THE OFFICE OF THE  
LEGISLATIVE COUNSEL, UNITED STATES SENATE**

# STATUTORY CHARTER OF THE OFFICE OF THE LEGISLATIVE COUNSEL, UNITED STATES SENATE, AS FOUND IN TITLE 2, UNITED STATES CODE

## CHAPTER 9—OFFICE OF THE LEGISLATIVE COUNSEL

\* \* \* \* \*  
SUBCHAPTER I—SENATE

### §271. Establishment

There shall be in the Senate an office to be known as the Office of the Legislative Counsel, and to be under the direction of the Legislative Counsel of the Senate.  
Feb. 24, 1919, c. 18, §1303(a), (d) 40 Stat. 1141; June 2, 1924, c. 234, Title XI, §1101, 43 Stat. 353.

### §272. Legislative Counsel

The Legislative Counsel shall be appointed by the President pro tempore of the Senate, without reference to political affiliations and solely on the ground of fitness to perform the duties of the office.  
Feb. 24, 1919, c. 18, §1303(a), (d), 40 Stat. 1141; June 2, 1924, c. 234, Title XI, §1101, 43 Stat. 353; Sept. 20, 1941, c. 412, Title VI, §602, 55 Stat. 726.

\* \* \* \* \*

### §274. Staff; office equipment and supplies

The Legislative Counsel shall, subject to the approval of the President pro tempore of the Senate, employ and fix the compensation of such Assistant Counsel, clerks, and other employees, and purchase such furniture, office equipment, books, stationery, and other supplies, as may be necessary for the proper performance of the duties of the Office and as may be appropriated for by Congress.  
Feb. 24, 1919, c. 18, §1303(a), (d), 40 Stat. 1141; June 2, 1924, c. 234, Title XI, §1101, 43 Stat. 353; Sept. 20, 1941, c. 412, Title VI, §602, 55 Stat. 726.

## HISTORICAL AND STATUTORY NOTES

### Designation of Deputy Legal Counsel

Pub. L. 106-57, Title I, §6, Sept. 29, 1999, 113 Stat. 412, provided that: "The Legislative Counsel may, subject to the approval of the President pro tempore of the Senate, designate one of the Senior Counsels appointed under section 102 of the Legislative Branch Appropriations Act, 1979 (2 U.S.C. 274 note; Public Law 95-391; 92 Stat. 771) as Deputy Legislative Counsel. The Deputy Legislative Counsel shall perform the functions of the Legislative Counsel during the absence or disability of the Legislative Counsel, or whenever the office is vacant."

### §275. Functions

The Office of the Legislative Counsel shall aid in drafting public bills and resolutions or amendments thereto on the request of any committee of the Senate, but the Committee on Rules and Administration of the Senate may determine the preference, if any, to be given to such requests of the committees. The Legislative Counsel shall, from time to time, prescribe rules and regulations for the conduct of the work of the Office for the committees, subject to the approval of such Committee on Rules and Administration.  
Feb. 24, 1919, c. 18, § 1303(b), (d), 40 Stat. 1141; June 2, 1924, c. 234, Title XI, §1101, 43 Stat. 353; Aug. 2, 1946, c. 753, Title I, §§ 102, 121, 60 Stat. 814, 822.

### §276. Disbursement of appropriations

All appropriations for the Office of the Legislative Counsel shall be disbursed by the Secretary of the Senate.

Feb. 24, 1919, c.18, Title XII, §1303 (c), (d), 40 Stat. 1142; June 2, 1924, c. 234, Title XI, §1101, 43 Stat. 353.

**§276a. Expenditures**

With the approval of the President Pro Tempore of the Senate, the Legislative Counsel of the Senate may make such expenditures as may be necessary or appropriate for the functioning of the Office of the Legislative Counsel of the Senate.

Pub. L. 98-51, Title I, §105, July 14, 1983, 97 Stat. 267.

**§276b. Travel and related expenses**

Funds expended by the Legislative Counsel of the Senate for travel and related expenses shall be subject to the same regulations and limitations (insofar as they are applicable) as those which the Senate Committee on Rules and Administration prescribes for application to travel and related expenses for which payment is authorized to be made from the contingent fund of the Senate.

Pub. L. 98-51, Title I, §106, July 14, 1983, 97 Stat. 267.

APPENDIX B—SUMMARY DESCRIPTION OF THE OFFICE OF THE  
LEGISLATIVE COUNSEL, UNITED STATES SENATE, AS OF  
JANUARY 2000

# OFFICE OF THE LEGISLATIVE COUNSEL UNITED STATES SENATE

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## **THE OFFICE OF THE LEGISLATIVE COUNSEL OF THE SENATE**

### **Establishment of the Office**

The Office of the Legislative Counsel was established by statute in 1919. The Legislative Counsel of the Senate is appointed by the President pro tempore of the Senate solely on the basis of his or her qualifications to perform the duties of the position. The Legislative Counsel is authorized to appoint Senior Counsels, Assistant Counsels, support staff, and other employees, to establish salaries, and to otherwise administer the Office. All appointments are made without regard to political affiliation and are subject to the approval of the President pro tempore of the Senate.

### **Duties**

The Legislative Counsel assists "in drafting public bills and resolutions or amendments thereto" upon the request of any Senator, committee, or office of the Senate.

### **Character of Services Provided**

The Office performs a variety of services relating to the preparation and review of proposed legislation. The Office routinely drafts original measures for introduction in the Senate. The measures range from simple private relief bills to omnibus measures of considerable technical complexity. Frequently, the Office is called upon to review drafts of bills prepared in executive agencies and elsewhere, and to make such revisions as may be necessary for technical sufficiency, before introduction in the Senate.

Much of the work of the Office is done at the committee and subcommittee levels. The Office routinely assists subcommittee members in the preparation of amendments required to effectuate policy decisions made by the subcommittee during its consideration of a measure and in the preparation of the amended measure for reporting to the full committee. Similar assistance is provided to members of the staff of the full committee before the measure is reported for floor action. Assistance also is given in the preparation of any floor amendments by committee members or other Senators. If a conference is requested on a measure, assistance is provided in the preparation of the conference report.

In addition to the preparation and review of proposed legislation, the Office is often consulted by members of the staffs of committees and subcommittees, and by members of the staffs of Senators. Such consultations occur regarding possible legislative solutions to particular problems, technical questions of substantive and procedural law, and the mechanics of preparation and the technical and legal accuracy of committee reports.

### **Policies Governing the Performance of Duties**

Attorneys in the Office are not involved in the formulation of legislative policy. In order to draft a measure or amendment that is technically effective to carry out the intent of the committee or Senator concerned, however, attorneys must be able to ascertain the desired policy accurately and in adequate detail.

The Office serves the committees of the Senate and individual Senators without regard to political considerations. The Committee on Rules and Administration of the Senate establishes the order of priority to be given by the Office to requests for service. The order of priority currently in effect is as follows: (1) measures in conference; (2) amendments to measures pending on the floor of the Senate; (3) amendments to measures pending before committees; and (4) preparation of measures for introduction in the Senate. Within each of these categories, the Office gives priority to a request according to the time it is received by the Office.

All service is provided on a confidential basis, and care is taken to prevent any violation of confidence.

### **Responsibilities of the Legislative Drafter**

Legislative drafting in the Congress is an exacting occupation. Effective drafting requires careful analysis of the legal problems involved, arrangement of matter in a logical sequence, and accurate expression of the concepts set forth. Constitutional limitations must always be observed. Most legislative proposals deal with matters which have been the subject of one or more previous enactments. A new measure must be carefully related to earlier enactments to produce, as far as possible, a consistent body of law which will achieve the congressional purpose without producing unintended consequences. Often, the drafter must work under severe time limitations.

The volume of work of the Office continues to increase steadily. In the 105th Congress, the Office completed more than 31,000 drafting jobs. Moreover, the drafting of new legislation is becoming increasingly more difficult and time-consuming due to the addition of a number of new subjects of Federal legislation and the increasing technical complexity of Federal statutory law.

### **Staff**

There are currently 27 attorneys in the Office. Attorneys skilled in the specialty of congressional legislative drafting cannot be recruited from outside sources. They must be developed within the Office over a period of years. When vacancies occur in the legal staff of the Office, new attorneys are usually chosen from among applicants who have superior law school records and who are interested in public service.

The support staff of the Office is composed of an Office Manager, an Assistant Office Manager, 6 staff assistants, and a receptionist.

Because the Office provides technical legal services on a nonpolitical and confidential basis, and must be impartial in appearance as well as in fact, active public participation in political matters which would give cause to question such impartiality is regarded as a disqualification for appointment or retention. No change in personnel of the Office has resulted from any change in political control of the Senate.

### **Promotion Policies**

An initial appointment of an attorney is provisional, and is made with the title of Staff Attorney. After demonstrating the ability to meet the standards of our legal staff, an attorney is promoted to the position of Assistant Counsel.

During the service of a new attorney as a Staff Attorney, all work is reviewed by a more experienced member of the staff. Thereafter, an attorney is expected to assume full responsibility for his or her work without routine review, but to consult with other members of the staff as may be necessary for the solution of particular problems. As a new attorney gains experience and skill, he or she is given primary responsibility for service with respect to an increasing number of areas of Federal law.



**APPENDIX C—MATCHING LEGISLATIVE LANGUAGE WITH  
LEGISLATIVE VEHICLES**

# LANGUAGE

	Function or Mode		Legal Effect		
	"Free Standing"	Amendatory	Mandatory (or Obligatory)	Authorizing (or Discretionary)	Hortatory (or Precatory)
<b>Bill</b>	Yes	Yes	Yes	Yes	Yes <sup>1</sup>
<b>J. Res.</b>	Yes	Yes	Yes	Yes	Yes <sup>1</sup>
<b>Con. Res.</b>	Yes	No <sup>2</sup>	No <sup>3</sup>	No <sup>4</sup>	Yes
<b>Res.</b>	Yes	No <sup>2</sup>	No <sup>3</sup>	No <sup>4</sup>	Yes
<b>Amdt.</b>	*	*	*	*	*

LEGISLATION

**Exceptions:**

- 1: Denotes that these legislative measures should take some language other than hortatory.
- 2: Resolutions may amend prior resolutions.
- 3: Resolutions may mandate matters internal to Congress.
- 4: Resolutions may authorize matters internal to Congress.
- \*: Dependent on the legislative measure to which the amendment is proposed.

Prepared by  
Arthur J. Ryneason, Esq.

APPENDIX D—HOW A SENATE BILL BECOMES LAW

# HOW A SENATE BILL BECOMES LAW

(As diagrammed by Arthur J. Rynearson, Esq.)

