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 16th), 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-policymaking, 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 67th 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 68th 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