

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