

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