

## Interview with Herbert J. Hansell

The Association for Diplomatic Studies and Training Foreign Affairs Oral History Project

LEGAL ADVISER HERBERT J. HANSELL

Interviewed by: Charles Stuart Kennedy

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*Q: Today is March 29, 1995. This is an interview with Herbert J. Hansell, former Legal Adviser to the Department of State, on behalf of the Association for Diplomatic Studies. I am Charles Stuart Kennedy. Herb, may we start with when and where you were born and something about your family, just to give an idea to future researchers as to where you're coming from.*

HANSELL: I was born in Pittsburgh, PA, on November 16, 1925. However, I grew up in Salem, a small town in Ohio, where I lived from age 2 to graduation from high school and where my parents remained during my time in college and subsequent years. My mother is still living there, as well as my elder brother. My father was a merchant operating a clothing store in Salem, OH, throughout all the years that I lived there, as well as thereafter, until he died in 1971. The business was continued by my brother until he retired and sold it several years ago. I attended public schools in Salem—both elementary and secondary schools. I attended college at the Massachusetts Institute of Technology [MIT].

*Q: Why did you go to MIT?*

HANSELL: Well, as a high school student I had a strong interest in math and in science. I thought that I wanted to pursue a career in some area of the “hard sciences.” I

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subsequently veered away from that career path. After my first year in college I went into the Navy...

*Q: I was going to say that your date of birth put you right into World War II.*

HANSELL: It did. However, very shortly after I entered the Navy, my application into what was then called the Navy "V-12 Program" was accepted. You're probably familiar with that.

*Q: That led to commissioning as a "90 Day Wonder" or the equivalent.*

HANSELL: This program represented an effort to train naval officers. I also think that, in part, it was motivated by a very far-sighted view of the Navy. It was considered important to keep educational institutions alive. The Army and Air Force had similar programs during the war, but they weren't quite as extensive. In any event, the Navy sent me right back to MIT [after I joined the V-12 program], where I finished the full curriculum. By that time World War II was over. I graduated [from MIT] in February, 1946. Shortly thereafter, I decided to enter law school with support from Uncle Sam under what was known as the "GI Bill." You may recall that this was one of the very best of the welfare entitlement programs.

*Q: Absolutely. I got my master's degree under the GI Bill.*

HANSELL: I suspect that a large part of the generation that complains the loudest at the moment about welfare entitlement shared in some of those benefits. However, in any event I practiced law in one setting or another after graduating from Yale Law School in 1949.

*Q: International law became sort of your field. Did you get much of this at Yale Law School, or what was the status of international law at that time? Was it something of a new world?*

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HANSELL: I have to say that I had relatively little early exposure to international law—certainly, none to public international law, and comparatively little to private international law. Until I went into the Department of State my practice largely involved handling securities and corporate matters for a number of larger corporations and smaller entities as well. Some of these firms had foreign investments and foreign trade interests, but I had very little exposure to the world of international law. Indeed, when Warren Christopher first called me in about December, 1976...

*Q: This was just after Carter had been elected President. Warren Christopher was Deputy Secretary of State-designate or something like that.*

HANSELL: That's right. Cyrus Vance had been designated by President-Elect Carter to be Secretary of State. That appointment was made around Thanksgiving, 1976, following Carter's election earlier that month. Vance, in turn, selected—and President-Elect Carter appointed—Warren Christopher as Deputy Secretary of State-designate in late November or early December, 1976. I had known Christopher, whom we all called “Chris,” as well as Vance, for many years. In any event Christopher telephoned me and asked if I would have some interest in the position of Legal Adviser in the Department of State. My first response was, “Chris, I really know virtually nothing about public international law.” To this he replied, “Welcome to the club!” So I have to say, in this rather long-winded response to your question, that I really had not had much exposure to the world of international law, public or private, before...

*Q: To give a little bit about the background, where did you practice corporate law?*

HANSELL: My law practice began with a firm in New York, Cravath, Swaine & Moore, one of the large Wall St. law firms, where I spent two years, from 1949 to 1951. I then worked in Washington, D. C., on the staff of what was then a fledgling agency, the National Science Foundation. I was the fifth person to be hired, I believe. The Science Foundation had been an interest of mine for a number of years. It was an outgrowth, as

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I suspect that you will recall, of what was known as the Office of Scientific Research and Development, the OSRD, during World War II. It was then headed by Dr. James B. Conant and Vannevar. They recommended, after some debate and Congressional consideration, that an approximate peacetime equivalent to the OSRD should be established to conduct government sponsored, basic scientific research. It was named the National Science Foundation.

Today, as you know, it's a huge enterprise, with a budget of about three billion dollars. However, in those days the initial budget was limited, I think, to \$300,000, and thereafter, for several years, to \$15 million.

In any event I was very interested and joined the legal staff [of the National Science Foundation] which was headed by a General Counsel, a man named William Krebs, who had been General Counsel of the Atomic Energy Commission. He went to the National Science Foundation and later hired me as his assistant. I spent two years at the National Science Foundation, ultimately serving as Assistant General Counsel.

Then I went to Cleveland, OH, in early 1953 and started work with a firm then known as Jones, Day, Cockley, and Reavis. It is now named Jones, Day, Reavis, and Pogue. I joined this firm on May 1, 1953. Except for my period of service with the Department of State as Legal Adviser, I've been associated with that Cleveland law firm ever since. So it's been nearly 43 years with that law firm, broken only by the three plus years with the Department of State. I also spent roughly one year—while with the firm but basically living in Washington—as initial legal counsel for Amtrak, helping to put that agency together from 13 passenger railroads.

When Warren Christopher called me [in November or December, 1976], I had been practicing law since 1953 in Cleveland, OH, with the firm I have mentioned.

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*Q: There must have been either a political basis, or a networking connection, or something like that. You know, somebody with a new administration does not just call someone else out in Cleveland, OH, and...*

HANSELL: There was a networking basis. I had known Vance for a number of years. We had worked together on Yale alumni affairs, primarily major fund-raising campaigns, and a couple of other projects. I had known Christopher in other contexts. Among other things, we were both trustees of an organization known as The Lawyers' Committee for Civil Rights. Indeed, when Christopher was Deputy Attorney General in the Johnson administration, under Attorney General Ramsey Clark, he had invited me to Washington and offered me a position in the Department of Justice in those years as, I think, Deputy Associate Attorney General, or something equivalent to that. In other words, a relatively senior position. I did not accept this offer. At that time I wasn't able to do so because of the demands of my practice.

However, I had known Christopher and Vance over the years. When Chris made—the call that I mentioned—he said that he and Vance had been going over prospects for filling the position of Legal Adviser [in the Department of State]. He said that they had talked about me and decided that I should be approached.

*Q: Both of them knew you, so it was basically two lawyers saying, “We know this guy.”*

HANSELL: That's right.

*Q: These appointments get very political. Had you had any political associations particularly?*

HANSELL: Not really. I must acknowledge that I've been somewhat politically active ever since becoming an adult. I have been an active Democrat and still am. But I hadn't really been active in national Democratic Party affairs and had no role in the Carter [presidential election] campaign [in 1976]. It's possible that that factor—my Democratic “interests”—

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was certainly known to Cy Vance and Christopher. It's generally believed that Vance had virtually "carte blanche" from President-elect Carter to staff up the State Department.

*Q: I was going to ask that, because it is usually about this time that Vance would propose [a person], and somebody in the White House would say, "Oh, yes, but we have somebody else in mind." The White House plays such a major role [in these appointments].*

HANSELL: That was true, I think, in a number of the other executive departments. Typically, I understand, that is the more common pattern. Even as to State, I assume, there was some "vetting" at the White House. However, it is my understanding—and I think that I'm quite right on this—that Vance had very broad discretion to staff out the State Department. For example, he chose Christopher who, I believe, when he was first proposed, had not been known to Carter.

I have with me a copy of Vance's memoirs. In them it is basically quite clear that he did have broad discretion to staff the Department as he chose.

*Q: Did either Vance or Christopher sit down with you and say, more or less, "Herb, look. Here's the way we see your job. Here are some of the problems which we expect to encounter. How do you feel about them?"*

HANSELL: Oh, yes. The job as such wasn't offered when Chris telephoned me. It was simply an invitation to come to Washington and talk with Vance, with him, and with others. I did this. I had a long talk with Vance who, at that time, was housed as, I guess, all Secretaries of State-designate are, in a temporary office, in his case, on the first floor of the State Department building. He and Christopher were a few doors from one another in these temporary offices. If I may digress for a moment, I can recall Christopher saying to me on either January 20 or 21, 1977, the first day that they occupied their offices—Vance, the office of the Secretary of State, and Christopher, the office of the Deputy Secretary of State—that he suddenly felt very "lonely" because Vance was so far away. You know how

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far those offices on the seventh floor of the State Department are separated from each other.

Anyway, in that conversation with Vance he identified what he saw as his priorities. I've recalled this conversation a number of times because it was fascinating to do this. The priorities were: one, a Middle East peace treaty to ensure peace in the Middle East.

*Q: We're talking [about a treaty bringing to an end] the Arab-Israeli conflict.*

HANSELL: Yes, an Egyptian-Israeli peace treaty. Two, Vance also hoped to achieve normalization of diplomatic relations between the U. S. and the People's Republic of China—to continue what Nixon and Kissinger had begun with the PRC. Three, Vance wanted to move ahead with the SALT II treaty.

*Q: The second Strategic Arms Limitation Treaty.*

HANSELL: Yes. Negotiations on that. Four, a resolution regarding Cyprus. Vance had previously been involved in Cyprus. Five, high on Vance's list was a Panama Canal treaty.

Those were the five priorities which Vance identified. I have to say to you that one of the sources of genuine satisfaction which I derived from my position as Legal Adviser, when I left the State Department [in late 1979], was that we had worked very closely together, and had achieved his objectives, on four out of five of those matters. We had achieved an Egyptian-Israeli peace treaty; we had normalized diplomatic relations with the People's Republic of China; the Panama Canal treaty was, of course the first objective to be accomplished, in 1977; and the SALT II Treaty was negotiated and signed.

Cyprus was the only one of the five priorities Vance had set out which was a disappointment. It continues to be, of course, unresolved. Indeed, to digress again for a moment, I noticed the news not long ago that Richard Beattyre had just been designated by Clinton as the President's Special Representative to explore the possibilities of making

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some progress on the Cyprus question. Beattyre was a prot#g# of Cy Vance's. During the Carter administration he was the chief legal officer for Joe Califano in what was then called HEW...

*Q: The Department of Health, Education, and Welfare.*

HANSELL: Beattyre subsequently succeeded Vance as “chair” or principal figure in their law firm in New York. Thus, a second or perhaps even a third generation of figures is still trying to make some progress on the Cyprus issue.

*Q: On this initial go-around did the subject of human rights, at least as far as you were concerned, come up or not?*

HANSELL: It did not, at that time. At least, as I recall it, there was not a heavy focus on it. It may have been mentioned in passing. Vance likewise had been involved with The Lawyers' Committee for Civil Rights, the organization which I mentioned that both Chris and I had been directors of. Vance had had a significant involvement in civil rights issues. Indeed, he was President Johnson's designated representative at the time of the Detroit riots in, I guess, 1967. These were deeply felt interests of both Vance and Christopher. So it's quite possible that there was some mention of the “human rights dimension” in my conversation with Vance, but this subject was not identified in our initial conversation in the same way as the five goals for Vance's period of service as Secretary of State.

We talked about a number of other issues and possibilities. I spent a good part of that day talking with others, including Monroe Leigh, who was then Legal Adviser under Secretary of State Kissinger. He was Kissinger's last Legal Adviser. Of course, I spent some time with Christopher and with a few others. I cannot now remember who it was, or when it was, that somebody actually said, “Well, the job is yours if you want it.” I guess that somebody did say that, because I went back to Cleveland to report to my wife [that I had been offered the job.]. It may even have been by phone. I just have no recollection of it.



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I still was not at all sure whether to do it, whether to give an answer “on the spot,” because I had a lot of commitments to my law firm, to my family, and to the city of Cleveland. I'd served on our local School Board and had a number of other civic commitments. However, all of that was eventually resolved. I think that there were several considerations which “tipped” the scale. In addition to my wife's reluctantly consenting—she was very attached to our home and life in Cleveland—there was a very important conversation [I had] with the senior partner of my law firm, a marvelous man named Jack Reavis for whom I had enormous respect. I talked to Jack to tell him about this offer which I was considering. He asked a question or two and then finally said, “Well, I think you'll do it,” which was his way of saying that I should do it. He would never have said or recommended directly that I should do it, but that was his way of saying the same thing.

Then there was a conversation with Erwin Griswold who, you may remember, was Dean of the Harvard Law School for a number of years, and later was Solicitor General [of the United States] under Presidents Johnson, Nixon, and Ford. He was Solicitor General for six or seven years, I believe. Then he became a partner in our law firm. He had argued more cases before the Supreme Court than any other living lawyer. He was a distinguished and beloved dean of the American bar. I talked to Erwin about this possible appointment. He said that in his view the position of Legal Adviser to the Department of State was probably the second best legal job in the United States Government—the first being his previous job as Solicitor General.

After all of those conversations and some further reflection I finally decided that I would accept the position. I was in place, although not yet fully cleared by the FBI, on Inauguration Day [January 20, 1977].

*Q: How did you handle the problem—which, I guess, faces most of the people who take that position—of bringing yourself up to date on international law? Or is it one of those*

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*things where you go into office and rely on your professional staff, and you were more in the position of "calling the shots," rather than...*

HANSELL: Of course, it was an immense learning experience. The most daunting aspects of it were becoming acquainted with the people and with the agenda of issues that were being dealt with by the Legal Adviser's Office and staff. The moment I took over my office I was confronted with—I've forgotten the number now—some substantial number of enormous briefing books, covering a vast range of matters involving every Department service and bureau. The issues were, of course, fascinating and seemingly endless. There was no way [that I could learn them all]. And the structure is such that you don't have to be intimately familiar with all of them. But I wanted to know as much as I could know about at least the most important issues.

I had long sessions, first of all with Monroe Leigh, my predecessor, then with the Deputy Legal Advisers. There were then four deputies. There were about 15 Assistant Legal Advisers. The structure of the Legal Adviser's Office is, as you may know, that there is one or more lawyers advising each of the bureaus in the Department of State. There is an Assistant Legal Adviser who deals with EA [Bureau of East Asian and Pacific Affairs], NEA [Bureau of Near Eastern Affairs], the functional bureaus, and what have you. The number of those Assistant Legal Advisers varies from time to time. [When I was Legal Adviser], they were supervised by the four Deputy Legal Advisers, who, in turn, reported to me as Legal Adviser. These were essentially civil servants.

Lawyers then and, I think, now, were in a different personnel category. They were not civil servants. They were Schedule something or other [Schedule C]. They had civil service status.

*Q: But when you came into office you didn't have a whole group of lawyers nominated by the Democratic Party, or something like that.*

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HANSELL: No. Most of the lawyers were in a personnel category known as Schedule C. They did not have Civil Service status, but had similar job protections. The Legal Adviser, through one device or another, usually finds it possible—I'm not sure precisely how the arrangements accommodate this—to appoint at least one Deputy Legal Adviser. I inherited four Deputy Legal Advisers. As it turned out, one of those positions was vacated within two or three months after I took office. This former Deputy Legal Adviser went on to become a deputy to Elliot Richardson, who was then handling the Law of the Sea negotiations. So there was a vacancy, and I was able to fill it.

*Q: Was the Law of the Sea negotiations which you mentioned "off to one side," as it were?*

HANSELL: As a matter of fact I think that the Law of the Sea negotiations were not initially among the priority interests of Secretary of State Vance. I don't mean to say that they were by any means disregarded. I think that at that time the Law of the Sea negotiations were at something of a transitional stage. There had been considerable work going on, of course, under the prior administration. I've forgotten who was responsible for them at that time, but Elliot Richardson was designated the person responsible for those negotiations for the Carter Administration. This became a separate activity within the Department. Richardson had the status of an Ambassador at Large. He did not report to the Secretary through one of the Bureaus, although his work was conducted in close coordination with several of the Bureaus. It was a very active part of the Department's agenda. There was a lot of activity in connection with it, and I spent some time—not a great deal but some time—on it. Several of the lawyers on my staff were very actively involved in it. We did provide one Assistant Legal Adviser, who was [Ambassador] Richardson's principal lawyer for these negotiations.

To come back to your original question, there was, of course, a huge learning curve [to deal with]. I found that over a period of about three or four months it was possible to

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“master” a large part of the agenda. Indeed, much of it had to be mastered much sooner than that.

I guess it's not telling tales out of school when I say that the very first problem that I encountered and talked to Secretary Vance about was litigation against Vance's predecessor, Secretary Kissinger.

*Q: It involved wire tapping or something like that.*

HANSELL: Well, it also involved his documents. He had put them into the Library of Congress under a special arrangement which permitted access to those documents only by him for a period of 15 or 20 years. There were a number of points of controversy involved. Yes, wire tapping was one of them. Indeed, there were enough sensitive issues relating to Dr. Kissinger that I suggested to Secretary Vance that I thought we needed a separate, special committee composed of several senior officers in the Department, to focus on issues that grew out of Kissinger's tenure as Secretary of State, because, obviously, the matters involved were very delicate.

Some early issues related to the Panama Canal. I needed an extensive and very deep-reaching briefing on this matter. It took some time to become as familiar with the various Panama Canal issues as I thought I should be.

However, it is very much a part of any lawyer's experience—and part of a Foreign Service Officer's experience, as well—that problems come to him. In my view a lawyer's highest calling is to try to find solutions to his [or her] client's problems. That means, of course, and first of all, understanding the problem as well as one can. The process [of handling various Department issues] was not different. Obviously, the milieu was very different, and there was a great deal that I had to learn about international law. That process of learning continued every day that I was in the job. I was much assisted by an institution which, I think, is unique to the Legal Adviser's office—a position known as “Counselor for International Law.” For many years that position had been occupied by academics—one

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year appointments of, in some cases, quite distinguished teachers of international law, and, in other cases, younger specialists who wanted that kind of experience and exposure to public international law practice in the State Department.

I was exceptionally fortunate that during the first six months that I was in office that position was held by Detlev Vagts, a professor of international law at Harvard. Subsequently, this position was held by Stephen Riesenfeld, who was an absolute gem. He was a lovely, elderly—indeed, once retired—professor of international law from, I think, UCLA [University of California at Los Angeles], who is still teaching at Hastings School of Law in California. He had earlier accepted a one-year appointment [to this position]. These appointments are generally made far in advance. He was there when I arrived, and we renewed his appointment because he was so valuable and useful.

There was always that resource available, as well as the staff of highly experienced and dedicated Deputy and Assistant Legal Advisers in that office.

*Q: When you arrived in office, in effect, you were the new head of what amounted to a bureau in the State Department. This must have seemed to you to be something like going to a foreign country. There were the other “powers” in the Department—the Economic, Administrative, European Bureau, etc. Did you see it as part of your job to develop “diplomatic relations” with these various entities?*

HANSELL: Yes, and clearly it was easier to do this with some of the bureaus than with others, although I must say that virtually all of the senior officers, the assistant secretaries and the deputy assistant secretaries, were cordial and helpful in almost any way that I could have expected. Of course, I worked more with some bureaus than with others. This varied over time. Hal Saunders, as I'm sure you know, was head of INR [Bureau of Intelligence Research]. As you can guess, there was a good deal of interplay between the Legal Adviser's Office and the Intelligence Bureau. Of course, I would get high level intelligence briefings, beginning on the day when I took over the job.

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The triggering event escapes my mind, but I remember Saunders coming to visit me, perhaps three or four weeks after I was on the job. He said that it had become clear to him that I needed to know a great deal more than I knew about intelligence sources and methods, intelligence gathering, and so forth. He arranged an in depth briefing which told me a great deal about satellite photography and other aspects of U.S. intelligence operations. Hal and I developed a very cordial, and friendly relationship.

*Q: Why did the Legal Adviser need to know about the intelligence community's methods of gathering information?*

HANSELL: I guess that there were two or three reasons. First, on many of the issues on which I and my staff were working, Middle East issues, arms control, and other areas of concern, I was a “consumer” of intelligence information; that is, I had a need for the available intelligence that could guide U.S. decisions and actions. Secondly, there were, and are, legal issues which emerge in the intelligence gathering process, including the ways in which we gather intelligence and problems relating to the information gathered, such as the privacy issue. Within the intelligence community there are some legal restrictions that have to be adhered to, including requirements for Congressional consultations. Hal Saunders wanted to be sure that I understood what all of those were because, to some degree, it was partly my responsibility to be sure that these legal restrictions were respected. Hal and, I'm sure, his predecessors were very conscientious about this. Thirdly, he knew that I was working quite closely with Secretary Vance, Deputy Secretary Christopher, and others. I and he wanted to be sure that I was in a position to know as much as I needed to know in order to advise them in a credible way.

*Q: What was your relationship with Christopher and Vance? It seems to vary with each administration and each Secretary of State. How did this work for you?*

HANSELL: Well, I worked easily with both, because I had known them for many years. I would say that probably there was more of a steady flow of contact with Deputy Secretary

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Christopher than with Secretary Vance, in part because Christopher was the operating officer of the Department in so many ways—in the same way that deputy secretaries tend to be throughout the government bureaucracy. I had access to Vance when I needed it, but I tried to be very conservative about asking for that.

There were several issues on which Vance and I were working together closely. Our most extensive involvement was on the Middle East peace treaty, the Egyptian-Israeli peace treaty negotiations which went on throughout the period that I was in the Department. They culminated when we signed the treaty in March, 1979. Then there were follow-on negotiations aimed at trying to negotiate a Palestinian settlement. We also worked together on matters involved in the negotiation of the SALT agreement [with the Soviet Union]. There were also various aspects of matters involving the People's Republic of China. Secretary Vance had staff meetings once a week or so. However, Deputy Secretary Christopher presided over what were known as the Secretary's staff meetings more often than Secretary Vance did. Apart from such meetings, I would say that I would meet with Secretary Vance perhaps twice a month on different matters. I would meet with Deputy Secretary Christopher, perhaps four or five times a week on various matters—substantive, procedural, and operational.

*Q: You had two lawyers above you, Vance and Christopher. Vance was very much involved in international affairs. He was sort of a trouble shooter for various administrations, but he was also a full-fledged lawyer. How did you see this? There have been times when this has been a problem. It has been said that one of John Foster Dulles' great weaknesses was that he was too much of a lawyer himself. That is, he made too much of an effort to get pieces of paper signed and all of that.*

HANSELL: Everybody's different, of course, in that respect. As you know, during the present period, when Warren Christopher has been Secretary of State, he has been the target of similar comments. I think that this is more of a reflection of his personality.

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Christopher is a very thorough, methodical guy. If Christopher had been a physician, an historian, a painter, or a musician, he would have been the same kind of person.

However, to some degree, of course, you can't have practiced law as long as each of them has and not have acquired habits of gathering facts and assembling relevant information and options. Frankly, the fact that we had known one another previously and that both of them were the products of the same kind of professional training as I had had didn't seem to me to make a lot of difference. Perhaps the chief significance may have been that they would be more likely than some others to understand and be sensitive to the legal issues.

Vance, for example, occasionally tempered the enthusiasms of Phil Habib, who was then the Under Secretary for Political Affairs, when Habib came along with some brilliant inspiration—and he had brilliant inspirations all the time—by telling him to check the idea with me. Vance knew from long experience in government and as a practicing lawyer that unforeseen legal and policy “booby traps” could be lurking in any course of action and was thus exercising reasonable prudence.

Of course, with Vance and Christopher there was not the kind of instinctive aversion to dealing with the legal process that, I think, characterizes a lot of Foreign Service people. I would say that perhaps the most trying aspect of my early period in the Department was coping with the historical tensions between the diplomats and the lawyers. In part, I think, this is because there is a tradition—and this is true elsewhere in government, some of it real and some of it imagined—that lawyers tend to be “nay sayers,” to see problems rather than solutions, and to erect obstacles to taking action. Almost every Foreign Service Officer has his own “pet” experience which he will relate to you at the drop of a hat. I must say that I very much believe that there are lawyers who practice law that way. Bureaucratic lawyers, perhaps, tend to do so a little more often than those in private practice, although there are plenty of lawyers like this in private practice. There are also plenty of bureaucrats who are not lawyers but who find lots of obstacles to action.



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My philosophy, which I tried to relate to my staff as often as I could, was that our job was not just to identify problems but to solve problems, to help the bureaus avoid pitfalls and solve problems. I tried to instill an approach that we should not identify problems and then leave “clients” without solutions. That’s always been my philosophy. The role of a lawyer is to serve as a lubricant to the process, whether bureaucratic, governmental, concerned with negotiations or other.

*Q: One of the things I've often heard, as a retired Foreign Service Officer myself, is that things go into “L” [Office of the Legal Adviser] but nothing comes out.*

HANSELL: Sure, I've heard a lot of that. To the extent it is valid, that is partly a matter of making sure that people respond. On the whole, I have to say that I found that the lawyers in “L” were very able, dedicated, hard-working people. “L” was one of the best “legal shops” in the United States Government. It was one of four or five legal government operations which were really of quite high quality. “L” is overworked, though I suppose that that is no different from a lot of other operations in and out of government. I did try to impress the importance of prompt and effective responses on my staff, whenever I could. I've been doing this for 40 years in private law practice, because no “client” likes to have his problem subordinated to somebody else's problem. No one wants to have his phone calls unreturned or his letters unanswered.

I said to all of the assistant secretaries [in the various bureaus in the State Department], who were the principal consumers of legal services, day in and day out that I wanted them to feel free to call me if they felt that they were not getting timely responses or attention to their problems.

It's very much like going to the doctor's office and waiting. You find that there are four or five people ahead of you. Nobody likes that experience. But in the legal context you don't even see the people whose problems were ahead of you. I think that we made some progress, although you never “solve” that kind of problem. I found myself “riding

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herd” on my deputies and encouraging them strenuously to “ride herd” on the assistant legal advisers and, in turn, on the lawyers on their staffs. Occasionally, I found myself asking for files so that I could expedite matters. I must confess that if an inquiry came from the Deputy Secretary, an Under Secretary, or an Assistant Secretary, it received attention a little more expeditiously than if it came from a desk officer. Occasionally, American Embassies overseas would send cables to the State Department in which they complained that they weren't getting answers to their inquiries. But we tried to serve them expeditiously.

*Q: Let's move down Vance's list of priorities [which you mentioned previously]. Was the Panama Canal treaty among the first to be dealt with?*

HANSELL: I would say that during my first year in office that became one of the Department's highest priorities. As it turned out, Deputy Secretary Christopher took over more and more of the responsibility for the [Panama Canal] treaty. It was a two part problem. First, there was the negotiation, which was headed, if you remember, by Ellsworth Bunker and Sol Linowitz, with quite a backup staff. Then there was the process of ratification, taking it through Congress. Christopher was the “point man” on the Congressional ratification side of it. He was also very heavily involved in working with Ellsworth Bunker and Sol Linowitz on the negotiation side.

Much of my work on the Panama Canal treaty was in relation to Christopher, although obviously we had problems that we had to take to Secretary Vance.

In the early period Vance dealt with multitudes of issues. He, too, had a lot of “learning” to do and a lot of relationships to establish with foreign ministers. He was spending a good deal of his time on Middle East and European-related issues. In addition to the Panama Canal treaty there were some Latin American problems. However, I think that Soviet-American relations were his highest priority in that early period. He had Marshall Shulman working with him as his special assistant [for Soviet affairs]. Shulman is a wonderful man.

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I'm just guessing, but I think that Vance spent more of his time on Soviet relations during that first year than on anything else.

*Q: Then Soviet relations attracted as much attention as anything else during that particular time?*

HANSELL: The chief aspects of it [Soviet relations] that we were concerned with certainly included the SALT negotiations. Paul Warnke was the negotiator, but Vance spent a lot of time on SALT. There were numerous legal issues of all kinds involved, some of which I spent my time on. There were intelligence and espionage problems, as you might guess, which perpetually grew out of Soviet relations.

*Q: What was the role of "L" in this? Is this basically what we do about spies in our own country?*

HANSELL: In part, yes. I am wondering how to describe it. The FBI [Federal Bureau of Investigation], of course, was responsible for domestic intelligence gathering and counterintelligence. There often were issues relating to what kinds of approvals they needed for certain kinds of intelligence gathering. These are the sorts of issues that become very "sticky." Everybody involved wants to be sure that they're not running afoul of the law. That's understandable.

There were trade issues with the Soviets: the Jackson-Vanik amendment...

*Q: The Jackson-Vanik amendment was an amendment to a bill which was passed [by Congress]. It put restrictions on the Soviets unless they conformed to certain immigration practices.*

HANSELL: It denied them "most favored nation" trade treatment, that is, favorable customs treatment, unless they permitted unrestricted or virtually unrestricted emigration of Jewish

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“refuseniks” from the Soviet Union. Each year the President had to certify that the Soviets met the standards of the Jackson-Vanik legislation.

There were other, bilateral agreements of various kinds which were part of the Soviet-American relations process. Some of them were, of course, matters in which, for one reason or another, “L” was involved.

Further to Secretary Vance's priorities, I think that his first trip to China was in late 1977. In that period we began working on what was then called “the claims asset issue.” That was one of the impediments to normalization with the PRC [People's Republic of China]. There were many U. S. residents who had claims against the PRC for properties that had been expropriated. Then there were Chinese government assets in the U. S. that had been “frozen”, i.e., rendered non- withdrawable, by U.S. Government decree. The problem was how to offset the Chinese assets that were held in the U. S. against the claims of American residents. That problem finally was resolved as part of the process of normalization of relations with the PRC. However, it took a long time.

Those are the issues which come to mind as items in which I was involved with Secretary Vance. As you know, he also had a vast agenda which didn't particularly involve me, encompassing many bilateral and multilateral issues. I used to go up to the UN [in New York] when he went there each fall for the General Assembly session. This was just for a day or two to be sure that I was on hand for anything that came along on which he needed legal consultation. We also went to Mexico and Canada together. This was all part of the process of being involved in the Secretary of State's agenda.

Then, as time went on—and this continued into 1978—he began to spend more and more time on the Egyptian-Israeli peace negotiations. We went to the Middle East jointly several times with Roy Atherton [initially Assistant Secretary for Near Eastern Affairs and subsequently, the President's Special Mideast Representative]. Roy and I made a separate trip or two to the Middle East as well.

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The issues we have mentioned were the issues on which my contacts with Secretary Vance were the most frequent.

*Q: You mentioned espionage. "L" played a role on how to deal with this and the FBI. How about the CIA [Central Intelligence Agency]? This was a time when the CIA was not in the best odor. It had been going through one of its "house cleanings," I think, under Stansfield Turner, the Director. In the first place, was there the equivalent of a Legal Counsel in the CIA? Did you work with him or her, and how did this turn out? What was the State Department's role in this whole business?*

HANSELL: Well, the CIA has its own legal staff. However, there were government-wide issues related to intelligence that involved the legal offices of other agencies. There were also statutes, and several Executive Orders which the President issued, dealing with counterintelligence problems. Working committees of senior legal officials were set up to deal with intelligence and counterintelligence related matters. The Justice Department was almost always involved in such matters, as well as the Defense and State Departments, the CIA, and, of course, the White House.

We had a monthly luncheon meeting of the principal lawyers in Commerce, Treasury, Defense, Justice, State, and the White House, at which we discussed problems of common interest.. These discussions concerned a great many more topics than intelligence and counterintelligence issues, although there were plenty of those.

In respect to interagency activities, with the Defense Department, as you might guess, there were issues which came up periodically involving U. S. personnel overseas. Once in a while there was a war powers issue where the State and Defense Departments have special responsibilities, if U. S. forces are going to be exposed to combat or to potential combat. Particular duties are assigned to the Legal Adviser in the State Department and to the General Counsel of the Defense Department. So there were several areas in

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which there were occasions for dealing with the principal legal officers of other federal departments.

There was lots of interaction with the Justice Department. Indeed, the Justice Department has become progressively more interested in foreign and international relations issues. When I was Legal Adviser in the State Department, it may have had one or two lawyers concerned in these matters. However, I am told that the Justice Department today, some 15 years later, has an office with between 50 and 100 lawyers concerned with foreign and international relations issues. These deal with extradition and drug interdiction problems, terrorism issues, and a whole gamut of other matters.

*Q: Just as the Defense Department has its own ISA [Office of International Security Affairs].*

HANSELL: The Commerce and Treasury Departments have their own involvements in the international area as well. The jurisdiction which used to belong pretty exclusively to the Department of State now is dispensed among a lot of other departments. That of course is true with regard to a great many subjects in addition to legal issues. The foreign interests of the other departments and agencies concern a host of subjects.

*Q: I don't know whether there were any base negotiations going on during your tenure. I know that the State Department usually finds that its worst problem is not so much trying to get the Portuguese, the Spanish, or the Greeks, for example, to come up with a base agreement. The problem is that the Legal Office in the Department of Defense wants to drive as hard a bargain as it can. I've heard many complaints that Defense has no conception of what foreign relations involve. The legal office that deals with treaties in the Department of Defense is said to be very difficult to deal with. Did you get into that?*

HANSELL: Only infrequently. I am familiar with the issues you refer to. Often the various bureaus in the State Department would come to us with concerns of this kind. In connection with every base agreement, of course, there are questions of jurisdiction,

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status of forces, what happens when one of our soldiers attacks a native of the host country, or vice versa. There are commercial issues. So the answer to your question is, "Yes," there were plenty of these matters coming to my attention. Except in very unusual situations I didn't have occasion personally to get very deeply into those. I did in connection with Panama because, of course, in negotiating the Panama Canal treaties, we had to figure out what was going to happen to the U. S. installations in Panama. I was also concerned with some of the problems arising out of the Philippine status of forces arrangements, which were in the process of renegotiation. However, these matters were not a major part of my agenda, as compared to the other problems which we have talked about.

*Q: In many of these matters did you find, as the Legal Adviser to the Department of State, that your main opponents were American lawyers hired by the other governments to argue the case, or was this not the case?*

HANSELL: Not often. Occasionally, that would happen. However, foreign governments don't tend to rely very heavily on U. S. lawyers. They argue their own cases. I would have a steady stream of foreign diplomats—ambassadors, ministers, and consular officials of one kind or another—who were seeking assistance of various kinds. Sometimes a foreign diplomat wanted U.S. Government help in asserting the sovereign immunity of his government, because a U.S. claimant was challenging actions by his government. However, this didn't happen very often. Nevertheless, occasionally, yes, there were times when American lawyers sought me out.

*Q: You would have an American opponent?*

HANSELL: Yes, sometimes, but more often not so much an opponent as someone seeking the assistance of the Department of State in connection with a matter where it was thought that the U. S. Government could or should take some action, could or should be helpful, either restraining a foreign government from doing something or encouraging

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a foreign government to do something—provide a trade benefit or, provide help when Americans wound up in foreign jails, in the hands of the law in foreign jurisdictions. This didn't happen too often, but it tends to happen. There are also foreign property disputes and expropriation issues. In connection with the normalization of diplomatic relations with the PRC we not only had the issues related to establishing relations but we spent enormous amounts of time on the question of how to deal with the severance of diplomatic relations with Taiwan and what our future relations with Taiwan were to be. We had to establish a whole new system for commercial, cultural, and other relations with a “non-government,” namely, Taiwan.

*Q: How did one go about that?*

HANSELL: That was a large scale project. Several people spent the best part of a year on that problem. There was, first of all, the critical issue of what to do about the U.S. Mutual Defense Treaty with the then-recognized Chinese government in Taiwan. The question was whether we could just terminate it, tell the Taiwanese that we were no longer going to extend the benefits of the treaty to them, or alternatively, whether the U.S. should terminate it in accordance with its one-year notice of termination clause.

Finally, Secretary Vance and I agreed that we needed a distinguished Republican lawyer to help us on that problem, to provide “political cover.” We enlisted Herbert Brownell, former Republican Attorney General. We briefed him extensively on the problem, and he and we concurred that the way to sever the treaty was to give notice of termination so that the defense treaty would remain in effect for the one-year notice period. However, Senator Goldwater, an ardent supporter of the Taiwanese, and others argued strenuously that termination of the treaty required approval of the Senate. Indeed, they sued the President. They lost, of course, as we knew they would, but the case went all the way to the Supreme Court.



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A second important issue was how to assure that Taiwan, as a non-country, would continue to enjoy certain benefits and privileges, which as a political matter had to be preserved to it. After close to a year's worth of research we concluded that we could ask Congress to enact, which Congress did, something called the "Taiwan Relations Act." This would provide that all U.S. laws and regulations that pertained to relations with other governments or other countries—which covered a vast array of issues, including trade, immigration, banking, and commercial matters—would be extended to Taiwan even though we did not recognize Taiwan as a state entitled to diplomatic recognition. I previously mentioned Stefan Riesenfeld, the distinguished former law professor, who assisted me as Counselor for International Law. His principal assignment for several months was to consider ways by which these legal arrangements could validly be extended to Taiwan. I was fearful that it might be necessary to review every law and regulation and amend them, one by one. Following his analysis of Supreme Court decisions and other resources, he convinced me that it could be done otherwise, by a carefully designed straight-forward declaration of extension, with a few refinements. We drafted an Executive Order for the President, which he signed when we established diplomatic relations with the PRC and terminated diplomatic relations with Taiwan. Indeed, Congress picked up that language and inserted it into the Taiwan Relations Act. It has governed U. S. - Taiwan relations ever since.

That whole process of evolving a new diplomatic and legal regime with the PRC and a very different unique regime with Taiwan and balancing those relations presented a major set of concerns for us during that whole period I was in office. As you know, there were issues of arms sales to Taiwan and how to conduct unofficial relations with it. At my suggestion, we created—this was a carryover from my experience as a corporate lawyer in private practice—a corporation under the laws of the District of Columbia, called the American Institute on Taiwan [AIT]. That is the entity which has unofficially represented the U.S. in Taiwan ever since. It still functions in Taiwan, representing the U.S. Government in conducting its non-official relations. You probably know this, but what happens is that

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Foreign Service Officers are “detailed” to that organization and during their periods of service there are considered to have temporarily been severed from U.S. Government employment. They are not employed by the U. S. Government as such during the time that they [serve in Taiwan]. When that tour of duty is over, they come back and resume [their U. S. Government careers].

*Q: This is such a “hot” political issue. The Sino-American relationship has been so political for so long. As you were working, trying to figure out a way to do this, was there anybody that you could work with in Congress to make sure that you were all moving along the same line?*

HANSELL: Oh, yes. We worked closely with the EA [East Asian] Bureau, which was then headed by Dick Holbrooke as Assistant Secretary, and the NSC [National Security Council], in which Mike Oksenberg, who worked for National Security Adviser Zbigniew Brzezinski, was the China specialist, as well as with a number of other people, including the Congressional Relations Bureau [H], on these matters. There were continual soundings made on the Hill, [i.e., in Congress] and consultations with numerous interested Congressional leaders.

Now, mistakes were made in the Administration's dealings with Congress. Indeed, some in Congress felt that there had been some promises made that had not been adhered to. One of the well-known tensions between Secretary Vance and Brzezinski arose from the fact that Brzezinski did not feel bound by political commitments that the Carter Administration, had in fact....

*Q: Brzezinski was more “hard line” on this issue.*

HANSELL: That's right. He felt that we had to move ahead without further prior notification to Congress or to the Taiwanese. You may remember the story that we woke up the

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President of Taiwan at 2:00 or 3:00 AM to tell him that we were announcing the next morning...

*Q: That we were technically going to sever relations [with Taiwan].*

HANSELL: That all took place in the middle of December, 1978, with the whole arrangement to take effect on January 1, 1979.

*Q: Did you send a lawyer over there [to Taiwan] to explain how the whole thing was going to work, because there was this legal fiction that...*

HANSELL: We not only sent a lawyer. As soon as we announced [our plans], Deputy Secretary Christopher led a delegation [to Taiwan]. There were half a dozen of us in the delegation, including the Deputy Assistant Secretary for EA [Bureau of East Asian and Pacific Affairs], Roger Sullivan. I went along. There was a senior officer from the Department of Defense. The Taiwanese orchestrated what amounted to a very carefully calibrated near-riot. The mobs smashed the windows of the cars driving us in from the airport to the downtown area. They dented the fenders. There were troops around to see that it didn't get totally out of hand, but it was pretty "dicey." It was a two-hour ride, roughly. I have photographs of the damaged automobile in which Roger Sullivan and I were riding. Deputy Secretary Christopher was in another car, which was pretty badly beat up.

We had very tough sessions with the Taiwanese, as you can well imagine.

*Q: You were just explaining...*

HANSELL: We were explaining the U.S. Government position. We said that the decision had been made to recognize the government of the People's Republic of China as the sole government of China. However, it had been made very clear to the PRC authorities that the U. S. Government was going to continue to maintain unofficial commercial, cultural, and other relations with Taiwan. The Mutual Defense Treaty would be terminated in

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accordance with its terms, but arms sales would continue, as would the various other dimensions of the relationship. Trade would be conducted, immigration would thereafter take place, banking relations would be continued, as well as all of the aspects of an unofficial ongoing commercial and cultural bilateral relationship. Taiwan was welcome to form an unofficial entity corresponding to our American Institute on Taiwan. Of course, the Taiwanese were not happy with all this.

*Q: Were they ready for something like this? They knew that something was going to happen.*

HANSELL: Everybody knew that it was coming, from the time that President Nixon went to China in 1972. This development was getting closer and closer. The big question was always [the status of] Taiwan. Leonard Woodcock [then chief of the U. S. Liaison Office in Beijing] was conducting these negotiations for the Carter Administration. In effect, he was the U.S. Ambassador to China. Late in the year 1978, Secretary Vance and I were in the Middle East, trying to make further progress on the Egyptian-Israeli treaty. He received a cable stating that Deng Xiaoping had told Ambassador Woodcock that, even though the PRC and the U.S. disagreed on Taiwan, the PRC was ready to agree that diplomatic relations would be established as of January 1, [1979]. These arrangements were announced in mid-December, [1978].

While there had been plenty of talk about the likelihood of normalization of relations with the PRC, some commitments made to Congress that there would be ample prior notice to it. Unfortunately, these commitments were not fully honored. I believe that had Secretary Vance been in Washington, that would not have happened. It happened while Vance was away, and things got a little out of hand. Sure, people knew that [a change of recognition] was in the works and, sooner or later, was going to happen, but relations with Congress on the issue were damaged by the handling.

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Secretary Vance and I quickly wound up our business [in the Middle East]. We were in Israel at the time. We came right back to Washington to participate in the deliberations to implement the announcement.

*Q: What about the Cyprus issue? Did you get involved in this question?*

HANSELL: Really, not at all. We did have a negotiator. Secretary Vance was very interested in that issue.

*Q: He had been one of the “players” from the time of President Johnson. He had spent a lot of time on Cyprus.*

HANSELL: That's right. I've forgotten whom Secretary Vance designated as our negotiator. It was one of the things that he mentioned in that very first conversation we had, as I indicated. I followed the intelligence reports and the cables on the issue, but I did not get involved in it at all.

*Q: What about the Middle East process? What was the role of “L” in that? We're talking about the dramatic events of President Anwar Sadat of Egypt going to Israel, which led up to the Camp David meeting.*

HANSELL: Our involvement up until about the time of the Camp David agreement was primarily advising NEA [Bureau of Near Eastern Affairs] on a number of issues involved. The negotiations, of course, had gone on for a number of years, including the period immediately after the 1973 [Arab-Israeli War]. We were working primarily with NEA and occasionally with Secretary Vance on various issues. However, there was no extensive involvement.

Immediately after the Camp David meeting, Vance created a negotiating team of about half a dozen people, including himself; Roy Atherton, who was the delegation leader and chief U.S. spokesman when neither the President nor the Secretary was present; Mike

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Sterner, who was a Deputy Assistant Secretary in NEA; the Country Director for Israel in the State Department; and me. We were the negotiating team from then on. When the Israelis and Egyptians first came to the U. S. in October or November, [1978]—the Camp David meeting was in September, [1979]—for the first negotiating session on a peace treaty, my staff and I wrote a draft treaty that the President could present to the parties as a basis for negotiation. I sent it to Secretary Vance. He in turn sent it to the White House. President Carter made a few changes in it, and submitted the draft to the Israelis and Egyptians. From then until March, [1979], when the treaty was signed on the White House lawn, the parties had extensive negotiations, with the U.S. delegation fully involved. As to my role and L's role, I participated actively in the U.S. delegation's work, as my Egyptian and Israeli counterparts did in their delegations. Much of the writing of successive drafts fell to us, working closely with our colleagues of course. I and they also were deeply involved in dealing with various issues that arose in the negotiations which had important legal consequences. One, which received considerable public attention in both Egypt and Israel, particularly in the Israeli press, involved the provision, now Article 6 of the treaty, dealing with the mutual defense treaty which the Egyptians had with their Arab brethren. This Arab League Treaty required that, in the event of armed conflict involving any member of the League, all other League members were obliged to come to the support of that member. The Israelis were not about to sign a peace treaty with Egypt unless Egypt would agree that the Egyptians would not join in any war that took place between Israel and Syrian, Jordan, or other Arab countries.

This was a question of “priority of obligations,” as it came to be known. It was extremely difficult to get that question finally resolved, requiring considerable attention of Secretary Vance, Ambassador Atherton and me in the process. In the end, it was resolved by a finely nuanced provision which is not easy to understand.

There were numerous other issues of comparable complexity that had to be resolved. For example, the Israelis, as you know, had occupied the Sinai peninsula and had to agree to give it up, which necessitated a complex three-year program of phased military

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withdrawals and creation of a new international team of military observers that is still functioning. There was a question of oil supply arrangements to replace the oil that Israel had been drawing from wells it had developed in the Sinai. There were issues concerning freedom of navigation, commercial and diplomatic relationships, and so forth.

This discussion of the Egyptian-Israeli peace negotiations brings to mind an anecdote about Secretary Vance. At one stage toward the end of the peace treaty negotiations, we had both Egyptians and Israelis in Washington. The Egyptian Foreign Minister, Hassan Ali, and Israeli Foreign Minister, Moshe Dayan, Secretary Vance, and various members of their respective entourages were working in Vance's conference room, quite late at night. Finally, toward 1:00 or 2:00 AM, the negotiations concluded and all of the others departed, leaving Vance and me alone in the conference room, waiting for the product of the night's discussions to be typed so we could send it to the White House for the President to look at first thing in the morning.

The conference room was awash in debris of the day's meetings. There were crumpled pieces of paper, half-consumed Cokes and hamburgers, and other residue around a conference room that had been the site of strenuous negotiations for a long day and evening. Nobody had taken the time to go out to dinner. Vance, who as a practicing lawyer during a long and active career had experienced many such arduous day and night conferences, leaned back in his chair, surveyed the scene, and said to me, "You know, Herb, this is just like practicing law." Of course, I had encountered similar experiences in my career and knew what he meant.

*Q: I've never served in Israel, but I've heard that the Israelis are very tough. They're always trying to get a little extra "edge," whereas the Egyptians really don't get their act together very well. Did you find any of this?*

HANSELL: Well, clearly, the Israelis were more cohesive and better organized as a negotiating team. However, I would say that President Anwar Sadat [of Egypt] and

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Prime Minister Begin were both masters at identifying their fundamental objectives and manipulating their constituencies to achieve them. I think Sadat was superb. He played the Egyptian people like a piano. Of course, he had some comparative advantages. There wasn't an army of reporters following him. His every move was not reported in the press in Israel, which is a vigorous democracy and in which every newspaper knows virtually everything that is going on, as is the case in Washington.

The Egyptians were just as good and as tough negotiators [as the Israelis], but I think that Sadat had considerably more room to maneuver and more flexibility. In the end, he basically gave President Carter just as much as Carter needed to strike a deal. You may remember that Carter made a last, final trip to Israel to try to close the gap between the parties. There was a very dramatic moment, when it looked as if the whole negotiation had fallen apart. At the end of the next to the last day we were there, the planes were at the airport, ready to go home. There was one final round of discussions set for the next morning. We worked all night on various issues. Finally, we and the Israelis arrived at a compromise of proposals on the remaining outstanding issues, which President Carter undertook to present to President Sadat. Carter met with Sadat at the airport in Cairo. It was clear that this was it—or nothing. It was quite a tense occasion: after several hours' discussion, Sadat agreed to the proposal, over objections of some of his advisers. I think that Sadat had a greater degree of flexibility and had more authority to compromise than Begin did. The Israelis may have been better coordinated, but I think that Sadat was the master negotiator. He was incredible.

*Q: You were a member of the team going out to the Middle East. How did President Carter operate in that context? He is still doing international mediation. He's not a lawyer.*

HANSELL: On the whole, I think that he operated extremely well. He has a sense, I think, of how to negotiate. I think that negotiators are born, not made, to a very large extent. There are all kinds of negotiators. Some people succeed by “blustering.” Some people succeed by understanding what the other side needs and by trying to bring the two



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sides together. As you know, there are numerous books written about how to negotiate. President Carter seems to have the knack. I thought that during the times that I saw him, by and large, he did very well. There were a couple of times when he did what I wished he hadn't done or he didn't do what I wished he had done. But he got it done, and that's what counts. There were a couple of times when he and I disagreed. However, on the whole, I think that he did superbly well and handled himself extremely well, with both Israeli and Egyptian leaders and both negotiating teams. He seemed to know when to “push” and when to back off.

*Q: Could you isolate yourself while you were participating in these negotiations from the pressures of Israel's supporters in Congress? I would think that this could...*

HANSELL: Well, let me respond in broader context of executive-legislative relations. The White House has very sophisticated machinery—every White House does—for dealing with various interest groups. Sure, the Jewish community and other supporters of Israel were always very interested in these negotiations, as were Arab-Americans and numerous others. By and large, it was possible to work reasonably well with Israel's supporters in Congress, just as, for example, in the case of the trade negotiations of more recent times, when Mickey Kantor [The President's Special Trade Representative] has been dealing with the Chinese or conducting negotiations with the Mexicans, it has been possible to work with groups having substantial interests in those transactions. There are mechanisms for keeping the interest groups informed and up to speed. Sometimes, there were head to head confrontations, however, I don't think that that was a matter of major concern.

Dealing with Congress is a high skill. Sometimes the White House did this well, and sometimes it did not handle it so well. As I said, in connection with the normalization of diplomatic relations with the PRC, we made some mistakes. I think that, on the whole, in connection with the Middle East peace treaty and all the attendant arrangements, it was a very high class operation. The Panama Canal treaty was ratified by the Senate by a

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margin of one vote more than was required, but that was enough. My guess is that if we had needed another vote or two, they would have been there.

*Q: When one looks at the Carter administration, as a Foreign Service Officer, some of the things that happened: the Panama Canal treaty, the recognition of the People's Republic of China, and the Camp David accords, are really all legal problems. More than those faced by any other administration that I can think of. These three, very difficult questions which you were dealing with were handled in a rather short time.*

HANSELL: That's true. There were other matters that fell into the same pattern as well. The SALT II [Second Strategic Arms Limitation Treaty] agreement comes to mind. Awareness that these are legal problems involves recognition of a much broader view of what constitutes a "legal problem" than many people take. In all these situations, we were dealing with "behavior norms," rules by which we live, and also with reflection of understandings in documents. These are all part of the legal process. Obviously, they are also part of the diplomatic process. Diplomats and lawyers do much the same thing. Written and spoken words are the basic tools of the diplomat and of the lawyer. Understandings and agreed modes of behavior are part of the diplomatic process as they are of the legal process. So, yes, I don't disagree with what you are saying.

*Q: What about SALT II? What was the main problem with SALT II? What were the main issues involved, from your point of view?*

HANSELL: Until very close to the end of the process my concerns with SALT II were with a series of rather isolated, legal issues involving the compatibility of the agreement with U. S. laws, also issues of inspection, and third, how to reflect in language various understandings arrived at in the negotiations regarding weapons capabilities and so forth.

The SALT II agreements included a very complex set of documents. There were the treaty, companion agreements, understandings, and agreed minutes. All of these things, as you know from your own experience, are composites of a lot of paper work. We wound up

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with a very elaborate and complex process. The final negotiations and the SALT II treaty signature took place in Vienna. However, there was concurrent work going on in Geneva, Washington, and Moscow. We had to station people in all of those places. I had members of my staff in all these various places—all in touch with one another by telephone.

Then, of course, we had typewriters with Russian and English keyboards in Vienna to put together the final document. In fact, we more or less became experts in that. When we did the Egyptian-Israeli treaty, we had typewriters with Hebrew, Arabic, and English keyboards. As you know, Hebrew and Arabic both go from right to left. It was quite a sight to see those typists in operation—one typewriter going from left to right and two typewriters going the other way.

The process of putting together the language of all of these understandings in the last two or three weeks and the final documents [involved in the SALT II treaty] really required a massive effort of organization and a lot of rather important paper shuffling. The negotiations had been going on for a long, long time and there were complex definitions [for example, “throw weight” and “Backfire” bomber and whether it was a strategic bomber or not] and all of these conceptual issues which had to be reduced to language. There was, of course, a very complicated, interagency process because ACDA [Arms Control and Disarmament Agency], the Defense Department, and the White House were all very much involved, in addition to State.

*Q: Did you find that, at least on the legal side, the State Department was playing almost a “mediating” role between the White House, ACDA, and the Department of Defense?*

HANSELL: I think that State and ACDA were in close accord. ACDA basically was an offshoot of State. Paul Warnke [Director of ACDA at the time] and Secretary Vance had very good rapport. The Defense Department, of course, has its own perspective on arms control issues and occasionally had to be “brought along.” The White House was very actively involved. Of course, National Security Adviser Brzezinski played a quite active

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role. So it wasn't so much a mediation role, I frankly think, as it was a process of trying to "bring into camp" all of the various points of view that had to be reconciled.

*Q: Going back to the lesser or domestic problem, you were in "L" when there was increasing unrest and litigation, particularly by women and minorities employed by the State Department. By this I mean women and African-American personnel, in particular, for an alleged lack of attention to their problems. What was the role of "L" in this connection during the time that you were Legal Adviser?*

HANSELL: A couple of our lawyers were very active in dealing with policies and cases relating to equality of opportunity. I kept myself rather well briefed, but the cases were being handled by the Justice Department. The Justice Department actually represents the State Department and the whole federal government in litigation of this kind. I worked a lot with Ben Read primarily, helping him to think through these matters. He was the Under secretary for Management of the State Department at that time. However, my job was to keep in close touch with the litigation and with what we were doing. I needed to be sure that I was satisfied with the quality of the representation that we were getting from the Justice Department. I consulted with Ben and others but I did not myself play an active role in the litigation.

Secretary Vance was very firm that the Department needed to look very hard at itself and its recruitment policies and make intensive efforts to reach out to all segments of the community so that there was equality of opportunity. He felt very keenly about that. We all participated in the recruiting arena, helping to attract as many applicants [for the Foreign Service exam] as possible. Those were the days when the Department was able to attract large numbers of applicants [for the exam]. Now, I understand, that due to budget constraints, there isn't even going to be an entering class [of Foreign Service Officers] in 1995, which is sad.

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Of course, there were other issues which we haven't touched on, simply because our allotted time has run out. .

*Q: Should we have another session?*

HANSELL: I'm game if you are.

*Q: Let's stop at this point. Could you mention a couple of things that we should touch on? At the very end I would like you to talk about the role of "L" during the Reagan administration. It seemed to be somewhat different and more political. What would be some of the subjects which you would like to cover? We can list them at the end of this session.*

HANSELL: Well, I think that it would be interesting, partly because I don't know how many Legal Advisers you have talked to.

*Q: I haven't spoken to any others. You are the only one so far.*

HANSELL: I'd like to include in the record some views on the role of "L" and how it fits within the Department and interacts with the whole range of Department activities, as well as the service which I think it can perform, and I'd also like to discuss some of the issues in the economic arena, as well as immigration, narcotics control, and environmental issues.

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*Q: Today is June 13, 1995. This is a continuation of an interview with Herbert Hansell, former Legal Adviser to the Department of State. Herb, we went through a litany of things we wanted to cover in this session. So shall we just turn it over to you and perhaps put in a question or two? I'll basically leave it to you to lead the way. You've written down the list which we discussed previously?*

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HANSELL: I did. The first issue which, I think, we touched on in those concluding remarks, and we briefly adverted to during the first session of this interview, is the role of “L” within the Department. Since I had not served in the Department of State previously, I was unprepared for the discovery that there is a kind of tension, sometimes bordering on suspicion, sometimes just annoyance, between the lawyers and the policy makers—the Foreign Service Officers in particular. You're familiar with this phenomenon from your own career experience. Some of that [tension or suspicion] derives, inevitably, from the role that the lawyers are called upon to perform, from time to time.

*Q: You said that you can't do that...*

HANSELL: Namely, to blow the whistle, partially or entirely inhibiting a proposed action or course of conduct. I guess that the Executive Officers and some of the other administrators have similar problems. I think that there probably has been a tendency over the years for the lawyers—or at least some of them—to acquire the image of “nay sayers.” I like to tell young lawyers that there are two kinds of lawyers: problem creators and problem solvers. The highest and best use of legal counselors is to identify the parameters of potential legal problems and then find ways to help the “clients”—in this case the line and staff departments and bureaus—to achieve their objectives by working within the system.

But there is that tradition, that tension. I spent a fair amount of time trying to deal with that. Partly, it's a matter of understanding and making sure that there is good rapport between the lawyers and operating bureaus. Part of the time it's just a matter of trying to deal with an image or impression which, as often as not, is incorrect but which, nevertheless, exists.

I made it a point, early on in my time in “L,” to get as well acquainted as I could with the Under Secretaries and the Assistant Secretaries, for example, to gain their confidence that L's objective would be to work with them to help them achieve their objectives. Q: Who were the Under Secretaries that you dealt with?

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HANSELL: Phil Habib was in "P" [Under secretary for Political Affairs] during the entire time that I was in "L," I guess; Richard Cooper was the Under secretary for Economic Affairs at the time; and Lucy Wilson Benson was the Under secretary of what I think was then called Science, Technology, and Arms Control, or something like that. She had oversight responsibilities over OES [Bureau for Oceans, Environment and Science] and, I think, Political-Military Affairs. I'm not entirely sure about the latter. And the Under Secretary for Management, who was Ben Read. They were the four Under Secretaries at that time, and I worked from time to time with each of them. By now there are probably one or two more, as inevitably happens, given bureaucratic proliferation. Then, of course, there were 25 Assistant Secretaries of State, give or take a few.

Obviously, there was more of a problem with some bureaus than with others. Less of a problem, I would say, with Assistant Secretaries than with those down the line. It depended, to a great extent, on the attitude of the Assistant Secretary. There was a number with whom it was a joy to work. I felt very comfortable in the relationship, once we had gotten to know one another. There were others who were less easy to work with.

*Q: Looking at the matter either geographically or functionally, were there any problem areas within the system, either because of your time or because of personalities or something like that? Did there always seem to be legal problems or was it particularly difficult to work with any particular bureau?*

HANSELL: The legal problems probably fell into several categories. Those where there was a structure of laws and regulations which the Department has to live within, on the financial, personnel, and/or administrative sides. Issues in these settings tended to be resolved relatively smoothly. Obviously, there were points of disagreement at times. However, I must say that the more comprehensive, regulatory arenas seemed to be less productive of concerns than the substantive and regional bureaus, where there wasn't as much of a regulatory or other applicable legal structure to deal with as there were contractual or treaty type issues or perhaps international law problems or policy issues

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with statutory, regulatory or other legal overtones. . In a good many instances there were issues of substance which had either legal components or drafting or language type problems. I had a rather steady parade of members of my staff, particularly younger lawyers, who would complain from time to time that they weren't being taken seriously by, or into the confidence of, the policy makers. Some of the lawyers who were assigned to certain bureaus were included in bureau staff meetings and had very good working relationships with their assigned bureaus. Where that was not as prevalent as I felt desirable, I tried to work with the bureau to improve the relationship.

*Q: I think that in the Bureau of Consular Affairs, which is my background, because so many things are legal in character, anyway...*

HANSELL: Oh, yes.

*Q: The lawyer is part of the process right from the beginning, because we were consular officers administering the law. I think that everybody was attuned to considerations like that.*

HANSELL: The Assistant Secretary for Consular Affairs, Barbara Watson, was a lovely person to work with. I had no trouble at all with her. There were occasionally suggestions of an interest on the part of some in consular affairs, from time to time, to hire their own lawyers. That didn't occur and didn't seem to make much sense. There were infrequent similar temptations in some other bureaus as well, which were resisted.

I remember that a profound education in how “L” should properly to me interact with other bureaus—and this happened early on in my experience—came to me at the hands of a master teacher, Hal Saunders, the Assistant Secretary for Intelligence and Research. Two or three weeks after I came on board in the Department, Hal had a concern about some issue that had arisen which I had dealt with—I can't now recall what the issue was. Of course, INR is a unique bureau because of the sensitive materials with which they work. When he saw how “green” and inexperienced I was in intelligence matters, he



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arranged very quickly for a full briefing for me. He brought in both of his deputies and most of his office chiefs. He had quite a group there. I learned how much I didn't know about the intelligence process. That was a very quick and valuable education. Hal was a great teacher and a wonderful person to work with.

I don't recall any major problems in carrying out our role. I do recall a couple of situations where "L" lawyers, not necessarily me, had worked for a long period of time on a particular matter. When it came down to the "crunch," to some final decision or ultimate resolution, the lawyers would sometimes be excluded, and that would cause some tension and upset. However, in a place that runs the way the State Department does...

*Q: Did you find that sometimes the lawyers were called in after the situation had gotten too bad? This is, of course, true in life. You always get in touch with the lawyer after it's too late, or you're already...*

HANSELL: That's right, and that's why you really have to build the relationship of trust, reliance, and confidence early on. After a period of time that was possible. It takes time to do that. There are traditions and prior practices in the Department that you are building on. These include the experiences of a lot of people, including people who, for one reason or another, have had unhappy experiences with "L" or with lawyers in "L." So you have to overcome that resistance. Yes, you're clearly right. That situation happens from time to time.

I remember that Secretary Vance and Deputy Secretary Christopher would call me, expressing immense frustration that x or y had occurred and asking whether "L" had known anything about it. My answer nearly always had to be "No." Q: As they are both top flight lawyers...

HANSELL: There were times when one or the other of them would say to one of the Under Secretaries or Assistant secretaries, "Run this by 'L'" when the Under Secretary or Assistant Secretary involved would not otherwise have done so. This instruction wasn't

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always greeted with enthusiasm, but that's what the top man is for, basically. Although you said that both Vance and Christopher were outstanding lawyers, neither of them tried to perform the role of "L." They knew when they wanted my input. I had known both of them—I think that that is probably stated earlier on the tape. I had known both of them and I think that they probably had a pretty high degree of confidence in my judgment.

*Q: Herb, every administration has its own personality. Often you get fairly young, quite inexperienced "hard chargers" [in the White House] who want to put their imprint onto foreign policy. They say [to someone in an executive department], "This is the White House calling." The White House as a building "talks" more than any other. Sometimes these people try to "throw their weight around." Sometimes the ideas are half baked. This is not characteristic only of the Carter administration. Every administration has this. Did you find yourself acting as a buffer? It's always handy to say, "You can't do that because it's illegal," or something like that, in contact with the White House. How were your relations there?*

HANSELL: The relations on the whole were pretty good, as far as I was concerned. As you know, tensions developed between Zbigniew Brzezinski, the National Security Adviser, and the Secretary of State, and ultimately, Secretary Vance resigned following the "Desert One" incident and the attempted rescue of the Iranian hostages. On the whole, my working relations with the people in the White House were good. The White House Counsel with whom I worked during most of the time that I was in "L" was Bob Lipshutz, a close friend of the President's. He and I had a very good working relationship. We had an informal working group, consisting of the chief legal officers of the White House and of the Justice, Treasury, Commerce, Defense, and State Departments. We met regularly for lunch to talk about common interests and problems. I think that we all had a good relationship at that level.

I didn't have a lot of problems with the White House, except when there were tensions at the top that somehow impacted on me.

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*Q: Can you think of any examples of this tension between the Secretary of State and the NSC?*

HANSELL: An example relating to the SALT II negotiations was an unpleasant “run in” I had by telephone with David Aaron, who was Brzezinski's deputy. On this particular occasion he was issuing in Brzezinski's name instructions that he wanted me to transmit immediately to Secretary Vance. At that time Vance was speaking to the OAS [Organization of American States]. He wasn't available to be ordered around by David Aaron or, for that matter, by anybody else and I told David so. We crossed swords over that. As the administration continued in office and got closer to its conclusion, tensions began to rise. People began to see the President's political problems beginning to grow and to influence what needed to be done. The White House tended to feel that the bureaucracy wasn't sufficiently responsive to the President's political concerns.

As you know, President Carter did have some genuine political problems as his first term—it turned out to be his only term—went on. The tension level gradually rose as people worked together and began to show the pressure. You could see that it began to have an impact on them as human beings. They got worn down. I think we can see this phenomenon today in the Clinton administration. They're beginning to wear down. You begin to see a little sniping between State and NSC, as there was a couple of weeks ago over the Bosnian “turn around.”

Back to your original question, on the whole I would say that, with a few exceptions, the working relationship that I had with the people in the White House was quite cordial and, I thought, effective and productive.

*Q: As I go down the list [you gave me at the end of our first session], I see that you referred to economic issues. What did that involve?*

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HANSELL: We worked quite closely with the Economic Bureau on a variety of trade issues and some of the economic issues that EB [Economic Bureau] was involved in. Dick Cooper, who was Under Secretary for Economic Affairs, had a very good relationship with my principal deputy, Lee Marks. He tended to involve Lee extensively on issues that Dick was working on, ranging from monetary affairs to law enforcement activities, because he respected Lee's judgment. There was close involvement between EB and "L," as you might guess, on the Law of the Sea negotiations and on environmental issues.

One of the principal economic projects I worked on was an Executive Order which the President issued at the instance of the EPA.

*Q: Environmental Protection Agency.*

HANSELL: The President had, within the White House, an organization called the CEQ, the Council on Environmental Quality. EPA and CEQ proposed that the President issue an Executive Order that would require environmental impact statements for federal actions that would have an impact outside the United States.

This proposed Executive Order produced a huge tussle within the bureaucracy. The State Department was very concerned about the broad sweep of the EIS requirement proposed by the environmental agencies. There were, perhaps, three or four months of contentious negotiations between the CEQ, the EPA, and a couple of other White House advisers, on the one hand, and the State Department, supported by the Export-Import Bank and several other executive departments, on the other. The argument was over the terms of that proposed Executive Order. I ultimately became the Department's principal negotiator. The negotiations eventually produced an Executive Order that was not nearly as objectionable to the State Department...

*Q: I can see that this was something that could stop foreign relations "dead in the water."*

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HANSELL: Well, that's right. For example, if a negotiated bilateral or multilateral understanding regarding disarmament or fisheries or trade has a potential environmental impact outside the United States, under the Executive Order as proposed, the U.S. could not conclude the negotiation and enter into the contemplated international understanding without preparation of a statement assessing those potential non-U.S. environmental impacts. The Department felt strongly that the original proposal would have a substantial adverse impact on the conduct of U.S. foreign relations. The Department was not enthusiastic about Executive Order finally issued, which was a good deal more moderate than the original proposal, but could live with it. As far as I know, that Executive Order is still on the books and being adhered to.

The Department also had an active narcotics interdiction role and a range of immigration concerns.

*Q: Let's talk about each of these, separately. On narcotics, did you find that you had to play the role of telling the law enforcement agencies—particularly the Department of Justice, the Drug Enforcement Agency [DEA], and so forth—that there are international laws. The law and police people want to get out and do something. This is fair enough. The narcotics traffic is a major problem and cuts across all sorts of boundaries. At the same time we have to keep in mind that there is such a thing as national laws in some other country and international law. Was that a problem for you?*

HANSELL: It was an ongoing process. Most of these were inter-agency concerns in which we would get involved. The Assistant Secretary of State for Narcotics Affairs, Mathea Falco, had responsibility for the State Department's interest in narcotics issues. She worked closely, of course, with the law enforcement agencies. The Department of State undertook some initiatives in trying to reach international understandings with other governments on the flow of narcotics, interdiction, growing marijuana, and other narcotics control concerns. Several of the lawyers in “L” worked closely with Ms. Falco and joined

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in these inter-agency groups. The short answer to your question is, “Yes, there were often occasions when the “L” lawyers would work closely with the law enforcement agencies.

The Justice Department provides an indication of how the international legal network and structure have expanded. When I was in office in “L” from 1977 to 1979, the Justice Department had, I think, two lawyers concerned with international legal matters, other than extraditions. I think that they had a little group called the Office of International Legal Affairs, or something like that. So in “L” we handled many international legal issues, even of a law enforcement nature—or at the very least we played a major role in helping to resolve them.

I understand that that office in the Justice Department has now grown to over 100 lawyers. It is larger than “L.” The U.S. law enforcement machinery has acquired a major international dimension. The FBI now has offices in foreign countries. Virtually none of that existed when I was in office. We had a larger role in those days than “L” perhaps does today, though I understand that the Department of State still works closely with the Department of Justice on a wide range of law enforcement issues. The Department also had a role in requests received from other governments to extradite persons in the U.S. accused by the requesting governments of violations of their laws. The Deputy Secretary was required to approve acquiescence in such requests, and “L” had a major role in advising the Deputy Secretary concerning each of them.

Similarly, the Justice Department frequently, and other law enforcement agencies occasionally, sought and received our assistance in efforts to obtain extradition to the U.S. of individuals abroad sought for prosecution in U.S. courts, and also in efforts to obtain testimony and evidence abroad.

*Q: I'm not sure whether this is the right place to raise this issue. However, on this matter I have the impression—and this is purely an impression—that when the Reagan administration came into office—you were obviously no longer in office, at that point—*

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*took a much more “blithe” attitude toward international restrictions or inhibitors than the Carter administration had done. They were much more willing to say, “Well, we want to get something done. Oh, there are laws, but we’ll get around them.” Did you feel that under the Carter administration—and, really, previous administrations—the ethos really involved understanding what international constraints were? The Reagan administration seemed to take a completely different course. Is that a mistaken impression that I have?*

HANSELL: You seem clearly to have such an impression, and so do others. I think it derives from three or four situations. Nicaragua was one.

*Q: The mining of the harbor [of Corinto on the Pacific coast of the country]. We just went ahead and said, “Oh, to hell with it.”*

HANSELL: There were claims that Congressional restrictions were not respected. The Iran-Contra affair was a second such situation. A third was the controversy over the ABM treaty.

*Q: The ABM treaty was the Anti-Ballistic Missile treaty.*

HANSELL: So in connection with those very high profile activities an impression was generated that at certain levels within the Department and the White House there was less than sufficient regard for our international commitments and for Congressional directives. The problem in connection with Nicaragua was that some officials appeared to be flouting statutes that proscribed spending funds on items that they were in fact spending funds on. I think that it was some of these high profile activities which created that impression.

In the area of human rights the Reagan administration took a different tack than did the Carter administration. To some degree there was an issue of adherence to treaty commitments in the international covenant on human rights. The chief difference was one of policy as to how aggressive the U.S. government would be in pressing human rights concerns with other states.

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*Q: The Department's Legal Adviser during the Reagan years seemed to be on the front pages of the press a lot more than you were. Was it Sofaer...*

HANSELL: Yes, Abe Sofaer. There were some controversial positions taken in relation to the ABM matter, which I think is where much of that occurred. There is no question that Abe was put on the spot and took a pretty controversial position. He was called to task for it in Congress.

*Q: He seemed to be playing the traditional role of a lawyer defending a rather dubious client.*

HANSELL: The view taken on the ABM issue was controversial..

*Q: Could you explain what the ABM issue was?*

HANSELL: It was a matter of interpretation of the ABM treaty in regard to the ability of the U.S. to deploy so-called "Star Wars" anti-missile interception technology. The Reagan administration, as you know, pushed this matter quite aggressively. The question was how the ABM treaty should be interpreted in relation to the ability of the U. S. to pursue the "Star Wars" effort. There was strong disagreement as to what the ABM treaty permitted and what it proscribed. There were so-called "narrow" and "broader" constructions, which involved, in part, what was said to the Senate when it was considering the treaty for ratification. There were also issues as to what the negotiating record indicated had been said by the parties [to the treaty]. An interpretation was adopted by the Reagan administration that certain aspects of the "Star Wars" effort were permissible, contrary to what had previously been the prevailing opinion.

*Q: Did you find yourself in the position of being the lawyer for a dubious client or on a dubious issue or which you felt uncomfortable with?*



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HANSELL: I can't say that I ever confronted a situation in which I was called upon to take a position which I felt uncomfortable with or could not in good conscience support. . There were a couple of situations, particularly in testimony before Congress, where I had to structure a legal defense for positions which had been taken in testimony by the Secretary, the Deputy Secretary, or occasionally the Assistant Secretaries. There were some such issues in connection with the Panama Canal treaty and some Middle East questions. I was the author of a controversial legal opinion about the legality under international law of settlements established by Israel in territories it had occupied following the 1967 war, where the Secretary and Hal Saunders or Roy Atherton, as the Assistant Secretary for Near Eastern Affairs, had taken policy positions on that issue.

*Q: We were very much involved with the Israeli Government in connection with the Camp David talks. There was a Right Wing, Likud Party leader, Prime Minister Menachem Begin, who was a very tough person. The Israeli position was very tough. It's been true over the decades that we've been dealing with this problem that the Israelis did not so much flout the law but would stretch it any way they wanted, for domestic political reasons. Did you find yourself getting in and trying to interpret the law because of the [positions taken by the] Israelis? There would seem to be some tension in this situation.*

HANSELL: With all due respect, I must disagree with your characterizations and statements. I had a lot of involvement with the Middle East negotiations. I spent a lot of time and worked very hard on a number of Middle East issues and ultimately on the Egyptian-Israeli treaty. Therefore, I worked extensively with the Israelis as well as the Egyptians. I found the Israelis to be very tough negotiators. They were very good. I regard myself as a well-trained and experienced negotiator and have done a lot of negotiating. I found the Israelis, like the Egyptians, to be very tough, very "hard nosed," very aggressive. Contrary to your comment, I think that the Israelis are scrupulous in adhering to their agreements. They like to have them spelled out in meticulous detail, like the Chinese, with whom I have also spent a lot of time, and, to some degree now, the

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Japanese. The Israelis like to have the issues pinned down. They don't like to leave much to chance, partly because of their history and the unfortunate experience they have had with understandings that weren't committed to writing, and partly because, where national interests are involved, they seek to surround themselves with multiple layers of protection and insurance. They're very insecure people, as you know, and have been surrounded by hostile forces for a long time.

I remember one of their principal negotiators, a man for whom I have the greatest respect. He's now on the Israeli Supreme Court. He said that you can't really ever understand the Israeli mentality until you appreciate that there's no place you can go from that country, overland, into a neighboring country. He said this prior to the consummation of Egyptian-Israeli treaty. From the U. S., you can go to Canada or Mexico. The French can go to Germany or Spain. Once you put yourself in that mentality, where you can't go anywhere, because there's nobody who will let you out of your country, he said, then you begin to understand.

In any event, the Israelis are very tough negotiators. However, as I say, they were scrupulous as a government and I found all of their people with whom I dealt to be tough and hard but very honorable. I dealt, perhaps, half a dozen times across the table with Prime Minister Begin, sitting with Secretary Vance. Usually the Prime Minister had with him the Israeli Foreign Minister, Moshe Dayan, and the Defense Minister, now the President of Israel, Ezer Weizman, and other Israeli government officials. Some of them were easier to deal with and more congenial than others. I came to feel that when their word was once given, it was good. The people that I dealt with at all levels always seemed to me to be honorable, although very astute and hard-working negotiators.

Occasionally, the Israelis were quite assertive, although not by any means the only ones. In connection with the Egyptian-Israeli treaty, we had to resolve an issue of oil supply. The Israelis were giving up the Sinai Desert. They wanted assurances that they would be able to acquire oil on the international market to replace the supplies of oil which they had

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been drawing from the Sinai, which they would no longer have access to once the Sinai was given back. Although the Egyptians had agreed to supply oil to Israel on commercial terms, if the Egyptians broke that commitment, the Israelis wanted an understanding that the U.S. would be a source of last resort and would help the Israelis find oil supplies on the international market or, if necessary, buy the oil on the international market and resell it to the Israelis. The then Israeli oil minister pursued that arrangement, which was his responsibility. He pursued it vigorously. Finally we hammered out a deal that everybody could live with, although not before I had to go the Israeli Ambassador, because I was responsible for those negotiations, to get him to help moderate the negotiations.

However, I didn't have a concern whatever, anywhere that I encountered, that once an issue was negotiated and the terms were clear, they would not be adhered to.

*Q: I still have the impression from having interviewed people who served in the buffer forces in the Sinai that there were [Israeli] overflights when there shouldn't have been overflights. The Israeli military were always "probing" to gain little advantages and all of that. The Egyptians were a little lackadaisical.*

HANSELL: I have no knowledge on that subject.

*Q: This was at a different level. It caused tensions.*

HANSELL: The extraordinary thing to me, in the process of negotiating the Egyptian-Israeli treaty, was the way in which Prime Minister Begin, on the one hand, and President Sadat of Egypt, on the other, handled their respective ends of the negotiation. Each of them, of course, was a master at manipulating his people. Sadat, in particular, "played" the Egyptian people like a piano. He was just so good. But he was only interested in the big issues, the big picture. Begin, on the other hand, was a thorough and careful negotiator. The specific details interested him very much. He was the master of the whole picture. He, of course, came from an intensely democratic environment, as you know. Sadat, on the other hand, was in a situation where, within limits, his word was law. But they were both

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very astute leaders of their respective bodies politic. It was really great theater to watch them operate. They seemed to develop a trust in one another, within limits; they also were wary of each other. President Carter had a sharp understanding of each of them and their interaction with each other. I went on the trip to the Middle East with President Carter that finally put together the pieces which made the Egyptian-Israeli peace treaty possible. It was a very dramatic three or four days, first in Cairo, then in Jerusalem, and then back to Cairo.

*Q: President Carter does not come out of a legal background. He was a politician, of course, but he wasn't a politician, born and bred. He'd been a Navy officer and so forth. How did you see him in this intensely political and legal environment? What, would you say, were his strengths and weaknesses?*

HANSELL: He was a very good mediator. He has an understanding of how to bring parties toward the center, and a capacity to understand the role and viewpoint of each party, and then to try to find common ground. He made mistakes, too, or at least what seemed to me to be mistakes. I would have handled some matters differently, but on the other hand he seemed to know his people and how to bring them together. It took a long time. He started in 1977 and didn't get it done until September, 1979, but he did get it done. I thought that he played that role very well.

In recent years, we have seen how he has built on the foundation he created as President. He has a fascination with the negotiating process. He has an ability to get people to feel that he understands their point of view. I think that that's how he has been able to deal with the North Koreans and the Haitians. There are those who feel that he's gone too far and is too willing to "bend." However, that's his style. He tries, even in Bosnia, to bring the parties together, and he has had a considerable degree of success. It seems that it's partly due to his stature as an ex-President, but it's also partly because of his ability to bring people along. He's really very good at that. I was quite impressed, as I say, notwithstanding a few times when I would have handled things differently than he did.

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*Q: Turning to a different issue which you mentioned here, immigration. Did that become a major issue?*

HANSELL: It was not really a major issue in the Carter years, at least as far as my involvement was concerned. There were the Soviet “refuseniks.” In the Mexican immigration we had a series of encounters with the Mexicans. Of course, Mexican immigration has been a chronic problem. Efforts were under way in both Congress and the executive branch to try to deal with it, with only indifferent results. Those are the two arenas that I recall—Mexican immigration and the Russian Jews—that were of particular concern while I was in office in which I was somewhat involved. Of course, there were other immigration issues, I am sure, that were being dealt with at a staff level.

*Q: Regarding the Soviet “refuseniks,” could you explain who they were and what the issue was?*

HANSELL: The issue was primarily permission for Russian Jews to emigrate from the Soviet Union, primarily to Israel. The Soviets, for reasons of their own, were very restrictive in permitting Russian Jews to leave, even though they were living under onerous circumstances. Under the Communist regime they were subject to various kinds of overt and not so overt discrimination. This was an issue that the Secretary took up with the Russians and others. It was one of the human rights issues that throughout the Carter years was on the agenda—and continued on during the Reagan period.

There was also a group which took refuge in the American Embassy in Moscow.

*Q: The Pentecostals.*

HANSELL: That's right. Ultimately, they were permitted to leave, but it was a painful period for a while.

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*Q: Did you find yourself meeting with a Soviet counterpart to try to come up with a solution?*

HANSELL: I met with Soviet representatives only occasionally. I did not have contact with Soviet counterparts on that issue at all. The only occasion when I had much contact with the Soviets had to do with the negotiations on the SALT treaty.

*Q: When the Carter administration came into office, obviously one of its major concerns in foreign affairs was the human rights issue. Did you have the feeling that you were “present at the creation” of essentially a new body of international law?*

HANSELL: It wasn't so much a new body of international law as it was giving the human rights issue a much higher profile, and undertaking a much more aggressive assertion of human rights issues. This was a matter of high interest to Secretary Vance and Deputy Secretary Christopher. They brought on board as Assistant Secretary for Human Rights Patricia Derian, then and now married to Hodding Carter, who was the Assistant Secretary for Public Affairs and spokesman for the Department. It was much more a matter of high visibility on the agenda than of creating a new body of law. Along with several people in Congress, we did push the genocide treaty aggressively. Former Senator Proxmire [Democrat, Wisconsin] ardently pursued the ratification of that treaty. I think, if memory serves me correctly, that Proxmire put something in the Congressional Record every day, making sure that the subject was mentioned. I think that this went on for something like 1,000 days.

There were other treaties and issues which we pursued in negotiations. The most prominent and, I think, significant aspect of the Carter human rights policy was that it was moved to the top of the agenda. Through Patricia Derian, the policy gained a lot of visibility.

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*Q: A lot of people whom I have interviewed in this series and who had positions of responsibility all over the world did not look favorably on her activities. She was very outspoken and didn't play the "political game." She was a zealot, you might say, in her performance of her duties. Maybe this is what it took to get human rights onto the world agenda where it is today. Maybe we should give her great credit for it, but in the bureaucratic sense she was a burr under the saddle.*

HANSELL: She was the first high profile figure in the Department in this respect.

*Q: Did you have any problems or dealings with the Bureau of Human Rights Affairs there?*

HANSELL: I had a lot of dealings with her and with the Bureau. I can remember the first day that she came into the Department. I walked into her office, as I didn't know her and wanted to meet her and welcome her into the Department. By then I was a "veteran" in the Department—I had been aboard for four months. I had a lot of interchanges with her. She sought my help quite often. Sometimes we were able to help her and sometimes not. Her style was not my style. I can understand why a lot of our diplomats would cringe when she showed up in their Embassies abroad or when she made public statements, because that clearly did not make their lives any easier. However, she saw that as her "mission." It was her understanding that she had the backing of the President and the Secretary of State. I think that she did, for the most part. They, too, may have winced once in a while at the way in which she performed her job. Nevertheless, she did what she thought she'd been hired to do, and did it vigorously.

There is always a conflict between those who feel that human rights issues should be at the top of our agenda and should constantly be before the policymakers and those who feel that we have a whole range of interests and concerns with foreign governments and that no single one of them should predominate and that those interests which cause irritation with foreign governments should sometimes be dealt with in a more astute way.

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She tended to feel that the more authoritarian and dictatorial a foreign government, the more attention should be directed to it.

There were times when I would have pursued her objectives differently than she did, but, on the whole, I had a good relationship with Pat. We got along well. I would say that perhaps 75 percent of the time we were able to reach agreement on issues that we both had to deal with.

As you may know, Deputy Secretary Christopher chaired a Human Rights Working Group, I think it was called, an inter-agency committee. It included representatives of a number of State Dept. bureaus and other U.S. Government agencies. I attended a fair number of its meetings. The meetings would consider a variety of human rights-related issues with a view to making recommendations to U.S. Government decision makers.

*Q: Are there any other issues that we might take a look at?*

HANSELL: No. I think that we have touched on all those that I identified in the interval between our two interviews, as well as those left on the agenda at the end of our last session.

*Q: Okay, why don't we stop here.*

End of interview