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COMMITTEE MEMBERS AND CHAIRMEN**

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HEARING
BEFORE THE
SUBCOMMITTEE ON
STANDING RULES OF THE SENATE
OF THE
COMMITTEE ON
RULES AND ADMINISTRATION
UNITED STATES SENATE
NINETY-SECOND CONGRESS
FIRST SESSION
ON
S. Res. 17
RESOLUTION AMENDING RULE XXIV OF THE STANDING
RULES OF THE SENATE WITH RESPECT TO THE NOMINA-
TION AND APPOINTMENT OF COMMITTEE MEMBERS

FEBRUARY 12, 1971

Printed for the use of the Committee on Rules and Administration



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COMMITTEE MEMBERS AND CHAIRMEN
NOMINATION AND APPOINTMENT OF

HEARING

SUBCOMMITTEE ON

STANDING RULES OF THE SENATE

OF THE

COMMITTEE ON RULES AND ADMINISTRATION

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SUBCOMMITTEE ON STANDING RULES OF THE SENATE

ROBERT C. BYRD, West Virginia, *Chairman*

HOWARD W. CANNON, Nevada

JOHN SHERMAN COOPER, Kentucky

(II)



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NOMINATION AND APPOINTMENT OF COMMITTEE MEMBERS AND CHAIRMEN

FRIDAY, FEBRUARY 12, 1971

U.S. SENATE,
SUBCOMMITTEE ON STANDING RULES OF THE SENATE
OF THE COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 301, Old Senate Office Building, Senator Robert C. Byrd of West Virginia (chairman) presiding.

Present: Senator Byrd of West Virginia.

Also present: Gordon F. Harrison, staff director; Hugh Q. Alexander, chief counsel; Burkett Van Kirk, minority counsel; John P. Coder, professional staff member; and Thomas P. McGurn, professional staff member.

Senator BYRD. The subcommittee will come to order.

The subcommittee is meeting today to hear testimony on Senate Resolution 17, introduced by Mr. Harris of Oklahoma for himself and Mr. Mathias of Maryland.

On February 10, 1971, the chairman of the subcommittee stated for the Congressional Record a notice of hearing on Senate Resolution 17 to amend rule XXIV of the Standing Rules of the Senate, and all Senators were invited to present testimony orally or in writing, and all Senators were welcomed to appear before the subcommittee to present their views on the proposed change in rule XXIV.

Mr. Harris and Mr. Mathias introduced the resolution on January 28, 1971. By unanimous consent the resolution was referred to the Committee on Rules and Administration with instructions that the Committee on Rules and Administration report the resolution back to the Senate not later than March 1, 1971, and so it is with the desire and the intent to comply with the instruction to report the resolution back to the Senate not later than March 1, 1971, that the subcommittee has announced this hearing today.

Rule XXIV, which has to do with the appointment of committees will be placed in the record at this point.

(Rule XXIV follows:)

RULE XXIV

APPOINTMENT OF COMMITTEES

1. In the appointment of the standing committees, the Senate, unless otherwise ordered, shall proceed by ballot to appoint severally the chairman of each committee, and then, by one ballot, the other members necessary to complete the same. A majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee, but a plurality of votes shall elect the other members thereof. All other committees shall be appointed by ballot, unless otherwise ordered, and a plurality of votes shall appoint.

(1)

2. When a chairman of a committee shall resign or cease to serve on a committee, and the Presiding Officer be authorized by the Senate to fill the vacancy in such committee, unless specially otherwise ordered, it shall be only to fill up the number of the committee.

Senator BYRD. Senate Resolution 17, as introduced by Messrs. Harris and Mathias, will be inserted in the record immediately thereafter.

(The text of S. Res. 17 follows:)

92D CONGRESS
1ST SESSION

S. RES. 17

IN THE SENATE OF THE UNITED STATES

JANUARY 28 (legislative day, JANUARY 26), 1971

Mr. HARRIS (for himself and Mr. MATHIAS) submitted the following resolution;
which was referred to the Committee on Rules and Administration

RESOLUTION

Amending rule XXIV of the Standing Rules of the Senate with respect to the nomination and appointment of committee members.

1 *Resolved*, That the Senate of the United States strike
2 out the existing language of rule XXIV and insert in lieu
3 thereof the following:

4 “1. In the appointment of the standing committees, the
5 Senate shall proceed by ballot to appoint severally the chair-
6 man and ranking minority member of each committee, and
7 the other members necessary to complete the same. A ma-
8 jority of the whole number of votes given shall be necessary
9 to the choice of a chairman and a ranking minority member
10 of a standing committee, but a plurality of votes shall elect

1 the other members thereof. All other committees shall be
2 appointed by ballot in the same manner, and a plurality of
3 votes shall appoint. No one shall be appointed chairman or
4 ranking minority member of more than one standing com-
5 mittee.

6 "2. When a chairman, ranking minority member, or
7 other member of a committee shall resign or cease to serve
8 on a committee, the vacancy shall be filled in the manner
9 prescribed by sections 1 and 3 of this rule.

10 "3. The chairman of each standing committee and the
11 other members of the majority party necessary to complete
12 its membership on each committee shall be nominated sever-
13 ally by ballot in a conference of Members of the Senate who
14 are members of the majority party. The ranking minority
15 members of each standing committee and the other members
16 of the minority party necessary to complete its membership
17 on each committee shall be nominated severally by ballot in
18 a conference of Members of the Senate who are members of
19 the minority party. In all such nominations, neither confer-
20 ence shall be bound by any tradition, custom, or principle of
21 seniority. A majority of the whole number of votes given shall
22 be necessary to nominate a chairman and a ranking minority
23 member of a standing committee, but a plurality of votes shall
24 nominate the other members thereof. A plurality shall nom-
25 inate a chairman, a ranking minority member, and other
26 members of all other committees."

Senator BYRD. Senator Harris, you have to meet another engagement within a half hour so I would suggest that you proceed with your statement. You have a prepared statement, do you?

STATEMENT OF HON. FRED R. HARRIS, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator HARRIS. Yes, I do, Mr. Chairman.

Senator BYRD. Is there a copy for the chairman? Is there a copy for Senator Cooper?

Senator HARRIS. There should be.

Senator BYRD. Very well. In order to accommodate you, Senator Harris, the chairman would suggest that you proceed with your statement and read it in its entirety if you will, please.

Senator HARRIS. Thank you very much, Mr. Chairman.

I am pleased to be associated in this effort for Senate reform with Senator Mathias who has led the way, particularly in regard to a change in the rules as they relate to the seniority system. The resolution, Senate Resolution 17, which Senator Mathias and I have introduced, is a part of our joint effort to achieve reform of what we feel is the outmoded seniority system.

Too many people today feel that nothing much is going to be done to right fundamental wrongs which exist in this country, and that feeling, right or wrong, exists in the country, and it puts, it seems to me, a special burden on every public official to do everything in his power to respond to urgent and desperately felt needs in this country, and to make the institutions to which he belongs far more relevant and sensitive to the will of the majority than they are now.

On the Democratic side of the Senate, as the chairman knows very well, we have already begun to make some important changes. There has been agreement to the announcement by the Majority Leader for meetings of the Democratic caucus upon the call of one member of that caucus on whatever item he suggests for the caucus agenda.

Secondly, this year the recommendations of the Democratic steering committee for committee assignments and for each committee chairman were first submitted to the Democratic caucus and were approved by the caucus prior to their submission to the Senate, and the Majority Leader has stated that that will continue to be the practice in the Democratic caucus, and that any member of that caucus can require a separate and individual vote on any chairman so recommended.

This year at the beginning of the session of the Senate, when the resolution for the appointment of committee chairmen was submitted to the Senate, I invoked rule XXIV of the Senate, thereby requiring a vote on each chairman individually. I announced in advance that there would be no effort to oppose any chairman and there had been no attempt to make a case against any chairman, but I felt that it was good procedure to demonstrate that chairmen of committees are officers of the Senate, selected by a majority of the Senate and are, therefore, responsible and should be responsive to the majority in the Senate.

Lastly, the Democratic caucus, upon the recommendation of the Majority Leader, has created a Caucus Committee on Reform having within its jurisdiction for study and recommendation, the whole question of seniority as it affects the selection of committee chairman

and conferees, and, second, the question of qualifications for membership in the Democratic caucus in the future.

The changes which Senator Mathias and I today propose in Senate Resolution 17 have to do with rule XXIV, and would require the Senate to elect one by one every chairman and every ranking minority member of each committee at the beginning of each new Congress. A new paragraph we would add to rule XXIV, would, further, for the first time, formally recognize the existence of the minority and majority caucuses in the Senate and charge them explicitly with the responsibility of nominating, for final election by the Senate, all chairmen and ranking minority members of each committee. This nominating process itself specifies that individual ballots would be required in every case, and the language of the section clearly contemplates the possibility of contests within each caucus for the top positions on committees.

This new section of rule XXIV also would include a sentence which explicitly states or would state that the rule of seniority may not bind the majority and minority caucuses in their decisions.

Taken together, these changes would go a long way toward opening up the process of choosing committee chairmen and ranking minority members to the direct influence of the full membership of the Senate itself. The resolution would grant the membership of the Senate a real opportunity, not the present illusory opportunity, to decide whether an incumbent chairman had been doing a satisfactory job, whether he had been responding to his own committee members and to the will of his caucus and the Senate itself on issues and legislation and on selection of staff under his committee's jurisdiction.

I believe this resolution will be adopted if the Senate has the opportunity to study it, consider its implications, and vote on it. If we do so quickly—and Senator Mathias and I are seeking a Senate vote on it just as soon as possible—I believe the very fact of its adoption will have a salutary effect on the way the Senate operates and the way chairmen run their committees, during the 92d Congress.

I appreciate very much this opportunity to appear, Mr. Chairman, and am grateful for your setting this hearing so promptly.

I would like to furnish for the record other statements which were taken by Senator Mathias and me at an ad hoc informal hearing which we had earlier this year on this subject.

Senator BYRD. Very well, those statements will be received.

Are they of such volume, Senator Harris, that you would recommend they be inserted in the record?

Senator HARRIS. I believe it would be well to print them in the record. The chairman might decide after he takes a look at them, but they are very well-reasoned statements, and by people of considerable stature in the country, including John Gardner, head of Common Cause; Mr. Leonard Woodcock's representative from the United Automobile Workers; Clarence Mitchell of the Leadership Conference on Civil Rights; Whitney Young of the Urban League; Lee Auspitz, president of the Ripon Society; Tony Dechant, president of the Farmer's Union; and David Cohen, chairman of the executive committee of Americans for Democratic Action. I believe these statements would be very helpful at the very least in the committee's deliberations, and if the chairman should see fit, as I would hope he would, I think it would be good to have them actually printed in the record since we had no way of printing or preparing a transcript.

Senator BYRD. Well, suppose the Senators submit the material, and the members of the subcommittee will study it and keep in mind the wishes of the able Senator from Oklahoma and the able Senator from Maryland to insert the material in the record. I will not give that assurance at this point but, certainly it will be accepted and carefully considered.

Now, just as precisely as you can, Senator Harris, would you indicate to the subcommittee exactly what changes will be made in rule XXIV of the Standing Rules of the Senate in the event Senate Resolution 17 is adopted in its entirety and as presently written.

Senator HARRIS. Well, we would write into the present rule, which, as the Chair knows, now requires, except as otherwise ordered, individual balloting in the Senate on the chairmen of committees, the provision for such balloting on ranking minority members of each committee, and then we would recognize in the rule by adding an additional provision to the rule the existence of the majority and minority caucuses. We think that is important because I think Senator Mathias and I are both in agreement that the two-party system is a good system and ought to be strengthened. It is under considerable attack these days. We would like to recognize the existence of the majority and minority caucuses in the rules and provide for the same kind of separate and several ballots on chairmen and ranking minority members in each of the caucuses as rule XXIV presently requires for chairmen in the Senate itself.

Senator BYRD. As I understand it, you would seek to direct that the appointment of the chairman of the standing, each standing, committee and the members thereof, be proceeded with by ballot in every case.

Senator HARRIS. We would not make that requirement in this rule in regard to members but only in regard to the chairmen and the ranking minority member, both in the Senate and in the relevant caucus.

Senator BYRD. Well, the verbiage of your resolution, as I read it, in paragraph 1 is as follows:

In the appointment of standing committees, the Senate shall proceed by ballot to appoint severally the chairman and ranking minority member of each committee, and the other members necessary to complete the same.

Senator HARRIS. As the Chairman knows, that is the language of present rule XXIV which is not usually invoked, and the thrust of what you say is correct. It is not our intent to require anything more than separate ballots on chairman and ranking minority members in the caucuses, in addition to what is required.

Senator BYRD. I am reading from the Senator's resolution:

Resolved, That the Senate of the United States strike out the existing language of rule XXIV and insert in lieu thereof the following:

In the appointment of standing committees, the Senate shall proceed by ballot to appoint severally the chairman and ranking minority member of each committee, and the other members necessary to complete the same.

Senator HARRIS. That's right, that is the present rule. It is not usually invoked.

Senator BYRD. Except that your resolution would direct that this be done by ballot whereas the present rule says unless otherwise ordered.

Senator HARRIS. That's right, and, of course, that would be the situation anyway. That is presently what is done in the Senate, as the Senator knows. The Majority Leader and the Minority Leader simply rise and ask unanimous consent for immediate consideration of the resolution and the entire matter is considered en bloc and approved en bloc; that is what is done. That would continue to be the situation and effect so far as committee members are concerned, I would presume. I think the present rule ought to be kept in that respect, but we are not trying particularly to spell out the requirement for individual votes on each committee member every two years in each of the caucuses, though I take it that a member could secure that right when the Steering Committee in the Democratic caucus, for example, recommended concerning the filling of vacancies.

Senator BYRD. Well, the present rule requires that the other members necessary to complete the membership of a standing committee will be appointed by one ballot. But the Senators' resolution would require that the other members necessary to complete the same be appointed severally, am I not correct?

Senator HARRIS. I think that that is correct, and I think that is probably good to have that power in there for the Senate.

However, as I have indicated, I am certain that it would be a very rare thing and that it just wouldn't be done by unanimous consent. Committee membership would be approved en bloc.

Senator BYRD. You think it would be?

Senator HARRIS. I am confident it would be, as has been true in regard to committee chairmen for so long in the Senate until I invoked rule XXIV this year.

Senator BYRD. Well, the verbiage, however, would not give one that comfort because it says that the Senate shall, not may, but it says:

"Shall proceed by ballot to appoint severally the chairmen, the ranking minority member of each committee" and it doesn't stop there, and it says "the other members necessary to complete the same".

How does that differ, if I may ask, by way of pointing out the fact; isn't that what is said in the rule presently?

Senator HARRIS. No. The rule presently provides that the other members may by one ballot.

Senator BYRD. I see.

Senator HARRIS. I see, right, yes.

Senator BYRD. By one ballot be appointed to complete the same?

Senator HARRIS. Right, I would have no objection myself personally to have that language back in there because primarily what we are trying to do is to require the election of chairmen and ranking minority members. I think of the two alternatives I would prefer the way Senate Resolution 17 is presently written because I would like the power to do that by ballot spelled out, but it isn't an overriding consideration in my mind.

Senator BYRD. The resolution would add the requirement that the chairman and the ranking minority member and "the other members" of the majority party necessary to complete its membership on each committee and "the other members" of the minority party necessary to complete its membership on each committee, "shall be nominated severally by ballot in a conference of Members of the Senate," respecting the two parties.

So, not only would the resolution require that all members, not only the chairman and the ranking minority member, but all members of every standing committee would be appointed severally by ballot by the Senate. It would also require that every chairman, every ranking minority member, every member of every standing committee be nominated severally by a ballot in the two respective conferences. Is that correct?

Senator HARRIS. The Senator is technically correct, as I have said awhile ago. I don't think that would be the practice. I prefer to have that power. I think it is the present situation. I believe if the Majority Leader, if I understood him correctly when he made his statement in the caucus last Wednesday, that it was his position that if there was any single objection to a recommendation of the Steering Committee, which I took to mean not only chairmen but also Members, that a Member of the caucus could demand a vote on that single issue by secret ballot, and that would be done.

So I take it that that is the present situation though, in my judgment—and as I say the chairman is technically correct—in most instances the individual Members of the committees would be chosen en bloc, I would imagine.

Senator BYRD. Well, I appreciate the fairness and the reasonableness with which the able Senator from Oklahoma would expect the rule to be invoked in the event it is amended as he is suggesting.

However, if it is amended, the word "shall" appearing in both paragraph one of the resolution clause with respect to appointment by the Senate, and in paragraph three with respect to nomination by the two-party caucuses or conferences, would there not be ample authority for any Member who wanted to invoke the rule to require that all Members of all standing committees be selected severally by ballot.

Senator HARRIS. Yes, I think so under the rule, but if I understood the Majority Leader correctly the other day I believe that is the presumed situation. He said, as I recall, that on any individual involved in the Steering Committee recommendation, if a Senator required it, there would be a separate ballot on that individual, by secret ballot, under the rules of the caucus.

Senator BYRD. But by the same token did he not also indicate that the same was true with respect to the choice of the chairman, certainly he could not speak for the way the ranking minority member was selected, but didn't he say the same with respect to the selection of the chairman?

Senator HARRIS. Yes, but in that instance, I think, it would require the same kind, if I understood him correctly, of individual invocation of the rule, the new statement of the rule, in the caucus rather than have it as a routine vote. It could be that there were some problems with the question of voting on individual members of the committee, that language could be put in both paragraph one and in paragraph three with respect to the members of the committees which would say "Unless otherwise ordered" or words to that effect. I think that you could make clear that what we would like is to make a rule, under which, quite regularly and routinely, without any Senator requiring it, there would be individual and separate votes in the caucus and in the Senate itself, unless there was action to the contrary, on chairmen and ranking minority members. There would not be the need to

have that kind of routine and automatic and regular vote on each committee member unless there was some invocation of that rule.

Now, that would be my interpretation because I think what is important here is that there be a reasonable expectation in the minds of committee chairmen, and in the minds of ranking minority members, that there is certain to be an individual vote on their selection, both in the caucus and in the Senate, and that it is not going to be routinely put aside but, as a matter of fact, is going to be routinely invoked. I believe it is that expectation in the mind of the chairman, and in the mind of the ranking minority member, which will cause him to become more aware of the fact that he is an officer of the Senate and an officer of his caucus, and that he is responsible to the Senate and responsible to his caucus. That is what we are trying to get at.

Senator BYRD. What is the rationale behind having this same procedure invoked twice? Why should he have to run this gauntlet twice—the chairman, and the ranking minority member?

Senator HARRIS. For two reasons, Mr. Chairman: No. 1, I believe that unless we recognize the existence of the caucus and require a separate vote there, the Senate approval, as is now true, would prove to be really a pro forma matter. Despite the fact that there was an individual vote on chairmen and ranking members in the Senate, it would not really constitute a selection because the real selection process, as is now true, would still occur earlier in the relevant caucuses.

Two, I believe that in addition to individual accountability and responsibility there is an increasing necessity to recognize the need for party accountability and party responsibility, to acknowledge that the chairman and the ranking minority member of each committee are not only responsible to the Senate itself, which officially chooses them, but also to the caucus which actually chooses them.

Senator BYRD. Why wouldn't the purposes which the able Senator seeks to achieve be realized by this selection process in the respective caucuses alone?

Senator HARRIS. I believe that there should be an opportunity to override the choice of the caucus, although I would think that that would and should be a very rare kind of thing.

Senator BYRD. At that point, if I may interrupt the Senator, if 55 Senators, 54 Democrats and one independent in the Democratic caucus, select Senator A for committee A, why would those same 55 Senators then override in open Senate the decision that they themselves had made in party caucus?

Senator HARRIS. It might have been a very close vote or at the very least a split vote in the caucus. The issue might be one of such important principle in the minds of those Senators who voted in the minority in the caucus that they would join with people on the other side of the aisle, of the other party, to try to appeal a caucus decision to the Senate itself. I believe it is important to have that outlet for appeal, although as I say I would hope that normally it would not and should not be used in order to reinforce this, the need for party accountability.

Senator BYRD. Very well.

Now, has not the Senator opened up a Pandora's box—and I say this most respectfully, I want to be just as fair and as objective as I possibly can be in the conduct of this hearing. I must admit that as far as the chairman is concerned the Senators carry the burden of persuading at least the chairman that their resolution is advisable and

workable—but has not the Senator opened up a Pandora's box with respect, let's say, to the appointment of the ranking minority member, who, to take the Senator's example, is selected by a very, very close vote in the conference of the minority? Suppose those who voted in the minority, in the minority conference, wish to appeal to the Senate. Would not the majority in this instance, when the vote is taken in the open Senate, would not the majority party dictate the selection with respect to the Republican minority member?

Senator HARRIS. I take it that is the rule now, because the Senate can turn down the chairman and theoretically elect whatever chairman they please. The rules—as the Senator knows—have no knowledge of the existence of party in the Senate, and I believe that we could strengthen the party system by recognizing the existence of the parties. Now theoretically you could have all sorts of switching sides in regard to the designation of party officials of committees, but I believe that experience shows that as a practical matter that would very rarely occur. The Senate has in the past refused committee chairmanships to people by vote in the Senate itself. In those instances, however, the Senate vote didn't totally set aside the business of party. It simply set aside one recommendation for chairman and took up another recommendation made by the same party. I believe it is important to have that kind of outlet, which I think the rules now allow—to permit the kind of appeal, for example, that was made in regard to Chairman McMillan in the House the other day.

Senator BYRD. As the Senator says, such a situation would not readily occur; and, yet, it would occur as regularly as this close vote to which he has earlier alluded, would occur in a conference leaving minority members feeling they ought to go to the open Senate with their case.

Senator HARRIS. If I may interject at this time, Mr. Chairman, I don't believe that would be the effect precisely because chairmen, under our proposed change in rule XXIV, would attempt to be a great deal more responsible to and responsive to and acceptable to the majority caucus.

Senator BYRD. At the present time there is a spirit of comity that prevails between the two parties in the selection of their respective slates for chairmen, ranking committee members, and members of the various standing committees. But if this feeling on the part of a minority of Senators in the minority conference were to spill over into an open vote in the Senate, and let's say, there were to be a vote between Mr. A. and Mr. B. both Republican Senators, and the Democrats are going to help make a final decision, doesn't it appear to the ranking minority member, if I may say, who appears at the table today in behalf of this resolution, doesn't it appear to you, Senator Mathias, that this could become a great bone of contention and division and friction and strife between the two parties in the Senate and that the majority party—the Democratic Party—could dictate the choice of the ranking minority member?

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Mr. Chairman, I think you are raising very interesting and very pertinent and very important questions, questions that certainly ought to be thought out extremely carefully as we approach some fundamental rule changes here.

But if this kind of mischief were intended or were desired it is available today.

Senator BYRD. No, it is not intended nor is it desired nor is it available today because with the spirit of comity that exists now—

Senator MATHIAS. I said if it were intended or desired it is available and, with due respect to the chairman, I believe it is available today when we go, as we did the other day, to the Senate floor with the committee assignments. Let's say someone had some interest in seeing that I had not become the ranking minority member of the District of Columbia Committee; it would have been a very simple thing for a Member of the Senate to have raised some question about the election of the minority members of the District Committee. I could have been stricken off the list entirely, and the members of the majority party, participating with those in my own party, would easily have been able to do it.

But it seems to me that the chance of that happening is so remote, even if the spirit of comity, which does very happily exist today, were to evaporate.

Senator BYRD. Let me put it this way: Conceding that it can happen today, doesn't the Senator from Maryland believe that if this language which is incorporated in Senate Resolution 17, becomes the rule, that while such and such can happen today that the likelihood of its happening is going to be greatly compounded by virtue of the new rule because under the new rule we are told that the nominating of the ranking minority members shall be by ballot in the conference and that the appointment of the ranking minority member in the Senate shall be by ballot.

If there is a fight in the Republican conference and if it is a closely divided one, and marked with great bitterness and friction, is the Senator willing to surrender to the majority party in the Senate a prerogative which would be its own under this verbiage, not only the prerogative but the likelihood that the majority party will indeed make the decision for the minority party as to the identity of the ranking minority member.

Senator MATHIAS. Mr. Chairman, I think you pose an extremely interesting question, one which puts us eyeball to eyeball with some very deep principles that are involved here. I don't see how you can make fish of one and fowl of the other. The same possibility exists that a chairman, challenged within his own caucus but surviving by a narrow partisan vote within that caucus, could be overthrown when the members of the other party join with dissidents in his party in a vote on the floor.

What we are saying, and what I believe, is that that same possibility could and should exist in the future under the—with respect to ranking minority members.

Now, why do I say it should? Because what we have done here, as we have evolved the institution of the Senate, is to make the chairman and the ranking minority member very powerful people. It isn't just a question of who sits at the end of the table, who sits at his right hand. It is a question of staff, it is a question of thousands of dollars of pay-roll, it is a question of being in a position to influence the movement or the lack of legislation, it is a lot of things which become integral parts of the institution of the Senate, and I am not sure that—let me say I hope the Republican Party will be the majority party and we would be

talking about your problem some day—but I am not sure that either party has a right to say that it is going to run its part of the show without respect to the total interests of the institution of the Senate and without the oversight of the whole Senate. I think that both parties should be willing to submit to the oversight of the whole Senate in these matters. And I don't think it is anything that the minority gives up or the majority acquires. I think it is making one flesh of the whole body.

Senator BYRD. Senator Harris, I know that you have to leave, and you may feel free at any point to go.

Senator HARRIS. I am going to have to withdraw, if I may, Mr. Chairman.

Senator BYRD. Yes, we may have a second hearing and give you an opportunity to appear further.

Senator HARRIS. All right.

Senator BYRD. I want to congratulate you on the initiative that you have taken in submitting this proposed new rule which, in your judgment, is for the improvement of the Senate and for the improvement of the legislative process. And while we may differ on this point I respect your viewpoint and respect your reasons for offering the resolution. I appreciate your appearance here today before the subcommittee.

Senator HARRIS. Thank you, Mr. Chairman. I make the same statement in regard to you.

Senator BYRD. I thank the Senator.

If we may carry on, Senator Mathias, in theory, I suppose everything that I have said with respect to the dangers concomitant to the verbiage of the resolution could occur under the present rule. Yet, isn't there a very substantial and basic built-in current protection against that happening, that protection being the rule toward which the two Senators are thrusting their lances, the seniority rule itself. I say this because the seniority rule is a very impersonal one. It allows these judgments to be made in conference on a very impersonal basis and, therefore, contributes to legislative harmony.

If a line of people are waiting to go aboard a bus, the last to arrive on the line expects the first to have stood the longest to be the first on the bus. It is a very impersonal rule. He accepts this rule. The people who arrive last don't get together and draw straws to decide who will be the first to board the bus.

The seniority bill works the same way, I think. It is an impersonal one. It is generally accepted by the members, and this rule itself is a built-in cushion against friction and division and strife in the party caucus. Under the present system we are not as likely to be confronted with this difficult choice in the Senate, shared by the majority party, of a ranking minority member as will be the case once this built-in cushion is gone, do you not agree?

Senator MATHIAS. Mr. Chairman, let me say, first that we are thrusting our lances directly at the principle of seniority. It isn't a rule, it isn't written down anywhere. You won't find it in the Senate rules and you won't find it in any statutes. It is a custom, it is a tradition—and I think it is useful that the Chairman has drawn this metaphor of those who stand in a line waiting to get on a bus, because it helps define our purpose here, which is to select drivers and not to seat passengers.

I think that we all agree that those who line up to get on a bus do get on on a first-come, first-served basis. They pay their quarter or their 30 cents or whatever the inflated bus rate is and they get on in

the order in which they arrived because they are all absolutely equal in the eyes of the bus driver, in the eyes of the bus company. And that is the way society arranges riding on a bus.

But I would hate to think that society arranged one of the most fundamental institutions of government in this country, and indeed in the whole world, on the same basis that we queue up to get on a bus. There are all sorts of elements which come into leadership in government which are not necessarily apportioned on a first-come, first-served basis. We are not all equal in talent, in leadership ability. We have different talents, different capabilities. Some of us may be useful employed in one part of the Senate's work, some in another part of the Senate's work. The seniority principle, the seniority tradition, forces people into different slots whether or not those are the slots and the positions that are compatible with their God-given talents.

I can think of cases in my brief tenure in the Congress where I have seen men either pushed into positions in which they were not particularly happy, or staying on in such positions because they knew if they got out the men who would inevitably, inescapably follow them were men to whom they could not in good conscience turn over important responsibilities.

Now, I would submit that what you have suggested is an extremely useful thing. We have been running this institution like people lining up to get on a bus, and the necessity of our times are such that we can't do it any more.

I think Senator Harris, who has been so courageous and thoughtful in this whole exploration that we have undertaken together, said that what was important was that we create an expectation in the mind of a chairman that someday he is going to have to seek the suffrage of his colleagues if he wants to remain chairman.

When we had our informal hearings just before this session of the Senate began, I tried to make it clear that we weren't seeking a change of faces in the committee rooms of the Senate. We were seeking a change in attitude, and the way you create that change in attitude is to make it clear that every good and faithful steward has his day of reckoning. If we are just going to have a busline, however, where people line up, there is no day of reckoning. You get on the line and you just shuffle forward until you drop off.

I think that most of our chairmen are good and faithful stewards; most of them can render good accounts. Yet that isn't a result of our system. That is just because it has happened that way.

Senator BYRD. Before responding to your last comment, I would like to say that the example I cited about seniority being like a line of people waiting to board a bus was certainly never intended to imply anything other than the simple fact that those first in line deserve first consideration.

As to Senate committee membership, it is inherent, I think, and basic that experience, expertise, leadership qualities and other talents and skills are inextricably woven into the seniority system.

Now, to return to your last remarks, the Senator has stated, or at least implied, that under the seniority system one cannot guarantee the best use of talent in those areas where they might be best applied. Is there any assurance that under any other system the same would not be said? I am thinking now of the late Senator Russell of Georgia,

a man who was absolutely incorruptible, a man who was a giant among giants, and who had the respect and admiration of every colleague in the Senate. Here was a man who had many talents, and yet it has often been said that had he not come from a certain region he would have been President of the United States.

Would not the same thing occur under a system which is being recommended by the able Senator? Would not regional considerations enter into the equation, would not personality enter, would not ideology enter into the equation so that indeed a man with the best talents might have to wrap them in a napkin and hide them in the ground rather than be able to apply them in the interest of his constituency and the country? Under this new system which you propose, how do we guard against these many forces that are going to be pulling and tugging?

Senator MATHIAS. Mr. Chairman, I think we have to look at what we are doing. We are not writing here, or trying to change here, the laws of the Medes and the Persians. We are trying to move along on the stream of history whereby one adopts the courses which seem necessary for one's own time.

The first vote that I cast when I went to the House of Representatives was a vote to enlarge the Rules Committee. The Rules Committee, which had been a relatively impotent body in the early history of the House, had been strengthened and bolstered in a great reform to trim the power of the Czar Cannon, the Speaker of the House, who had become autocratic and arbitrary.

When I got to the House, the time, the tide, had changed. The Rules Committee, in the judgment of many Members of the House, had become too powerful; and so the time had come to take another course in this long stream of history.

As has been pointed out in the last month or so, we are in that same kind of a situation today. The idea of following the seniority principle, the unwritten custom of waiting in line, was adopted as a measure of reform at one time in the Senate.

Now it seems to me that we are seeing that the seniority principle in itself, in a somewhat parallel way, can be overdone. What was a reform at one time has become such a fixture and so inflexible that it in itself needs to be looked at, modified a little.

Senator BYRD. Senator, let me—

Senator MATHIAS. I would like to direct myself to the chairman's question about whether or not Senator Russell, whom we all respect so, whom I recall just the other day Senator Scott saying was a man of the greatest character he had ever known—would Senator Russell have been able to hold his chairmanship under the system which Senator Harris and I propose. I would say to the Senator, yes, I think he would because seniority will always be an element in this choice. I do not think either Senator Harris or I conceive of a system in which seniority won't be one of the elements that will place a man in line for consideration for leadership of a committee, whether on the majority or minority side.

Seniority is going to be one of the elements. But what Senate Resolution 17 will give the Senate an opportunity to do is to avoid those unhappy situations, and also happily rare situations, wherein somebody, for some tragic reason or other, is obviously unfitted for a job. Without a revolution, without some extraordinary action which

is devastating to the individual and harmful to the institution, he can be set aside and some more prudent choice made.

Senator BYRD. The Senator says that the seniority principle can be overdone, and that it will still be an element. Yet the language of the resolution is directed specifically toward the seniority principle. It says that in all such nominations neither House shall be bound by any custom or tradition based on seniority; why shouldn't it say the same with respect to ideology? Why shouldn't it say the same with respect to region? Why shouldn't it say the same with respect to race, creed, or color, et cetera, et cetera? It singles out one factor in the equation and says the decision in all nominations will not be bound by this one, and that is seniority.

No. 2, the Senator says that we are seeking to do this to avoid unhappy situations, in which, for example, a Senator who is unfitted for the job is selected.

Can the Senator name one such unhappy situation that has existed in the Senate of the United States since he has been a Member of the Senate, or even going back to his tenure in the House? Can the Senator name one such situation in the Senate in which a chairman of a committee was unfitted for the position or a ranking minority member was unfitted for the position; can the Senator name one such instance?

Senator MATHIAS. Well, I am sure the chairman is not asking me to single out by name—

Senator BYRD. The Senator can just answer yes or no. Can the Senator name one, one situation in which a ranking minority member of the Senate was unfitted—

Senator MATHIAS. In my 11 years in the Congress, I would have to say that I have observed, I think, several situations, unhappy, tragic personal situations, involving either a chairman or a ranking minority member. Such situations, I think, might well have caused a party caucus to ponder very carefully.

Senator BYRD. Without asking the Senator to name names, would the Senator say that the person was unfit because of incompetence or was it because his ideology did not agree with the political philosophy of the Senator?

Senator MATHIAS. In no case was it an ideological matter. In some cases it was a physical question, in some other cases some personal problem had arisen. In no case was my comment directed to ideology. In fact, I smiled a little when the Chairman said why shouldn't the same apply to ideology, because I had a high ranking, I think we call him now, party functionary of the Republican Party who said to me the other day, "What in the world are we going to do? We have been believing in the balanced budget for all these years, that is our tradition, and now we are out in the field of the full-employment budget."

So, you see, we are not bound by custom or tradition in matters of ideology. We are involved here in a question of the choice of a party caucus in choosing the party leadership. That is what it really is; it is the party leadership. Just as you, Mr. Chairman, are a very important part of your party's national leadership, so the people who occupy the commanding positions of their party at the committee tables of the Congress are a part of the party national leadership. I think this is too important to allow one's rise to that position of leadership purely and simply and only and solely because one got in line on a certain day.

Senator BYRD. The Senator is talking about apples and oranges. There are 17 standing committees of the Senate, 17 chairmen of the 17 standing committees, and there are 17 ranking minority members, whereas in the selection of party leadership—

Senator MATHIAS. I did not mean to imply that the leadership positions on the floor were to be confused with the committee chairmanships. In the eyes of the general public, in the eyes of the American people, while the floor leadership of both parties occupies a unique position, the committee leaders, the chairmen and ranking minority members who often speak for their parties on the legislative issues that are before the committees, become a part of the leadership of the national party. I make that distinction clear.

Senator BYRD. As the Senator looks over the roster of the 17 standing committees today, does the Senator, without naming names, know of a single ranking minority member who is unfit for the job, who is incompetent to carry out the responsibilities of that position or for any reason should not hold that position?

Senator MATHIAS. I am very happy to be able to say to the Chairman that I am familiar with the roster of, the current roster of, ranking minority members of the Republican Party. I would support in a party caucus the election of every one of them to the positions that they are now in, and have so stated publicly before this. I feel very happy about that situation.

But I recall again what I suggested, that what we seek is not a change of faces but a change of attitude, as Senator Harris said, the expectation in the mind of the chairmen that there was an election some day out ahead.

Senator BYRD. If the Senator were suddenly confronted with the necessity to board a plane and he were offered his choice of two pilots, one who was relatively young, handsome, who had been chosen by the JC's as one of their ten outstanding young men in the United States who had graduated from his high school as valedictorian of the class, and who was a Phi Beta Kappa from one of the great universities, but who had never flown a plane, and the other man in his early fifties, had flown over a million passenger miles, what would be the Senator's choice or would there be any choice? Would experience count?

Senator MATHIAS. I think the chairman knows very well what my choice would be and what the choice of the other 99 Members of the Senate would be: experience, knowledge, and expertise. These are indispensable, and I place a very high regard on the discernment of Members of the Senate.

God knows we are called upon to make the decisions of war and peace and life and death, and extracting the wealth of the Nation for great national purposes. I think we have the discernment to pick the pilot who has the training and the knowledge and the experience, and I am not afraid to trust the Senate to exercise that kind of discretion wisely.

Senator BYRD. Would the Senator be willing to say that in the choice of that pilot and that in all such choices no airline passenger shall be bound by any tradition, custom or principle of seniority, substituting the word "experience" for "seniority"?

Senator MATHIAS. Yes, Mr. Chairman; I certainly would.

Let us suppose you and I walk into the waiting room of an airport one day and there is that 747 waiting to take off, and here is a line of

pilots sitting down on a bench. They are there in the exact order that they were hired by the airline, and the man at the front of the line has been drinking a little and he is a little bleary eyed. He is No. 1. Am I going to be forced by the choice of seniority to choose the pilot who happens to be sitting in the No. 1 seat, or can I go to the No. 2 man who is bright eyed and clear and keen and aggressive and ready to go? Which one are we going to take? Are we going to be bound by any tradition of seniority?

Senator BYRD. Suppose the No. 2 had been drinking?

Senator MATHIAS. Let us go to No. 3, let us go to No. 4.

Senator BYRD. Suppose the Senator has an important tax case and he goes to a firm in which there is a bright young man who had just passed his bar review examination, and in that same firm there is a senior member who, by virtue of his experience, is recognized as one of the outstanding tax lawyers in the country. What would be the Senator's choice? Would he prefer the man who has had great experience over the newly graduated member of the firm? If experience is all important in other fields, it is also important in the legislative process.

Senator MATHIAS. Mr. Chairman, we are in a very happy situation here in the Senate. The people of the United States are going to pay the same fee regardless of which one, which lawyer, they get.

When I was earning an honest living as a country lawyer and practicing with my father, we very often would go to the courtroom together, and it was enormously helpful to me to have his advice and counsel. Yet he was in his early seventies in those days, not as physically active as a younger man would have been. He did not run around and do a lot of the things that are necessary in the course of preparing for a trial, but he was on hand. He was not in full charge of the proceedings but he lent an invaluable—he played an invaluable role in the trial of a case.

Now, I think we are very much in that situation here: The conduct of committee business, the speed with which legislation can be considered thoughtfully, prudently, carefully, the vigor that goes into the holding of hearings. Your own interest right here today, Mr. Chairman, at a time when the Senate is in recess, in holding this hearing is illustrative of it.

Is a chairman going to be interested enough to do all that? Is he able, is he physically up to it? You can have a chairman who has all the attributes of vigor and energy without throwing overboard the senior partner who, under our system here, is still going to be a member of the firm, still taking part.

Senator BYRD. Let us keep in mind, though, the Senator himself has said under the present rule the selections can be by ballot so that in the event there is that occasional situation in which a member may be physically unfit, the caucus if it so desires, can take appropriate action.

Senator MATHIAS. Ah, but, Mr. Chairman, that is not realistic. To overthrow a man today in our time, in your lifetime and mine, is a monumental act—it is a revolt. You could go back through recent history, and people who are close scholars of the history of the Senate, can tick off on their fingers the times when that has happened, when the situation has become so grievous, so aggravating.

We do not want to wait for those kinds of tragedies to occur, tragedies which are as distressing for the members as they are for the Senate.

What we are looking for, and again I think it is important enough to repeat, is a change of attitude, an expectation in the mind of the chairmen that such a thing could happen. It would not occur in a great revolt, which is a very unlikely event, but in the normal course of business if business really is not going as well as it could, not as it should, but as well as it could.

Senator BYRD. Why confine this expectancy just to the chairmen? The able Senator's colleague indicated a little earlier it would be quite all right with him if we deleted this language which would require balloting severally of the other members of the other committee. Why confine this expectation just to the chairman and the ranking minority member?

Senator MATHIAS. Well, we are practical men. I think in the ideal you would make every slot a choice. We live within the realm of the possible. We live within the realm of what is practical.

I would anticipate, as I would in the rule that I submitted in the Republican caucus which is now the subject of a special committee appointed by our conference chairman, Senator Smith, that the seniority principle would not be questioned below the leadership, below the ranking minority member or the chairman. This is not because I believe, as an ideal matter, that it ought not to be, but because, as a practical matter, I think that it is as far as we are likely to go in the immediate future—and I say that very candidly and very frankly to the chairman.

Senator BYRD. The principle of seniority, although it is an unwritten one, is really a principle that involves experience. What the Senator is doing here, if I may say most respectfully, in attacking the seniority rule is, in reality, an attack upon experience.

The present unwritten rule provides that experience, if I may substitute it for the word "seniority," is a guiding factor in the selection of the chairman and ranking minority member and is the guiding factor in the progress that any member makes on a committee once he is appointed to that committee. We cannot get away from the importance of experience. No matter how we clothe this verbiage, no matter what trappings we seek to place upon the word "seniority," the bedrock is experience.

Senator MATHIAS. Well, with a very great deal of respect, I want to say that I disagree with the chairman utterly, totally, and completely. I do not think that what we are doing is attacking a principle which involves experience. I say we are attacking a custom which denies the benefit of experience, which denies cognizance and consideration of whatever mistakes a man may make, however outrageous. As I say, ideology has not been a factor in my thinking on this. Let us say, however, that somebody was an avowed Communist or an avowed Nazi or any other ideology, which you and I would both agree would be unacceptable to the large majority of the Senate. In spite of our experience with this man, if he stayed here long enough he would attain the important leadership position which is inherent in being a committee chairman or ranking minority member.

Thus our attack is not against the principle which involves experience but it is against a principle which denies experience.

Now, as I said a little bit earlier, seniority in the broadest sense, a man's experience here, the record he has made here, the knowledge he has gained here, the personal relationships which are important in every kind of human organization, personal relationships he has

developed here, his leadership capacity, his growth as a Member of the Senate, all of these are factors which, I think, will be inherent in seniority, which will always be important, and which will always tend to make the man who is a senior member the first candidate for committee leadership. He will be the first man considered.

I would suggest that it is only when there are either flaws in his character or flaws in his record that the caucus would deviate from the leadership principle which his service here has probably merited.

But, it seems to me, we are apt to attain for the public, for the American people, a higher standard of service as we go along if we make it clear that we are rewarding the kind of service that I think you and I hold as the ideal of the Senate; and, further, that the situation is not one of merely standing in line, in spite of whatever our experience may have been here, such that if we stay here long enough we are going to end up at the top of the heap.

Senator BYRD. Well now, the Senator oversimplifies the thing. Any Senator worth his salt is not going to be content with merely standing in line and, if he waits long enough, ending up at the top of the heap. The Senator may remonstrate as skillfully as he wishes, he cannot expunge from the word "seniority" the basic principle of experience. Experience is what we are talking about here and, if I may just continue——

Senator MATHIAS. I do not——

Senator BYRD. The system which is now followed is that system which guarantees to the people of this country knowledge and experience in dealing with the subject matter of legislation which comes under the jurisdiction of each committee.

The Senator has been a Member of the U.S. Senate for 2 years, and he is going to be reelected and, I trust, reelected again and again.

Senator MATHIAS. I hope the Senator is a very accurate prophet.

Senator BYRD. Well, a prophet is not without honor except in his own country and in his own house.

Has the Senator ever used that cliché in any of his campaigns, "Experience counts"? I wonder if the Senator at some point, some day, as he gets along and moves along by virtue of the principle of seniority in the Senate, and gets higher and near the top of that Judiciary Committee or the Committee on Government Operations, will appeal to his people, as I know he will, to reelect him to the U.S. Senate, the greatest deliberative body on earth, et cetera, et cetera. I wonder if he is going to take great pride at some point in saying, "Now, ladies and gentlemen, if you reelect me I am going to be the chairman of the Judiciary Committee. I am within one space of being chairman now, and the present chairman has announced his retirement. And if you reelect me I will be chairman of the Judiciary Committee of the U.S. Senate. It will be a great honor for the State of Maryland. I have worked all these many years in the vineyard, I have toiled in the heat of the day, and I, by virtue of my experience and my service and my seniority on that committee, will become its chairman if you reelect me."

I wonder how many Senators make this very justifiable appeal to their constituents when they run for re-election. They can make such a campaign appeal because of the assurance that under the present seniority system they will be at the top of that committee with the passage of time. And why shouldn't they be? After all, they have spent all of these years studying the area of legislation that

comes within the jurisdiction of the committee, they have the experience, they have the know-how, they are familiar with the agencies that operate in this field, they are familiar with the agency representatives, they are familiar with the laws that govern this particular type of legislation.

Why shouldn't the people of the United States be assured of the benefits to be derived from this expertise that will be the result of this long tenure of service that Senator Mathias has had over the years on a particular committee?

Senator MATHIAS. Well, Mr. Chairman, you have given me several bones to gnaw on in that question. I do not know that it is a very reasonable likelihood that I could ever go to my constituents and say that I was about to be chairman of the Judiciary Committee of the U.S. Senate. I would say this to you, Mr. Chairman, that if I did go to them and did say that I would take greater pride in saying it if I knew that I had the votes because I had the trust and the confidence of the members of that committee. It would be more valid if it was not happening simply as a matter of the operation of time, and the hand of mortality on the other members of the committee and some inflexible, automatic, mechanical system that had simply moved me to the top.

If I could say to them, "Yes, the members of the Senate Judiciary Committee cast their ballots and the lot fell upon Mathias," then I would have something in which I could take great pride.

Senator BYRD. You could not assure them that the same Senators 2 years away—

Senator MATHIAS. I could not assure them of that.

Senator BYRD. Would let the lot fall upon Mathias again.

Senator MATHIAS. No, I could not assure them of that, and I am not sure, although it has some self-serving features as far as a candidate is concerned, that you should be able to assure them of that. I am not sure that while it is, of course, a value to a Member of the Senate to say things of that sort, whether this is, in fact, the way the system ought to work.

Senator BYRD. Isn't it of value, though, to the people of the United States that they have a man as chairman or ranking minority member, who has by virtue of the experience acquired over many years—

Senator MATHIAS. Well now, over many years—

Senator BYRD. Has acquired a knowledge of the field which is within the jurisdiction of the committee?

Senator MATHIAS. Now, you raised a preliminary question I would like to address myself to. No. 1, you said shouldn't the people of a State be rewarded by virtue of their Senator's tenure alone? Let us take the case which does not exist in any single instance of the U.S. Senate today, but let us take the case of a man whose only virtue is tenure as the absolute example, if you will. Why should the people of his State be rewarded by having him become the chairman of an important committee, perhaps the people of his State with a population of just several hundred thousand people, when the actions that he will take as chairman of that committee will be in matters of vital interest, vital concern, to 205 million Americans?

Why should the people of his State be rewarded?

Senator BYRD. How will they be guaranteed anything better under the system that the Senator recommends?

Senator MATHIAS. Well, I would like to go then to this point. You said in our proposal Senator Harris and I proposed to expunge from seniority the word "experience." I say to you, Mr. Chairman, that the present system expunges from seniority half the word "experience," and that what we propose to do is restore the other half. Under the present seniority system there is a presumption that all experience is positive.

What we are saying is that we would restore to a consideration of seniority the fact that experience can be both positive and negative, and that if the experience is positive the odds are overwhelming that seniority will become the predominant factor in the election.

But if the experience is negative, then the Senate will, as a matter of choice, not as a matter of revolt, not as an earthquake, not as a chaotic act, but as a matter of ordinary business routine, review the record and make a choice.

Now, that is just as simple as that. We do not expunge the word "experience" from seniority. We enlarge the word "experience," both its positive and its negative aspects.

Senator BYRD. Doesn't the Senator feel that, under the system which he proposes, there will be inevitable politicking, log-rolling, back-scratching, friction and ill-feeling? Isn't he attempting to substitute a system of political campaigning, and a very personal one, a system in which personalities would be inevitable, for the present very impersonal and harmonious system?

Senator MATHIAS. Mr. Chairman, I was a member of the Maryland Legislature before I came to the Congress, a member of the Judiciary Committee of the Maryland House of Delegates. There was no rule of seniority in that committee. It was always headed by an able lawyer as a member of the legislature. Other able lawyers, far senior in experience, served happily, cheerfully, on the committee under the leadership of a more junior chairman.

When the chairman was, for one reason or another, removed from the chair, another chairman was chosen. It became an act of legislative leadership, an act of the leadership of the committee; it became a question of party responsibility. There was not an undue amount of log-rolling, electioneering, back-slapping, nor was there an undue amount of recrimination.

Senator BYRD. Senator, I have had the same experience. I served in the West Virginia House of Delegates and in the West Virginia Senate, and what the Senator says with respect to the choice of chairmen in the State legislature is indubitably true. But the Senator, I fear, is not being realistic when he says there is not log-rolling, when he says there is not politicking, when he says there is no recrimination in those State legislatures, because I think the facts would show otherwise.

How is the system, which the Senator proposes, going to avoid such log-rolling tactics? Suppose Mr. X is elected chairman of the Senate Committee on Public Works under the Senator's system, what is going to happen when that chairman is charged with giving pork barrel projects to various Senators on that committee because they voted for him as chairman of that committee? Doesn't this system, which the Senator proposes, open itself to such dangers?

Senator MATHIAS. Well, Mr. Chairman, the limits of opportunity for cronyism of various sorts are only the limits of human ingenuity itself. There might be an extra motive under the proposed system for

that kind of cronyism, an extra motive, but I am not sure that it would enlarge the practice of it enormously. I have confidence in the Members of the Senate.

Senator BYRD. So do I, but human nature has not changed since Adam, and I think the Senator is opening the door for such.

Senator MATHIAS. Well, this is, of course, the classic argument. The change which has occurred in American society, the openness which has come upon American society since the seniority rule was adopted, I think, makes a difference which the chairman might well observe.

Look at this room today, look at these cameras. I do not believe that a blatant kind of electioneering of that sort would happen, and I do not think it would be tolerated if it did happen. I would think that the chairman and this committee could do a very useful thing if they would weigh very carefully not the fears, not the suspicions, but the real probabilities that that kind of thing would happen, and weigh that against the greater efficiency, the greater vigor that might come upon the committee system if it were to undergo this very modest reform.

Senator BYRD. If I may just interpolate at this point, and I say it most respectfully, I think that some of us are weighing the fears with respect to the present system, perhaps a little overly much. It could be said either way, could it not?

Senator MATHIAS. And this committee is to be much complimented for, I think, attempting to weigh in the scales the assets and the liabilities of the present system and of the proposed change, modest change, I would call it.

But I would only suggest, and again the chairman has spoken very accurately of the value of experience, I would suggest that the value of experience in legislative bodies around the world would indicate that the seniority system is not a necessary element to its legislative success.

Senator BYRD. How many legislative bodies around the world have existed for 182 years?

Senator MATHIAS. Well, I will be glad to quote a famous American, "Give me a week and I will tell you a few." [Laughter.]

But we have the Althing in Iceland, which is over 900 years old; the Parliament in Westminster, the mother of parliaments; the Legislature of Maryland is 300 years old. I can go on quite a way. But—

Senator BYRD. Was it ever said of the Maryland Legislature or the West Virginia Legislature that it was the greatest invention of modern politics?

Senator MATHIAS. There have been some who thought so. [Laughter.]

Senator BYRD. Gladstone, the great English statesman, who served under Queen Victoria, referred to the Senate "as that remarkable body, the most remarkable invention of modern politics."

Senator MATHIAS. I might interpolate, if I can interrupt, Mr. Chairman, that at that point, the seniority system was not one of the virtues or traditions of the Senate.

Senator BYRD. Perhaps the chairmen were selected by the President pro tem or by the Majority Leader.

Senator MATHIAS. It was a leadership function. The custom has changed over the years.

Senator BYRD. And it was for precisely the necessity of getting away from that kind of system that the seniority system developed.

What, if anything, would prevent a popular Senator from being nominated and elected chairman of a committee on which he has never served?

Senator MATHIAS. Nothing whatever except, Mr. Chairman, except what I have suggested to you, that I believe seniority will always be an important element. I do not think you will ever remove seniority as one of the, if not the, predominant elements upon which nomination and election to committee chairmanships take place.

Nothing prevents it today, Mr. Chairman.

You could have accomplished it when we balloted on the committee chairmanships on the Senate floor last month. There was no legal bar whatever in the rules of the Senate to prevent the most junior member of the Senate—I think at that point Senator Chiles of Florida was No. 100—from being elected chairman of the Senate Finance Committee.

Senator BYRD. But not under the seniority system.

Senator MATHIAS. Undoubtedly not under the seniority system.

Senator BYRD. As to legislation, which is our business, would you believe that a Senator who has served years on a committee which deals with health, drug legislation, or labor legislation, is no better qualified to chair or be the ranking minority member of the Labor and Public Welfare Committee than one just coming on that committee?

Senator MATHIAS. Oh, I would believe that the experience of years of familiarity with legislative issues is of enormous importance and would certainly be an element to be considered.

Senator BYRD. Do you really believe that if this resolution were adopted the chairmen and ranking minority members would not be elected on a political basis rather than according to the qualifications of the Senator based upon experience in and knowledge of the field?

Senator MATHIAS. At the risk, Mr. Chairman, of being repetitive, what I think would happen if this rule were adopted is that the seniority principle would be the predominant element in election, but that because, as a matter of organizational routine at the beginning of every new Congress, a chairman had to stand for election, there would be a subtle change of attitude which would lead to a more efficient, perhaps if you like more democratic, demonstration of committee business.

Senator BYRD. We may all criticize an occasional failure of a chairman to be as good as he ought to be, but how is the substitution of this purely political system of selection going to prevent such exceptional cases?

Senator MATHIAS. Mr. Chairman, I do not know of any guarantee, any human guarantee, we could ever adopt that would prevent all failures.

What we are trying to do, I think, is to move toward systems which minimize the number of failures and maximize the positive results. I believe this reform would do that.

Senator BYRD. Both you and I served in the House of Representatives with the late Congressman Dawson, who later became chairman of the Committee on Government Operations by virtue of the seniority system. He was a good chairman, a good representative of his people. Under your proposal, would a Senator from a minority group have greater difficulty in becoming chairman of a committee than under the present seniority system whereby he is guaranteed the chairmanship?

Senator MATHIAS. Well, I would scorn, Mr. Chairman, that concept of a man who had been chosen by his people, the electorate that sent him here. Such a man would be subject to prejudice——

Senator BYRD. You would scorn it, so would I.

Senator MATHIAS. Within the Congress. I would think—no, very frankly, I think that again, all other elements being equal, that he would find that he would receive the kind of treatment that his record merited, regardless of the fact that he himself happened to be a member of a minority group within the American population.

Since you raise that question, I think we have another very interesting example. When I was a Member of the House, there arose the case of another chairman, Adam Clayton Powell, who had become by virtue of seniority, chairman of the Education and Labor Committee, and who was finally ousted from that position in a violent kind of a storm which has not totally subsided yet. There is still some litigation going on about it.

If there had been a day-to-day, month-to-month, year-to-year, Congress-to-Congress reckoning of the accounts, that tragedy might have been avoided.

Senator BYRD. Well, the tragedy was not caused by virtue of his seniority. The tragedy was caused by virtue of the man himself.

Senator MATHIAS. The tragedy was caused by the fact that he developed an attitude of mind that as a chairman he was impregnable, and that is the attitude of mind that we seek to change.

Senator BYRD. Does the Senator say that that attitude of mind prevails in the U.S. Senate among the 17 ranking committee members and the 17 chairmen of committees?

Senator MATHIAS. I am saying, Mr. Chairman, that the way to prevent its ever developing in the mind of any one of the 17 chairmen or the 17 ranking members is to provide that there be a normal, ordinary day of accounting.

Senator BYRD. The Senator provides medicine for a disease that does not exist for the moment. I say this most respectfully. It seems to me if we are going to propose a change in the basic rules of the Senate there ought to be some basic reason why it is necessary to do that. We have 44 rules of the Senate, and at least 16 of them have been in existence virtually with the same verbiage as they are now written since 1789, which indicates that there is a great reluctance on the part of the Senate to revise its rules. There have only been four major revisions. One in 1806, one in 1828, one in 1860, and one in 1884. This does not mean they are perfect or there should not be a change in this rule or that rule from time to time, but it does indicate the veneration in which they are held. I recognize what the Senator is trying to get at here, and I applaud him for it, and I respect his viewpoint. But in so doing, if we follow this approach aren't we creating a worse system?

Senator MATHIAS. Of course, Mr. Chairman, I would have to say no, I do not think we are. I say again that we do not deal in absolutes; we do not deal with absolutes in politics. I think what we are trying to do is create a system in which we, as a matter of degree, move to a procedure which may result in fewer mistakes and greater efficiency in the handling of public business.

Now, the Senator says that I direct, that Senator Harris and I direct, ourselves to a cure for a disease that does not exist. I would say to the Senator that one of the most progressive things that has

happened in medical science today is the concept of preventive medicine. If we shall agree, for the sake of this discussion, that the disease does not exist today, then let us make sure that it never does come about.

Senator BYRD. Let us be sure that in the drug—supposed to be a panacea—is not a fatal ingredient.

Senator MATHIAS. There is no claim of a panacea, certainly not from me. This is a modest kind of a little pill that is intended to help along.

Senator BYRD. I am not so sure that plain old-fashioned aspirin in the long run might not be the best remedy.

Would not a change in the seniority system promote a struggle for appointment and bring pressure groups into the picture?

Senator MATHIAS. Mr. Chairman, I do not think that we kid ourselves that it does not happen under the present system. You have just suggested that because the seniority rule is inflexible people can count on where they are going to sit in the next Congress, assuming reelection and so forth. I am sure that this assurance has enormous impact on the kind of electioneering that goes on within the States.

Senator BYRD. I am talking about struggles within the conference and within the Senate.

Senator MATHIAS. Yes. But we have to consider the larger issue of the body politic.

Senator BYRD. Let us consider that. I assume that I agree with you.

Senator MATHIAS. Let us say, then, the No. 2 man on the committee is up for election, and the No. 1 man has announced his retirement.

Senator BYRD. Okay.

Senator MATHIAS. Now, all the commercial and economic and social lobbying groups that have an interest in that committee are going to get immediately interested in that election, and it may be in the most remote State in the Union, with the smallest population, but it becomes an enormous concentration.

Senator BYRD. No question about that. But the Senator's new rule does not go to elections in the State. It deals with elections in the conference and in the Senate.

Senator MATHIAS. Oh, no, but it will make a difference in elections in those States.

Senator BYRD. What difference will it make within the Republican conference?

Senator MATHIAS. In all honesty, Mr. Chairman, I do not believe—and you had your experience in West Virginia and I had mine in Maryland, and my observation of what has happened in our state-house in Annapolis in recent years, or in other legislative bodies, does not lead me to believe—that all morals are going to be abandoned, and that people are going to run around electioneering for these positions.

I suspect that if there is some reason why the normal reason of seniority may be questioned there may develop some sharp competition. I do not think it will happen in each case every year. I think it will probably be the exception rather than the rule, and I am not nearly ready to throw up my hands in despair that we cannot do better than we are doing.

Senator BYRD. The Senator has not answered my question. Would not a change in the seniority system promote a struggle for appointment and bring pressure groups into the struggle with respect to the selection of chairmen and ranking minority members?

Senator MATHIAS. Mr. Chairman, I could not guarantee you that there might not be greater activity than today. Bees flock around honey just as naturally as the sun comes up in the morning; and they do it today, and I think they will continue to do it.

Senator BYRD. Did the pressure groups get into the selection today of the ranking minority member of each of the 17 committees in the Senate?

Senator MATHIAS. Of course not; the Senator knows that.

Senator BYRD. The Senator used the word "today" in his analogy.

Senator MATHIAS. Well, the fact that special interest groups attach themselves to members of legislative bodies is what happens today; and the relative importance of those members, I think, is a measure of the number of bees which are going to be attracted to that particular box of honey.

Senator BYRD. But the Senator's resolution goes to rule XXIV. He seeks to change rule XXIV, and his resolution has to do with the nomination of candidates for ranking minority members in the Republican caucus and candidates for chairmen of the committees in the Democratic caucus and, second, their appointment in the Senate.

Under the present system, which is governed by rule XXIV, do pressure groups get involved in the selection of ranking minority members of committees?

Senator MATHIAS. Mr. Chairman, let me go back again. I would say to you again, viewing the broad body politic, yes, because under the seniority system they become involved in the previous sequential actions.

Senator BYRD. Which rule XXIV has not one thing to do with.

Senator MATHIAS. I agree.

Senator BYRD. Let us confine, if I may suggest to the able Senator, let us confine our remarks to what XXIV does and what Senate Resolution 17 would do.

Senator MATHIAS. In my judgment, there would be no significant activity. You asked me for an opinion. I would say no significant activity, and I cannot disassociate that completely from what I consider to be a line of direct consequences beginning with the election process in a Member's home State.

Senator BYRD. Well, the Senator has answered the question, and answered it sincerely, to the best of his knowledge, and I respect him for it. I think, though, that most of us would have to disagree because I do not think there is evidence of pressure groups getting into the caucus selection of committee chairmen and ranking minority members except in very, very exceptional instances, as, for example, in the case of a situation involving an Adam Clayton Powell.

But, it seems to me, though, that if we do away with the seniority system, and if the selection of ranking minority members and chairmen and members of standing committees is going to be based on a purely political system, the activity of all kinds of pressure groups is going to be greatly insured. It is, perhaps, just a difference of opinion, but it is my opinion that pressure groups will not only get involved in the selection of chairmen and members of committees but will also dictate their selection.

Doesn't the seniority system help to insulate the Congress from encroachments by the White House? We have a system here that is pretty well accepted and understood and recognized, even though there

may be those who would like to see it changed, but the selection of ranking members and chairmen is based on a pretty harmonious system. It is an impersonal one, as I have indicated.

Under the Senator's proposal, would not the selection of chairmen and ranking committee members be something that the White House, under either political party, would inject itself into?

Senator MATHIAS. Well, the Chairman introduces a very interesting speculation here. I would say that history shows that the Congress was a more independent body, perhaps a more influential body, in our Federal structure prior to the adoption of the seniority system than it has been since the adoption of the seniority system. It has been during the time that the seniority system has been in effect that the Presidency—and do not misunderstand me, that I am saying it is because of the seniority system, but it happens that it has been while the seniority system has been in effect—that the Presidency has gained its great predominance in our system.

Senator BYRD. One could just as easily say that during the seniority system measles have been conquered, but it does not follow that it was due to the existence of the seniority system.

Would the Senator direct his answer to my question? Would not the destruction of the seniority system—which is well acknowledged and accepted by the people in the White House and everywhere else as the current mode by which chairmen are selected—and the institution of a system whereby the chairmen are elected *de novo* every 2 years, and based on how popular they are among their colleagues, and so on and so forth, would not this open the door for possible intervention by the executive branch?

Senator MATHIAS. Well, let me admit for the sake of the argument that it would, let us say it does, but let me suggest to the chairman another theory.

Senator BYRD. Before the Senator suggests another theory—which is all right, since we are having this seminar in theory today—does the Senator not see a danger in this? We are talking about his resolution now.

Senator MATHIAS. For sake of the argument, I will say, yes, this is an opportunity where agents of the White House could come down and play some sinister role in these proceedings which would violate the principle of separation of powers. Surely I see that danger.

But let me suggest to you that it might be a means of revitalizing the institution of the Congress in the eyes of the American people inasmuch as one of the reasons that the Presidency has become so predominant in the public mind as the embodiment of the Federal Government is the visibility of the Presidency and the competition which is constantly surrounding the office of the Presidency; and let me further suggest that if, in fact, the chairmanship of the committees and the importance of who is chairman were dramatized to the American people by the fact that there were an occasional challenge, it might do a great deal to symbolize to the American people the vigor and the importance and the essential nature of both the Congress and the unique American congressional committee system which is one of our great contributions to the art of government.

I think perhaps, the Chairman has hit on something here which I had not thought of as being one method of making us more competitive with the occupant of the White House, whoever he might be.

Senator BYRD. The Senator is very sanguine.

Senator MATHIAS. Well, you know, they say the difference between pessimists and optimists is that the optimist is happier.

Senator BYRD. That may be true, but I am not sure that this has much to do with Senate Resolution 17.

I wish to thank the Senator for his very erudite responses to the questions that have been asked. He has been a most agreeable witness, and he has made a fine contribution today.

Does the Senator have anything further he would like to say or insert in the record?

Senator MATHIAS. Well, Mr. Chairman, I again would like to repeat my thanks and that of Senator Harris for your extraordinary courtesy and kindness in hearing us today, a day that many Members of Congress are out of town.

If I could, I would just like to make one concluding statement. What Senator Harris and I have attempted to do by way of reform or improvement has sometimes been characterized as an attack on the seniority system. It is not intended to be an attack on anything, certainly not an attack on any body. We are trying to make things better than they are. By the same token, I think that there has been a misconstruction of reaction among Members of the Senate because, I think, most Members of the Senate have viewed this whole problem with great objectivity.

In the Republican caucus I offered a motion which was finally adopted in modified form which would prevent the operation of the seniority system from placing one Member at the head of the Republican side of more than one committee. Now, this did not change the seniority system but it changed the results of the seniority system.

As a result of that motion, which was adopted by the Republican caucus, there have been 12 direct changes on the Republican side of committee tables, and the indirect changes, I would expect, would extend to every single member of the minority.

This was a motion which was adopted finally by a vote of 35 to 2 in the Republican caucus which, I think, illustrates, and I am sure the same objectivity exists on the other side of the aisle, that Members of the Senate are not in some fortress besieged, fighting off these attacks. We are all of us trying to make the system work better, and I think that is the spirit that the Chairman has exhibited here today. I am sincerely grateful to him.

Mr. Chairman, I have a prepared statement I would like to submit for the record. We have sort of gone beyond it, but I think it might be useful because it deals in some detail with the legal aspects of the change we have suggested.

We also have the statements that were referred to by Senator Harris. They include—and I just note this in passing, they include—the statements of our colleague, the Senator from Arizona, Barry Goldwater, who represents one of those spacious Western States with a few people, and another colleague, Senator Harrison Williams of New Jersey, who represents one of those small, densely populated Eastern States, both of whom are in complete agreement that some change is needed.

So, Mr. Chairman, if I may, I will submit my own statement and the other statements which Senator Harris and I were privileged to receive.

Senator BYRD. Senator Mathias, your statement will be inserted as though it had been read.

Also, the statements of Senator Goldwater and Senator Williams will be received for the record.

(The statement of Senator Mathias follows. The statements of Senator Goldwater and Senator Williams before the Ad Hoc Committee on Congressional Reform may be found at the end of this hearing.)

**PREPARED STATEMENT OF HON. CHARLES McC. MATHIAS, JR.,
A U.S. SENATOR FROM THE STATE OF MARYLAND**

Senator MATHIAS. Mr. Chairman, I greatly appreciate the prompt attention the Subcommittee on Rules is according Senate Resolution 17. I am fully cognizant of the organizational and administrative difficulties encountered by any committee in the early days of a new Congress. I wish to thank the Chairman for his accommodation, his interest, and his courtesy in this matter which I consider to be of vital significance to the future of the U.S. Senate. Our purpose today is to explore the feasibility of explicit changes in rules and procedures which could have far-reaching consequences. But even the most ideal and workable rules would accomplish little without the continued demonstration of a cooperative spirit by each individual Senator toward the others, whether their political philosophies are similar or varying.

Senate Resolution 17 would modify procedures for the selection of Senate committees and their chairmen and ranking minority members. In the relatively recent past chairmen and ranking members have been chosen solely on the basis of seniority. This has been an extremely powerful tradition and it is encouraging that in the Senate, as in the Nation, there is a growing willingness to explore its significance and to consider improvements.

At the special ad hoc hearings on seniority which Senator Harris and I convened January 18 and 19, testimony was presented by a wide variety of witnesses: The Honorable Barry Goldwater, a Senator from a spacious Western State; The Honorable Harrison A. Williams, a Senator from a densely populated Eastern State; John Gardner, Chairman of Common Cause; Whitney Young, The National Urban Coalition; Clarence Mitchell, National Association for the Advancement of Colored People; Leonard Woodcock, the United Auto Workers; Lee Auspitz, the Ripon Society; and other representatives from the Methodist Church, the Farmers Union, and the Americans for Democratic Action. Such men reflect the view of a great many Americans. They all agreed that the time has come for Congress—and especially the Senate—to improve the method by which it does its work.

It is clear that the time has come to find new ways to reach new solutions, not merely new ways to get the same tired answers. We need to examine the whole legislative process and find better ways in which the individual talents of all Senators can be utilized fully. It is time, in short, to turn on the lights and illuminate the musty corners and corridors of the Capitol so that we can see where we ought to go and how to get there.

Before us today is a proposed change in Senate rule XXIV, which presently states:

1. In the appointment of the standing committees, the Senate, unless otherwise ordered, shall proceed by ballot to appoint severally the chairman of each committee, and then, by one ballot, the other members necessary to complete the same. A majority of the whole number of votes given shall be necessary to the choice of a chairman of a standing committee, but a plurality of votes shall elect the other members thereof. All other committees shall be appointed by ballot, unless otherwise ordered, and a plurality of votes shall appoint.

2. When a chairman of a committee shall resign or cease to serve on a committee, and the Presiding Officer be authorized by the Senate to fill the vacancy in such committee, unless specially otherwise ordered, it shall be only to fill up the number of the committee.

The changes proposed in Senate Resolution 17 embody no intent to eliminate or radically alter rule XXIV as such: Rather, the amendment that Senator Harris and I propose is an attempt to rekindle the spirit of that rule written by our Founding Fathers—a spirit which has been continually violated and which has become the vehicle for perpetuating an unforeseen, unconstituted system of appointing committees and their chairmen.

First, in the selection process Senate Resolution 17 includes the position of ranking minority members as well as that of chairman of a standing committee. As our committees function today the ranking minority member is the counterpart of the chairman in his role of committee and party leadership. His position is complementary, if less well-endowed, and his manner of appointment deserves commensurate consideration.

Second, Senate Resolution 17 explicitly states that no member of either party may be appointed chairman or ranking minority member of more than one standing committee. Both party conferences already, in fact, adhere to this principle, the Republican conference having adopted a resolution I introduced in caucus several weeks ago.

Third, Senate Resolution 17 recognizes the majority and minority conferences as the nominating bodies for chairmen and ranking minority members, respectively, as well as for the other members necessary to complete the committees. This simply formalizes the procedure which currently exists and with which we should not tamper.

In the nomination process Senate Resolution 17 requires that each position be considered severally, that is, individually. Thus each nomination will stand or fall on its own merits, untied to any slate or bloc, and each position will be invested with a certitude of accountability every 2 years. Without any such element of accountability, no legislative body or sub-body can claim to be truly democratic.

For the sake of consistency Senate Resolution 17 strikes the phrase “unless otherwise ordered” in rule XXIV, and applies all the elective provisions to the selection of a new member when the contingency arises of a present member resigning or vacating his position on a committee.

Most significantly Senate Resolution 17 provides that in all nominations the party conferences will not be bound by any tradition, custom or principle of seniority. This is the crux of the resolution.

The seniority system should not be confused with the growth of knowledge and experience gained in long service that has benefited the Senate. Extended congressional service has produced men who, through many long years, have acquired great experience and expertise in their particular field. Their knowledge is invaluable to the Senate. I would hope that any reform of the seniority system would not diminish their contributions, but rather would allow the Senate to

draw upon the full capabilities of all Senators in order to most effectively deal with the complex and difficult problems confronting our society today.

But let us consider the effect of the seniority system in those committees where it has been rigidly enforced. The attitudes of all the members are as much warped as are those of the chairman and ranking member. Ambitious and able junior members may often find the committee atmosphere stifling and turn their energies away from the urgent and pressing business of the committee because seniority denies them any early opportunity to direct staff investigations, question witnesses, and help shape committee reports. Manpower available to do the work of Congress is, therefore, diverted and dissipated at the point in the system when it is most needed.

Let me emphasize that Senate Resolution 17 would in no way prohibit or prevent the election of the most senior member of a committee as its chairman or ranking minority member. It would, however, require that this choice be made thoughtfully and individually, rather than automatically. The standard for election would become the quality of a Senator's service, not simply the length of it. Further, Senate Resolution 17 injects both discipline and dynamism into the committee system by establishing the means for a review of the stewardship of each chairman every 2 years.

The Senate must be a place where all Members share the power and responsibility vested in them by the Nation's citizens. It must be a conveyer belt in the efficient exercise of democracy, not a treadmill of outworn practices and inefficiency. We have an obligation to the Nation to utilize the best talents of all our colleagues in molding our legislation and, in all our actions, to maintain the confidence of the people in that sector of government which has been entrusted to our custodianship. In all candor, I fear that we have not met that obligation to the best of our ability. Adoption of Senate Resolution 17 would be a step toward meeting that obligation.

Governmental systems such as ours have fallen into political bankruptcy when they have lost the confidence of the people as a viable vehicle for responsive change, and when the spirit of the people has been prevented from working its will within the governmental structure. I fear that the seniority system as it currently exists in the Senate is dangerously close to creating a crisis of confidence. Refinement or elimination of the seniority system is a prerequisite for the intelligent innovations and orderly change that the legislative branch requires in order to continue to maintain its position of responsibility to the people. If we do not allow the will of the people to be heard, we may find ourselves stranded at the altar, forsaken by our fellow countrymen.

Changing the Standing Rules of the Senate is not a matter to be taken lightly, and I can assure the chairman that a great deal of thought has been given to the proposals offered to the committee today. I am firmly convinced that we must move quickly in this direction. In the past few months I have received an extraordinary volume of mail on the subject of seniority from all over the country. Almost without exception the message has been to move forward, to open up the Senate, to adopt the reforms we are considering today. For the benefit of the Senate and the Nation, the allocation of leadership responsibilities in various areas of legislation must reflect something more than simple longevity. Senate Resolution 17 would permit

these other considerations to arise, it would dictate nothing beyond its own procedural mechanics, and it would encourage the flexibility and freedom of decision which was envisioned when rule XXIV was written by our forebears.

Senator BYRD. I have two or three other questions, if I may just tarry a bit longer. I believe there is no place in the present standing rules where references are made to the caucus of either party.

Does the Senator feel it wise to incorporate into the Senate rules language that would govern the operation of the two party caucuses? This would be the case in the event paragraph 3 of the resolution is adopted.

Senator MATHIAS. Well, it is an admission of the facts of life. Caucuses exist, parties exist, and it is an admission that they do. I do not think any immature sensibilities are going to be ruffled as a result of mentioning the fact that caucuses and parties exist.

I do think this, that it spells out very clearly the fact that there is such a thing as party responsibility, there is such a thing as a job, an obligation of the caucus. I think it could be desirable.

I would raise, and I do not want to extend this because the chairman has been enormously generous—but I would raise the possibility that under the changed rule the caucuses might have their own methods of procedure. Now, that would give them considerable flexibility on how they go forward.

Senator BYRD. Isn't the Senator, however, opening up a dangerous vista of possibilities? Suppose the Democrats, as the majority party, make all the rules for the Republican Party caucus.

Senator MATHIAS. Those dangers are all around us, Mr. Chairman. In the State of Maryland, for example, the rules that govern the operation of the Republican Party as a State organization are subject to the legislation which is adopted by the State Legislature, and when I was in the State Legislature we had 123 members in the House of Delegates, only seven of whom were Republicans. We got along.

Senator BYRD. That may be true. We may get along, Senator, we may get along without any system at all, but we cannot obviate the possibility that a very sticky situation could arise if we start incorporating into the rules of the Senate language which governs the operation of the two party caucuses. There could come a day when a very arbitrary majority party could change the rules with respect to minority caucuses, and I am wondering if we are not really asking for possible trouble here.

Senator MATHIAS. Well, I do not want the Chair to think I am treating his question lightly, because I am not. As a lawyer, however, I believe my job is to think of all the possible difficulties that could afflict my client, and to tell him of it so that he can make possible choices.

But, as you guide your client among the possible choices and between the rocks and shoals of danger that may beset his course, I think you weigh the greater and the lesser dangers.

Now, if, in fact, as you walked out of your front door in the morning to come down to Capitol Hill you were to weigh every possible difficulty that could arise in a 5- or 6-mile drive from wherever you lived to your office, nobody would ever go out the door. You know, the possibilities of being killed are enormous between here and your house.

Senator BYRD. Yes, but if the Senator did not put some antifreeze in his radiator once every winter he would not reach Capitol Hill one day, so you have got to anticipate some problems.

Senator MATHIAS. I am in complete agreement, Mr. Chairman.

Senator BYRD. Republicans have decided that no Republican Senator can fill more than one ranking minority membership on standing committees; is that a fair statement?

Senator MATHIAS. That is right. That is the essence of what was generously called the Mathias resolution. Of course, it is, in effect, the same rule which already governs the majority party under Senate rules.

Senator BYRD. Yes. But does the Senator not agree that this innovation—which is a good one, and which was brought about by his rule—can be overthrown by the majority party under his resolution? In the resolution he suggests that, in the appointment of the standing committees the Senate shall proceed by ballot to appoint severally the chairman and ranking minority member of each committee.

What is going to keep the majority party in the Senate from selecting the Senator from Maryland, if it so desired, as the ranking minority member of three standing committees? It has the votes, it has the power, and under the language of the resolution it may do this. What will happen to the Senator's innovation in that event? I ask this because it is a possibility.

The Senator, I am sure, will agree it is a possibility that could occur. That being the case, then, is it wise that we incorporate language in the Senate rules which governs the operation of the party caucuses?

Senator MATHIAS. Again, if I can agree for the purpose of discussion that it is a possibility, let me say it is a very remote possibility because the rule in section 3 also provides that the caucus shall be the nominating body, and the caucus would normally be governed by the rule, and the caucus would not violate its own rule in making those nominations.

In the amended resolution we also, of course, provide that, on line 3 of page 2, that no one shall be appointed chairman or ranking minority member of more than one standing committee. Thus the essence of the Mathias resolution in the Republican caucus is embodied in the amended rules.

I think it would apply both under the caucus rules and the nominating procedure and under the amended rule in the elective procedure.

Senator BYRD. Well, perhaps the Senator is correct.

I feel that much food for thought has been generated today with respect to the proposed resolution. Perhaps Senate rule XXIV can be improved. Perhaps Senate Resolution 17 offers some feasible changes. It will bear considerable study. But the subcommittee will, when it comes together, consider the record of the testimony. Then if the subcommittee feels that additional hearings are needed, they will be held.

In any event, the subcommittee will give its very serious consideration to the proposal that has been advanced by the Senator and by Senator Harris.

Senator, thank you very much for your appearance before the subcommittee. The subcommittee will stand in adjournment subject to the call of the Chair if the need should arise.

Senator MATHIAS. Thank you very much, Mr. Chairman.

(Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.)

(The statements of Senator Williams and Senator Goldwater before the Harris-Mathias Ad Hoc Committee on Congressional Reform on January 19, 1971, are as follows:)

STATEMENT OF HON. HARRISON A. WILLIAMS, JR., A U.S. SENATOR FROM THE STATE OF NEW JERSEY BEFORE THE AD HOC COMMITTEE ON CONGRESSIONAL REFORM

Mr. Chairman, I feel privileged to testify at these ad hoc hearings on Senate reform, not only because they concern the institution of which I am proud to be a member, but also because I sense that some of the issues which will be raised during these two days of testimony could have a dramatic impact upon the direction of our entire nation during the next few years.

I do not think I overstate the case when I assert that the delicate and sometimes shifting balance of power between the three branches of our government—a balance brilliantly conceived to protect us from the excesses of other governmental systems—has, until rather recently, been tilted in favor of the executive branch. But I believe we are now in the process of setting that balance aright; a process which began with the recognition that the awful consequences of our Southeast Asia venture resulted, in part, from a virtually unanimous relinquishing of Congressional authority in the military-foreign policy fields to the Executive. This recognition, in turn, catalyzed a whole new awareness of the need for Congress to reassert itself in these and other fields for the good of the country. The now common phrase "reordering of priorities" can be said to have developed hand-in-glove with this new awareness. It is a healthy partnership; it must be nurtured; it can be greatly aided by these hearings. For we are now face to face with the question of how Congress can best implement this new awareness and assert those initiatives which are properly its own.—How, in fact, it can be made to respond so that the yearnings for an improvement in the quality of our lives may be satisfied; the unhappy divisions within our society at least bridged, if not completely healed; and the apprehensions about the very efficacy of our system relieved.

Mr. Chairman, disillusionment with the procedure of our legislative system has affected a great many Americans and, increasingly, members of the Congress are numbered among this group. Senators and Congressmen are no longer loath to admit to a sense of frustration over continued adherence to customs and rules designed to obstruct and delay legislation having the support of a majority of the members of Congress and, of course, the public which it represents. While minority rights should, and I am sure will, be preserved continued frustration of congressional majorities is a stain upon our democratic traditions which must be erased.

The French poet, and Senator, Victor Hugo, once remarked, "No army can withstand the strength of an idea whose time has come." I believe that this is the time of the idea of Congressional reform, and we must not fail to act.

The criticism most frequently mentioned in discussions of Congressional reform concerns the seniority system which, as we all know, provides for the virtually automatic accession of those legislators blessed with longevity and safe districts to extremely powerful positions. Merit plays no part in the process. And neither, Mr. Chairman, does the existence, or lack of it, of a responsiveness to the views of a majority of the members of a chairman's party.

This is not to say that the chairman of Congressional committees either lack merit or are in disharmony with the majority of their party. In fact, the opposite is true. The distinguished gentlemen who chair the Standing Committees of the U.S. Senate are extremely knowledgeable in their areas of responsibility and have consistently demonstrated their ability to work closely and cooperatively with their colleagues on most issues. However, under the present system a lack of merit or consistent disharmony with a party majority would not necessarily disqualify a member from attaining a chairmanship, and there have been examples in our history of legislators attaining chairmanships which, on the basis of ability or philosophy, they might not have received under a different system.

The seniority system has existed in the U.S. Senate for almost 125 years. One possible indication of its worth can be deduced from the fact that this system which we venerate so highly has not been adopted to our knowledge by any other parliament or legislature in the world. It is unlikely that any profit-making business firm would seriously consider a similar form of promotion. Among certain primitive societies, however, I understand that the concept enjoyed widespread

currency until quite recently. The Nyakyusa tribe in East Africa practiced a particularly interesting form of seniority. The tribal elder and leader was called the "Lwembe" and he occupied a most exalted and venerable position. Such deification, however, was not without its disadvantages. The old leader was carefully watched in his advanced years and upon the first signs of an ebbing vitality, he would be secretly smothered by the tribal priests.

The proposal which I would like to present today is considerably more in keeping with Senatorial decorum and courtesy than the just-mentioned method of determining leadership.

I propose that the seniority system be abandoned and that the chairmen of all standing committees be elected at the convening of each new Congress by a secret vote of the majority members of the committees. Only members who have served at least two years on the committee of which they are members at the start of each Congress would be eligible, in order to ensure familiarity with the substance and procedures of their committee. I suggest that a majority of those voting be required for election, with run-offs held as necessary. In the event of deadlocks, the member with the longest committee service would prevail.

Having gone through the electoral process ourselves, Mr. Chairman, we are all familiar with its imperfections. But, if we can agree that merit and party consistency should be the critical factors in the selection of our committee chairmen, then I suggest that none are better qualified to render these judgments than fellow committee members, and that no better way of rendering these judgments than through a secret ballot can be devised.

Such an election of chairmen would have several advantages. It would, for example, immeasurably increase the participation and interest in committee work of each majority member who aspires to the chair, and ensure a continuing commitment to diligence on the part of the chairman, who must stand for reelection each Congress. It is also obvious that the prospect of such elections would discourage any drastically divisive or uncooperative behavior on the part of an aspiring or unsuccessful candidate. The experience of the Joint Committee on Atomic Energy is somewhat revealing in this respect. According to some of its members, the automatic rotation of that Chairmanship between its Senate and House ranking members has led to a greater responsiveness on the part of committee members from the one body to the suggestions and proposals of members from the other body. This has prevented the growth of complacency and has encouraged better performance on this committee.

I believe also, that much of the danger of factionalism that is so feared would be avoided by the use of a secret ballot—a condition which would, incidentally, serve to thwart the intervention of the Executive branch or other interest groups into the selection process.

One of the drawbacks of the election method occasionally cited is that the need for a compromise candidate in some instances might cause "moderation" rather than "qualification" to emerge as the dominant consideration. There is no doubt that this is a possibility. But this eventuality, Mr. Chairman, would still seem far less of a risk to the committee system than the selection, as has sometimes happened, of a chairman who may not be at all representative of the views of the committee members.

If I may, Mr. Chairman, I also wish to speak in favor of another change in practice which has been proposed for the Congress. As my colleagues are well aware, there are many occasions when the Senate, in its wisdom, must differ with the House of Representatives upon diverse issues. We have employed, over the years, the traditional method of meeting with our counterparts from the House in conference, to iron out differences in legislation. It frequently happens, however, that the conferees which are appointed by this body, are Senators who are not completely in agreement with the majority of the Senate with respect to the issue under consideration. I feel that this practice is unfair not only to the majority position in the Senate, which deserves to be defended in conference by its most enthusiastic proponents, it is also unfair to the conferees themselves, who are put in the uncomfortable position of being called upon to defend a position with which they are not in sympathy. I call upon the Senate to study, with a view toward implementation in the near future, alternative procedures to enable the selection of conferees more reflective of the prevailing view of the Senate.

Mr. Chairman, these are, in essence, proposals which I feel would be most effective in reforming Senate procedure and practice. However, I recognize that there are many other proposals which could result in an improvement over the present situation. For example, proposals have been made to limit the age of committee chairmen to a certain maximum. I would support a resolution to undertake a study of the age factor, or indeed to examine the entire seniority question should we fail to grasp the opportunity for meaningful reform now before us.

Mr. Chairman, in closing I would like to make a few additional observations as to the implications of the suggestions which I have made today. I cannot help but feel that the present system serves the unhealthy end of weakening party accountability, which in turn abets growing discontent with the ability of the two-party system to function. Every other November there is a national election and we campaign as members of our national parties. Certain pledges are made to the people which, as honest men, we feel committed to quite strongly. Those fortunate enough to be elected come to Washington and attempt to carry out their mandate only to find that power may lie in the hands of men who ignored the national party and, in fact, sometimes opposed it. To the extent that the seniority system prevents the pledges of either national party from being executed, the voters who judged on that basis are being robbed of their victory and faith in our two-party system is shaken. This situation must be replaced by a clearer expression of the people's will.

Mr. Chairman, I believe the bipartisan nature of these hearings is a major step in ensuring the success of the reform movement. I congratulate you and your colleagues on your initiative, and I am proud to be a part of it.

STATEMENT OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM THE STATE OF ARIZONA BEFORE THE AD HOC COMMITTEE ON CONGRESSIONAL REFORM

Senators Harris and Mathias, let me say at the outset that I think these hearings serve a useful purpose. I am very pleased to be able to participate in your effort to find ways of improving Senate procedures and making our distinguished body more responsive to the nation; and as a Member of the institution we are discussing, I will try to add some helpful insight to this study.

Perhaps more than most Members, I have had an opportunity to observe and examine the practices and procedures under which the Senate operates. Before my present term, I was privileged to serve for 12 years as a Member of the Senate and then to have a self-imposed sabbatical of 4 years during which I could reflect upon the basic structure and distinguishing features of this national institution. So, unlike many of the voices which you will hear in the course of these proceedings, I will speak to you as one who has viewed the inner workings of the Senate's machinery and who has had a unique opportunity to examine the issues which are the subject of your hearing.

With this background, I wish to express my strong view that there is no need to perform major surgery on the Senate. To the contrary, I shall propose several changes in practices used on the Senate Floor which would make the Senate operate in a smoother, swifter, and more responsive manner, but would not require amendment of the Senate rules. In addition, I shall suggest one reform which would require a substantial break with Senate tradition.

But before launching into the details of these suggested changes, let me explain the reasons for my belief that no drastic alterations are called for. To my mind, the Senate is not the irresponsible, ponderous dinosaur which many of its critics make it out to be. Though there are times when we all become frustrated over its inability to grab hold of an issue and reach a decision right here and now, upon reflection, when one looks at the record developed by the last Congress, we can see the Senate is capable of reaching a great many significant decisions. On the other hand, I do not think the mark of a successful Congress is necessarily found in how many laws it passes, and often the Senate can serve the country best by not acting to pass ill-considered proposals.

On the positive side, I might mention two laws which I had sponsored in the last Congress together with wide bipartisan support that might contribute to the public good. One of these new laws will protect the important personal right of privacy by completely barring the use of the United States mails as a means to distribute unsolicited and unwanted sexually related advertisements.

The second will enhance the right to vote for President and Vice President for over 10 million American citizens. You may recall this law abolishes residence requirements as a pre-condition to voting for President and Vice President, and grants to all United States citizens the right to register absentee and to vote by absentee ballot in Presidential elections. I like to point to this statute when anyone suggests the previous Congress has failed to act on election reform. Why this one change alone will expand the vote by nearly 14 percent.

And have we already forgotten the giant step taken when Congress reduced the voting age to 18? This provision will add another 11 million persons to our election rolls. Therefore, it must be recognized that the 91st Congress deserves credit for having enabled over 20 million additional American citizens to join the ranks of

eligible voters in future elections. This is an increase of almost 30 per cent in the number of persons who elect a President.

Other legislative contributions made by the previous Congress include a Water Quality Improvement law, enactment of a major organized crime bill, a Clean Air measure, and a complete reform of the postal system.

Among the legislative proposals which the last Congress turned down is the so-called welfare reform proposal. Though I realize there is some disagreement over this issue, I am persuaded that my good friend from Delaware, Senator John Williams, is correct when he concludes the welfare package would freeze all the inequities of existing law into the new program and add several new ones. For example, my colleague revealed that not one welfare recipient in America would receive a dime less than that which he is now getting under existing law. On the other hand, the welfare proposal would increase the public assistance rolls from 11 to 24 million persons, a rise of more than 100 per cent. In addition, it was discovered the bill would have provided a \$1,300 cash bonus to a mother who had an illegitimate baby over and above what she would receive if the baby were born in wedlock.

It's this kind of deficiency which leads me to believe it might not be such a bad idea if the Senate would defer action on a Presidential proposal every once in a while. I do not think there is anyone here who wants the Senate to become a rubber stamp for the President, whatever his political beliefs. I have mentioned one instance where I believe President Nixon has been given bad advice. I would also like to refer to a related measure which should never have gotten through during the term of Mr. Nixon's predecessor, Lyndon Johnson—and this is the Medicaid program for which public expenditures have leaped 1,000 percent above the estimates given to Congress. Indeed, I might add that much of the inflationary costs saddled upon the national economy today can be traced back to legislation which was barreled through by an obliging Congress which was all too eager to accept and expand President Johnson's social schemes.

With these thoughts in mind, I would like to list some of the practical changes which can be made in order to improve the Senate's performance. I will preface this list by saying they did not originate with me. Rather, these are items which have been developed as a result of great efforts and time spent by the joint leadership of the Senate, particularly Senator Mansfield and Senator Scott. I do not think I am revealing any secret today when I mention that the joint leadership is likely to request—perhaps I should say insist—that at least a dozen changes shall be implemented in the Senate's procedure once the new Congress convenes.

These changes include a decision by the leadership to insist that roll call votes do not last more than 20 minutes in the Senate. On occasion, I can recall when these votes have stretched out up to 45 and 50 minutes in order to accommodate the convenience of one or two individual Members. If we are to cope with the ever increasing needs of a growing nation, we should try to prevent this kind of ridiculous waste of time which holds up the country's business.

In order to make this practice workable, the Sergeant-at-Arms will be asked to install a new light and bell system to indicate the beginning of the final 5 minutes of each roll call vote. In this way, each Member can know at a glance this is his last opportunity to be recorded. Whether Senators will find this acceptable will depend upon them, of course. The mechanics can be provided to assist Senators, but it's up to them to make proper use of these procedures.

Another move to cut down on the time for holding votes will be an appeal to Members to stay close to the Floor once they know a unanimous consent agreement has gone into effect. If Senators will keep close to the Chamber instead of being scattered all over Capitol Hill, I am confident this will save several precious minutes out of each day whenever a vote is called.

The next change would require that all Members should be prepared to accept strict enforcement of the 3 minute rule on speeches during the morning hour. Here we have a rule that is broken regularly and draws out the beginning of the Senate's day time after time. It is my feeling Senators should abide by the present rule; and if they cannot deliver their full statement within 3 minutes they can always ask for their speech to be printed in the Congressional Record as if it had been read in its entirety.

This proposal is related to a decision to crack down on the growing tendency of Senators to seek a special order setting aside the whole morning hour for their speeches. When the new Congress convenes, Senators will be expected to ask for no more than 15 minutes under any special order; and if their thoughts need further development, they should insert their remarks in the Record or come back at the end of the day to resume their statement after the Senate's business has been conducted.

Perhaps the most important change will be the giving of a firm notice to each Member that he must remain in Washington except during announced recesses. All too often in the past individual Senators have been allowed to delay the holding of a vote from one day to another in order to satisfy their outside speaking plans. Now if we would just think about this, we would see that if each Senator is granted a delay only once in each session of Congress, the Senate would thereby lose a full 100 days out of its work year. This is an impossible situation, and I shall support the enforcement of the new practice with great hopes for its success.

In order to assist the needs of each Senator, I understand the joint leadership will seek to provide for a 5-day recess at the end of every month during which Senators can carry out their speaking engagements. Again, it will be up to each Senator to adjust his schedule in the service of the entire Senate.

There are other changes which will improve the ability of each Senator to do his job well even though it may not reduce the time it takes him to do it. For example, the 3-day rule on appropriations bills will be followed to the letter. As you know, this rule provides that an appropriation measure must stay on the Senate's calendar for 3 days before it is acted upon. The close monitoring of this rule will assure Members who do not sit on the Appropriations Committee that they will have the time to study and inform themselves about these massive, important bills.

Secondly, the final 15 minutes of debate under a limited time agreement will hereafter be equally divided between the proponents and opponents of an issue. Very often in the past, the Senate has witnessed the spectacle in which all the minutes reserved for one side has been used up early in a debate, so that by the time most Members come onto the Floor, they will hear only a one-sided presentation of the issue. By altering this practice, I believe Senators who are in the Chamber shortly before a vote will be able to hear a balanced discussion of both sides of the matter before them.

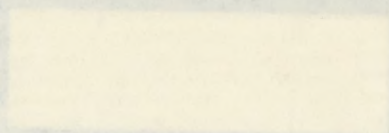
This concludes my review of the mechanical changes which will be laid before the new Congress when it convenes. I shall leave it for the Senate leadership to announce the full details of their new plan. But before closing, I would like to add one suggestion to their list which is the proposal that Senate Committees should begin their work much earlier in the session by scheduling hearings immediately after Congress convenes.

Finally, I want to join with the many opinions voiced at this hearing that conclude the Seniority system is outmoded and improper for a Twentieth Century Congress. While I do not have any hard and fast position about what we might use to replace it, I do think it would be worthwhile to consider whether the Chairmen and members of each Committee can be chosen by party vote, or in the case of the Chairman, perhaps by the ranking three or four members of each Committee.

For my part, I am very impressed with the energy and skill shown by many of our junior Members, and I strongly believe these young men should be given greater opportunities to rise to the heights of their abilities within our political structure.

Furthermore, I will go a step beyond the usual recommendation by announcing my position that the Senate procedures must be revised to make room on our Committees for the younger Members according to their personal area of expertise. In my view, any consideration of a change in the Seniority system should not be restricted merely to the stop of Committee Chairman, but must be aimed at the broader question of how one can get onto that Committee in the first place. If we can achieve this one limited change, I think we can do more to modernize the Senate and preserve its stature than by adopting any other reform which I have heard about.

This concludes my statement.





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