

Floyd M. Riddick

Senate Parliamentarian, 1964-1974

Interview #4 Filibuster and Cloture (July 27, 1978; August 1, 1978; August 25, 1978) Interviewed by Donald A. Ritchie

Ritchie: I thought we could talk now about one of the more controversial issues of your career as parliamentarian, the whole question about cloture and the persistent problem that the vice presidents have faced, from Alben Barkley on, about how they would rule on whether or not the Senate was a continuing body, and how the rules operated. You were quoted recently in the *Washington Post* (15 June 1978) as saying: "coming from the House to the Senate, it is like going from prison to freedom. This procedure of the filibuster, when the senators restrain themselves and do not abuse the privilege, is more edifying and constructive." Is that an accurate quote?

Riddick: It's pretty close; of course the "going from prison to freedom," perhaps was picked out of context, so it didn't mean that you were actually

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imprisoned, but that the restrictions of speaking over there were such that when you come to the Senate there is such a feeling of freedom in debate that you just don't get in the House procedures. You operate in the Committee of the Whole under the five minute rule; nobody can speak over an hour under any circumstances; and it presents an entirely different picture. Then too, not only the individual's ability to speak, but the fact that when you start out on a major bill there's no such thing as a rule adopted by a majority to limit the general debate to seven or ten hours, and then the bill will be read for amendments under the five minute rule in the Committee of the Whole. In the Senate you just keep on talking for as long as you want to talk and discuss it until nobody seeks further recognition.

The Chair in the Senate at every hiatus continues restating the question:

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"The question is on so-and-so." He dares to put the question until no senator cares any longer to speak. When no senator seeks recognition any further, he puts the question. But even if he started to put the question and some senator rises, "Mr. President." He will pause right there and recognize the senator, and off we

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go on debate again. This gives you an opportunity to develop an overall picture of the pending legislation that you can't get in the House. Of course, it's said that no preacher ever won a convert after twenty minutes.

Some speak too long, but I don't know, my feeling is that some of these pieces of legislation are so complicated and so involved that if you don't have a chance to speak at length and develop your thoughts completely, you don't have a chance to bring out all of the aspects of the bill. Frequently, as I indicated to you earlier, you go to a senator after the bill is passed and

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point out something to him, and he didn't even know it was in the bill! You just don't get the opportunity without plenty of time to bring out all of these detailed aspects that can become very significant in the life of the American people.

Ritchie: And yet there's always been a conflict between that freedom to express yourself and the desire to get the business of the Senate completed.

Riddick: That's true. You've got a definite program, and if you don't get that program enacted you just don't get the work done for that Congress. So, it's an eternal conflict between getting the job done and having time enough to discuss all aspects of the pending legislation.

Ritchie: Rule 22 was adopted in 1917, as part of the reaction against the filibusters prior to World War I....

Riddick: Yes, the cloture rule was adopted on March 8, 1917, and basically it has remained pretty much the same except

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for particular aspects of the rule. I might say that after it was adopted, some of the precedents, or some of the actual case history, caused changes in the rule itself.

In 1946, for example, there was a motion made to take up the F.E.P.C. [Fair Employment Practices Commission] bill. They agreed to take it up by a vote of 49 to 17. Then, while it was in effect the pending business, it was not immediately before the Senate, because on the next day after the morning hour the Senate preceded to work on the journal of the Senate. This kept up for such a long period that [Barkley](#), the Majority Leader, filed a motion to invoke cloture on the F.E.P.C. In a sense it was the unfinished business, in the parliamentary sense, but it was

not at that time pending, because the thing before the Senate was the journal. When the motion was filed and it became time to make the point of order, [\[Richard\] Russell](#) made a point of order

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that it was not the pending measure, and the Chair sustained him. Barkley took an appeal, but his appeal was rejected by a vote of 48 to 36.

Then in 1948 an anti-poll tax bill was up, the motion to take it up was pending, and again a cloture motion was filed on the motion to take up the anti-poll tax bill. A point of order was made that cloture was not applicable to the motion to take up, that the rule read "on the pending business," and therefore it wasn't applicable to the motion to take up.

Ritchie: Because it wasn't pending?

Riddick: It wasn't pending. Russell made that point of order, and the Chair, Senator [Vandenberg](#) of Michigan, sustained the point of order.

Then in 1949 Senator [\[Scott\] Lucas](#) moved to take up S. Res. 15, which was to amend the cloture rule. That debate was started on February 28, on that motion to take up. On March 10, he filed a motion on the motion to take up.

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Barkley was then Vice President, and that's a case that I mentioned to you about a vice president not following the parliamentarian's advice. Russell made the point of order that the motion was not applicable to take up S. Res. 15. Barkley overruled the point of order.

Ritchie: Although the parliamentarian had suggested the point of order was in order?

Riddick: That's right. He had advised the Chair that the point or order was in order. But Barkley, having been against that line of thought while he was majority leader was consistent and refused to sustain the point of order. Russell took an appeal from the decision of the Chair. The appeal in effect rejected the ruling of the Chair; the Senate failed to sustain the ruling of the Chair, by 41 yeas to 46 nays. That left them in sort of a vacuum as to what to do. But then it was decided to continue the debate on the motion; there seemed to be a determination to do something.

I remember, I was around at that time, I was on the floor when Senator [\[Allen Eliender\]](#) was speaking, and I saw somebody come by and say to him: "Everything's OK, you can quit speaking." He sat down immediately. The senators had worked out a compromise at that stage of the game, so there was no longer any need for prolonged debate. They immediately proceeded to vote and take up the resolution. The substitute was offered for the resolution, the so-called [Wherry](#)-Russell, or Wherry-[Hayden](#) compromise. After rejecting various amendments to the substitute the Senate adopted the resolution as amended by the substitute by a vote of 63 yeas to 23 nays. Now this changed Rule 22, it struck out "pending business" or "pending measure," and inserted in lieu of those two words language to apply cloture motions to "any measure, motion, or other matter pending before the Senate, or the unfinished business." That broadened

the scope. And that was to be adopted by a two-third vote of the senators (that's where the person's opposed to amending the rule got a little payoff) duly chosen and sworn.

Ritchie: Rather than just two-thirds of those present and voting?

Riddick: That's right. There were two other amendments that allowed them to exempt motions to take up amendments to the rules of the Senate. In other words, any motion to take up a resolution to amend the rule, cloture couldn't be applied to. Once it was up, you could apply it to that, but you couldn't apply it to the motion to take up rules changes. Likewise, motions to consider proposals to amend the cloture rule were debatable during the morning hour. You know in the morning hour a motion to take up a bill (that is, until 2:00 o'clock if you move to take up a bill) is not debatable. This exempted proposals to amend the rule from that proviso, so

that you couldn't get up a motion without debate to amend the rules during that period when there was no unfinished business.

Thus the move to change the rules continued to pick up support after this, but it was slow to get any changes. Beginning with the first session of the 83rd Congress a concept had developed, a theory that the Senate as a continuing body was not applicable in the case of amendments to the rules. Many were trying to sell the idea then that since they couldn't get enough votes to invoke cloture to

amend the rules, that senators and the public should try to sell the Senate the idea that you could at the beginning of each new Congress amend the rules by a majority vote without having to worry about cloture. This concept was slow to develop to the extent of getting a job done.

Ritchie: What historical background is there for that? Was there any concept that the Senate was a continuing body before

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that? Or was it something that was devised artificially?

Riddick: No, if you go back and read a lot of the literature as I have, for example, and compile your findings which have never been printed, but which is a compilation from the early years of the Senate until today, including senators who later became presidents or moved to other high offices, you will find it is not new nor artificially devised. So many of them have said the Senate was absolutely a continuing body in every respect. That was the intent of the fathers of the Constitution when they provided that only one third of the senators would come up for election every two years. It made the Senate have a two-thirds membership at all times, under all circumstances. As they said, the Senate was an everlasting institution, that there was no break. Supreme Court decisions have been cited to that effect; cases concerned with committees citing people for contempt when

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the Senate was not in session; the Supreme Court has held more than once that the Senate unlike the House is a continuing body. Therefore, even after *sine die* adjournment of a Congress, a Senate committee can go on and hold hearings as long as it is authorized by the Senate to undertake any such hearings.

Ritchie: In 1953 there was an unusual circumstance, because you had a new Republican Congress and yet you still had the outgoing Vice President Barkley serving until January 20 before [Nixon](#) had been sworn in.

Riddick: You mean Nixon sworn in as vice president?

Ritchie: Yes, with Barkley still presiding. So it was sort of a last-gasp attempt, I guess, hoping that Barkley would be sympathetic to their concept that the Senate could adopt new rules by majority vote at that point.

Riddick: Right. Well, briefly, and if you are interested in more detailed history on the various changes, I might add here

that after this change was made, for the Constitutional two-thirds, as they call it, they again in '59 reached another compromise that brought it back to two-thirds of those present and voting, and made it easier to bring up amendments to the rules by striking out certain sections that exempt the application of cloture to proposals to amend the rules. The Senate at the same time in '59 amended Rule 32 to provide that the rules of the Senate shall remain continuous from Congress to Congress until changed in accordance with the existing rules. Except for that there were no other significant changes made in the cloture rule until 1975, when the Senate amended Rule 22 again so that three-fifths of the constitutional membership of the Senate could invoke cloture. In other words, sixty senators could invoke cloture, -- except again for proposals to amend the rules, which takes a two-thirds vote of those present and voting.

One other change I might mention. It's very significant in my opinion. The majority leader asked me about this when Senator [\[Edward\] Kennedy](#) proposed his resolution. To me it took the control away from the leadership as to what amendments could be filed, which is causing them a lot of trouble today. I told them that the only hitch against the change was that this proposal of Senator Kennedy's could allow endless amendments to be submitted before you invoke cloture, which might hold up the Senate for a long time each time cloture is invoked. They're now finding that is exactly the case. The senators are able to stage a filibuster after you invoke Cloture!

Under the old rule, the rule provided that after cloture is invoked, the only amendments in order are those which are germane and which have been presented and read before you vote to invoke cloture. Of course,

it had been quite a common practice for the majority leader, if amendments had been submitted, to ask unanimous consent, just before you voted to invoke cloture, to allow them to be considered as having met with the provisions of Rule 22 as far as the reading aspect is concerned. Then, if there were forty amendments there, that number would be available to be called up if they were germane. Well, the Kennedy amendment changed the requirement that amendments had to be read, because he was caught one time when he didn't get over in time to submit an amendment which he wanted to offer, but he didn't get the amendment in before cloture was invoked. Thus, he didn't get his amendment

called up. So he felt that the rule should be changed so that it would be easier to get amendments available, to be called up if cloture should be invoked. This change was agreed to, but it allows anybody who presents amendments to the journal

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clerk before the vote's announced to invoke cloture, to call them up. It doesn't have to be read, you don't get a chance to see what's in the amendment, and there's no limit. You can come in with a cartload of amendments, as long as you present them to the journal clerk before the vote is announced that cloture is invoked. They're in order if they're germane.

Under the old procedure, which was never resorted to, but which was available, the leadership could limit the number of amendments. The leaders could file a motion to invoke cloture and immediately after the cloture motion had been read, they could have moved to adjourn. And nobody would have had a chance to have an amendment read, because the Chair is going to recognize the leader first, and he could move to adjourn, which motion is not debatable. The leader generally wins on procedural issues; he always carries

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a majority of the vote on procedural issues. The rule says that once cloture motion is filed, on the following day but one, one hour after the Senate convenes, the Chair shall direct the clerk to call the roll to ascertain the presence of a quorum. Immediately after which, he shall put to a roll call vote whether cloture is going to be invoked on that motion or not. So, if the cloture motion is filed, the majority leader could immediately move to adjourn, and no amendment would have been read. The next day he comes in, he could get recognition immediately and move to adjourn again. Then the following day you'd be in only an hour, before you would vote, and you couldn't get in many amendments in an hour if they spent the full time reading them to the Senate. The leader could also object to any amendment being submitted under unanimous consent and that the amendment be considered to have complied with

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provisions of Rule 22 as far as reading is concerned. So this is a case where the leadership has actually lost control as to how many amendments can be tossed in, and it's presented to the leadership with a problem.

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Ritchie: Do you think they'll try to tighten up that loophole?

Riddick: I don't know whether they'll try to tighten up that one or not, but I know the leadership is very much concerned about doing something, so that they can prohibit filibuster once cloture has been invoked.

August 1, 1978

Ritchie: The other day we were talking about the cloture rule, which is a complicated subject for most people outside the Senate. Could you summarize some of the major changes that have taken place in the cloture rule?

Riddick: As I previously stated, the original cloture rule was adopted on March 8, 1917. It took a two-thirds

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vote of the senators present and voting to invoke cloture, but cloture was applicable only to the pending business. The next major change, the Senate expanded the scope of the cloture rule to change it from just the pending business to any pending motion or any pending question or the unfinished business, or just about anything except proposals to change the rules of the Senate. Then the Senate expanded the requirement to include a Constitutional two-thirds vote of the senators.

Ritchie: What are you referring to when you say "Constitutional two-thirds"?

Riddick: Because the way the rule reads, it was two-thirds of those duly chosen and sworn; which, to cut it short without all the verbiage, is interpreted to mean the Constitutional two-thirds, because that accounts for the total membership. Then after that change, efforts were made to get it more liberalized

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again. So it was moved back again from the Constitutional two-thirds to two-thirds of the senators present and voting. The Senate then tightened up on the exemptions so that it would be easier to apply cloture to a motion to take up a resolution to amend Rule 22, or any other rule of the Senate, which wasn't applicable before that change.

The Senate did leave the requirement that you could not, during the Morning Hour, bring up a resolution to change the rules of the Senate without it being debatable. By that rule, one was able in a sense to block the motion to take up a change in the rule. Senators could keep the debate going until 2:00 o'clock and

then the unfinished business would come down, or, if there was no unfinished business, the motion would still be debatable and you'd just about have to invoke cloture in order to get to consider a resolution to change any rule of the Senate.

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Then after that, in 1975, there was but one major change concerned with voting. Instead of two-thirds of the senators present and voting it required only the Constitutional three-fifths -- that's again three-fifths of the senators duly chosen and sworn, which would be sixty, as long as we have one hundred membership. But in the case of a rules change, or proposal to take up a measure or to change the rules, it would take a two-thirds vote instead of a three-fifths vote. One other change was made. I believe it was in '76, the Senate adopted the so-called Kennedy resolution, which allowed any amendments germane, if submitted to the journal clerk before the vote was announced, to be eligible for consideration. Whereas before that time an amendment not only had to be submitted and be germane, but it also had to be read, unless unanimous consent was given to wave that reading requirement before cloture was invoked.

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Ritchie: This begins now the question on the Senate as a continuing body, which has brought in every vice president since Alben Barkley and seems to be a recurring controversy. There's always a question at the beginning of a session over how the vice president will vote on the rules. I wonder if you could explain some of this, and your role as parliamentarian in that long debate that's been going on?

Riddick: Well, maybe the best thing to do would be to take it year by year when the Senate tried to make these changes, and bring in a bit of my role as we take them step by step.

The first thing that the proponents for change tried to do, was to establish a basis for change. I don't think there's any question but what most people have always conceded that the Senate was a continuing body, certainly in certain respects. There's always, unless they've died or a catastrophe should occur, two-thirds of the

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Senate membership duly elected and sworn, because only one-third of the senators go up every two years for reelection. So, for certain purposes, there's never been any question, I don't believe, in anybody's mind, but what the Senate was a continuing body. The proponents for change began to try to differentiate

between the Senate as a continuing body in some respects and with regard to changes in the rules. It was argued pro and con that since the bills all die at the end of a Congress you begin a new Congress *de novo*, and therefore it should be in order to change the rules at the beginning of each new Congress, because the Constitution specifically specifies that each house shall make its own rules.

The Senate started first to make some changes in the rules back in 1949. Senator [Scott] Lucas of Illinois was then the majority

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leader, and the former majority leader, Barkley, was then vice president. The Senate began debate on the motion to bring up S. Res. 15, on February 28th, and it continued the debate on that until March 10th. Still the Senate had been unable to do anything, so Lucas filed a cloture motion to take up S. Res. 15. But up to this time, the rule read that cloture could be invoked only on the pending business. When the cloture motion was filed on this, and was ready to be called up, Senator [Richard] Russell made a point of order that it was not applicable to the motion to take up S. Res. 15 because that was not the pending business; the motion was pending to take up the resolution. Barkley overruled the point of order, but Russell appealed and on March 11th Lucas moved to table the appeal. The motion was rejected by a vote of 41 yeas to 46 nays, which meant that Barkley's decision would be overruled. The Senate continued debate

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after that vote, but later they were able, since the proponents for the change were determined, to work out a compromise, on March 15th.

Ritchie: Were most of the proponents liberal Democrats, or were any Republicans involved in this?

Riddick: Oh yes, it was not at any time strictly a party vote. There might have been more of one party than the other, but it was never a strict party vote. So an agreement was reached on March 15th that the resolution would be taken up, with a preconceived agreement that if it were permitted to come up that certain changes would be made that were suitable to opponents of the change as well as the proponents. That was embedded in the so-called Wherry-Russell or Wherry-Hayden compromise. That motion to take up was then adopted by a vote of 63 yeas to 23 nays. Then they proceeded to work on a substitute for the bill, which changed the wording "pending question"

to any measure, motion, or any other matter pending before the Senate or the unfinished business. Cloture was to be adopted by a two-thirds vote of the senators duly chosen and sworn, or the so-called Constitutional two-thirds. And the debate was not to be precluded on motions to make amendments to rules. Nor could cloture be filed thereon. That gave the opponents of change some advantage. This was done, but a lot of the proponents of the change even wanted to invoke cloture by majority rule, so it would practically have the effect of the previous question.

The Senate was still not ready for such a drastic change, but the supporters of change continued to agitate and began to gain support. With the first session of the 83rd Congress the proponents for change had insisted that the Senate might be a continuing body in some respects, but not to the exclusion of a rules change by the Senate at the beginning

of every new Congress. Barkley was still vice president on January 3, 1953, when they proceeded under this new technique.

Senator [\[Clinton\] Anderson](#) of New Mexico and others made a motion on the opening day that, in accordance with Article 1, Section 5 of the Constitution, each house may determine the rules of its own proceedings, and that it should be right for the Senate to take up a resolution without being restricted to a two-thirds vote to make changes in the cloture rule. At that stage of the game, while Barkley was still vice president, Senator [\[Robert\] Taft \[Sr.\]](#) had become the majority leader. Taft made a statement soon after the motion by Anderson, but he wasn't going to do it until there was a limited amount of debate. After a reasonable debate, Senator Taft moved to table the Anderson motion, which was agreed to by 70 yeas to 21 nays; so you can see they still didn't have enough

support to do anything unless it was done pursuant to the rules of the Senate.

In 1955, the 84th Congress, no challenge was made as to the continuity of the Senate and the right to change the rules at the beginning of a new Congress.

Ritchie: At that point the two parties were almost tied.

Riddick: That's right, the party division was varying within a one-vote margin. So it couldn't be done by party operation, it had to be done by blocs, or liberals versus conservatives, or what have you.

At the beginning of the 85th Congress, that was in 1957, Anderson and others renewed their motion of 1953. Nixon was then vice president and Senator [Johnson](#) was majority leader. Johnson, like Taft had done in 1953, announced at the beginning of the debate that he proposed after a reasonable amount of time to table the Anderson motion. Of course, the Anderson motion was that the vice president immediately

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put the question, as well as the right of the Senate to change its rules at the beginning of each new Congress.

Ritchie: They, I guess, anticipated that something would happen. Did Johnson come to you ahead of time on this question"

Riddick: Oh yes. Mr. Watkins was still in the Senate as the parliamentarian, but since he had undergone a very serious illness, I was brought in on all of these discussions and worked very closely with the leaders and the vice president.

Ritchie: How did Johnson feel on this issue? Was he annoyed that it came up, or was he afraid of the disruption it might have on other business?

Riddick: Well, the leadership must always remember that it takes a majority vote, or, in the case of a cloture, a two-thirds vote, to do something. He's certainly got to have a majority vote to run the Senate. So regardless of personal feelings you've also got to

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consider the amount of support you've got in the Senate in order to accomplish what you stand for and what you propose to do. After all, if a majority leader just bucks the will of the majority for a certain length of time, it won't be long before somebody says: "Who's running this show?" The leader has got to keep a majority with him in order to really be the leader. He might hold the post, but he's not the leader unless he's carrying a majority with him.

It wasn't long after the debate started in 1957 before Johnson was able to get a unanimous consent agreement to limit the debate before they were to vote on his motion to table. In the meantime, in the debate, because the proponents of change were trying to set the stage in order to accomplish their ends, Senator

[\[Paul\] Douglas](#) inquired of the Chair the difference between a point of order and a parliamentary inquiry. To which Nixon replied:

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There can be a appeal from a decision of the Chair on a point of order. There can be no appeal as to any pronouncement by the Chair regarding a parliamentary inquiry. A response by the Chair to a parliamentary inquiry is an opinion. A ruling on a point of order is a decision of the Chair and is subject to appeal to the Senate. (*Congressional Record*, 85th Congress, 1st Session, January 3, 1957, p. 10.)

This was more or less planned, or programmed, before they got to getting the Chair to give his opinion as to the right of the Senate to change its rules at the beginning of a new Congress.

Ritchie: So, in other words, Douglas let you know that he was going to raise this question, and then you prepared a response for the vice president to make?

Riddick: We worked it out together. Vice President Nixon always participated in what he was going to say, and while you worked with him and tried to give him a good solution, or a good answer, he made his final decision as to exactly what he was going to say.

Ritchie: Was there anything else he could have decided to say at that point?

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Riddick: Well, you would set the guidelines, so to speak, of what you could do, or what was within the realm of Senate practices and precedents. And he obviously wouldn't buck that, because he, too, didn't want to do something that the Senate would knock him down on.

Ritchie: They could overrule his decision.

Riddick: That's correct, And so you sort-of pull these things together and work along to do what you can within these confines.

Ritchie: Now, what was the purpose of this maneuver, of Douglas asking that question and Nixon ruling?

Riddick: They wanted to get as much as they could get favorable to themselves, so they too would know what they could count on doing if they found it expedient to do some thing contrary to the former precedents. So you draw your lines, or make your rules, before you start the game.

On January 4, during this debate, Nixon gave his much, and often quoted opinion about the continuity of the

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Senate, and the right of the Senate to change its rules; this was in response to a parliamentary inquiry made by Senator [\[Hubert\] Humphrey](#). Really, the vice president set the stage that in effect the Senate had certain rights to change its rules at the beginning of a new Congress, and that any provision of a rule which prevented a majority from changing its rules was unconstitutional. But, if you read the whole opinion, you'll find that after he gave all of these aspects of what he thinks is right and wrong, he puts in this final conclusion: But that the Chair had no authority to rule on Constitutional questions, and, if a Constitutional question should be raised, he would submit it to the Senate to be decided by a majority vote. So while he put out his feelings about the particular situation, he realized that in final analysis as to what he'd said, the Senate would make the decision.

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Ritchie: But by a majority vote rather than a two-thirds.

Riddick: Well, yes, the only trouble is whenever you submit a constitutional question to the Senate any point of order or any question submitted to the Senate for decision is determined by a majority vote but is debatable.

Ritchie: So it could be filibustered?

Riddick: So you could filibuster that. Nixon's reply to Humphrey, I believe, is important enough to quote here in full:

The senator from Minnesota is aware that the answer to that question is that the Senate is proceeding under the unanimous consent-consent agreement. The Chair is cognizant of the fact that the senator from Minnesota and other senators will propound parliamentary inquiries relating to this subject, and, consequently, it would perhaps be helpful if the Chair indicated by a general statement the Chair's opinion in regard to the parliamentary situation in which the Senate will find itself after the vote which will be taken on the motion to lay on the table.

The Chair emphasizes this because, strictly speaking, a parliamentary inquiry is for the purpose of guiding the Senate in its deliberations so that the Senate will know the effect of votes or other actions which are taken on specific matters. Therefore, the statement which the Chair now makes

relates specifically to the question of what the parliamentary situation will be as the Senate

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votes on the matter currently being discussed. That question, and others which have been discussed in the debate today, in effect, go back to the basic question -- Do the rules of the Senate continue from one Congress to another?

Although there is a great volume of written comment and opinion to the effect that the Senate is a continuing body with continuing rules, as well as some opinion to the contrary, the Presiding Officer of the Senate has never ruled directly on this question. Since there are no binding precedents, we must turn to the Constitution for guidance.

The constitutional provision under which only one-third of the Senate membership is changed by election in each Congress can only be construed to indicate the intent of the framers that the Senate should be a continuing parliamentary body for at least some purposes. By practice for 167 years the rules of the Senate have been continued from one Congress to another.

The Constitution also provides that "each House may determine the rules of its proceedings." This constitutional right is lodged in the membership of the Senate and it may be exercised by a majority of the Senate at any time. When the membership of the Senate changes, as it does upon the election of each Congress, it is the Chair's opinion that there can be no question that the majority of the new existing membership of the Senate, under the Constitution, have the power to determine the rules under which the Senate will proceed.

The question, therefore, is, "How can these two constitutional mandates be reconciled?"

It is the opinion of the Chair that while the rules of the Senate

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have been continued from one Congress to another, the right of a current majority of the Senate at the beginning of a new Congress to adopt its own rules, stemming as it does from the Constitution itself, cannot be restricted or limited by rules adopted by a majority of the Senate in a previous Congress.

Any provision of Senate rules adopted in a previous Congress which has the expressed or practical effect of denying the majority of the Senate in a new Congress the right to adopt the rules under which it desires to proceed is, in the opinion of the Chair, unconstitutional. It is also the opinion of the Chair that Section 3 of Rule 22 in practice has such an effect.

The Chair emphasizes that this is only his own opinion, because under Senate precedents, a question of constitutionality can only be decided by the Senate itself, and not by the Chair.

At the beginning of a session in a newly elected Congress, the Senate can indicate its will in regard to its rules in one of three ways:

First. It can proceed to conduct its business under the Senate rules which were in effect in the previous Congress and thereby indicate by acquiescence that those rules continue in effect. This has been the practice in the past.

Second. It can vote negatively when a motion is made to adopt new rules and by such action indicate approval of the previous rule.

Third. It can vote affirmatively to proceed with the adoption of new rules. Turning to the parliamentary situation in which the Senate now finds

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itself, if the motion to table should prevail, a majority of the Senate by such action would have indicated its approval of the previous rules of the Senate, and those rules would be binding on the Senate for the remainder of this Congress unless subsequently changed under those rules.

If, on the other hand, the motion to lay on the table shall fail, the Senate can proceed with the adoption of rules under whatever procedures the majority of the Senate approves.

In summary, until the Senate at the initiation of a new Congress expresses its will otherwise, the rules in effect in the previous Congress in the opinion of the Chair remain in effect, with the exception that the Senate should not be bound by any provision in those previous rules which denies the membership of the Senate the power to exercise its constitutional right to make its own rules. (*Congressional Record*, 85th Congress, 1st Session, January 4, 1957, pp. 178-179.)

Now, you asked me what role I played in some of these activities. I imagine I worked with the vice president alone at least forty hours in bringing together the pros and cons, the precedents and practices of the Senate, and even proposing certain language to him, but in final analysis, he was the one that made this statement on his own to the Senate. Apparently, he was impressed

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by the role that I played with him in this, because about ten or twelve years later, just before he was forced to resign as President of the United States, I was in attendance at a reception at the White House, and in the reception line, as I shook the President's hand, he turned to his wife and said: "Pat, you remember Dr. Riddick, he's the one who worked so long with me on my decision on the cloture rule." So, he apparently had remembered that particular event very strongly.



A Practical Guide to Preparing and Delivering
Testimony Before Congress and Congressional
Hearings for Agencies, Associations, Corporations,
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By William N. LaForge

Testifying Before Congress



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Ritchie: It's such a carefully worded document; it sounds like there were many decisions over almost every section of that, on how to prepare it. There must have been quite a bit of controversy and compromise over how he would rule.

Riddick: It's unbelievable what all goes into a decision by the Chair on some of these major things. I recall, in one instance, I was in his little private office, when he and I were

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alone together there, and we'd been working all morning. We were continually interrupted by phone calls. Even by the Secretary of State, [John Foster] Dulles, calling trying to influence him as to how he should respond, or the role he should play in this decision. It was commonly known to everybody what was going to be done, that he was going to be called upon to give responses to parliamentary inquiries.

I remember very distinctly after so many calls had come in, following one call he hung up and called his office and told them: "Don't let another call come in here unless it's the President of the United States. How in the world am I ever going to get anything done?" I was impressed by him in that instance; he was talking as we put all of these things down, and patching them together, and trying to make some sense out of what he should say, and yet keep within the rules and precedents of the Senate. I

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remember he suddenly paused at one time and said: "I know, but we've got to do what's right." It impressed me very much because he was only impressing me, there were no reporters around or anyone else. I was greatly impressed by that statement, for whatever it's worth.

Ritchie: The issue that was prompting all of this throughout was civil rights. Did that enter into your considerations or was your discussion with the vice president strictly limited to the parliamentary decision?

Riddick: My concern was strictly with parliamentary procedures.

Ritchie: I meant his concern.

Riddick: Apparently he knew what the administration wanted and he did not want to be a reactionary as far as civil rights were concerned; he was trying to do

what he could, obviously, to placate the administration within the rule of reason; but he too, I'm sure, from our conferences and discussions, was

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concerned with what the practices and precedents of the Senate were. That's why he was so careful and gave so much attention to the preparation of this opinion, or this response to the parliamentary inquiry. There again, I should say, it should not be overlooked that this was a response to parliamentary inquiry; it was not ruling of the Chair, and therefore, was not subject to an appeal. So it was merely an opinion expressed by the Chair.

Ritchie: Was that the reason for Douglas' request at the start?

Riddick: That's right, to establish this fact, I guess.

Ritchie: In a non-debatable format. And were the two party leaders involved in these discussions?

Riddick: Oh, yes, they obviously tried to get to the vice president, too. I don't mean try to, they do, they talk to the vice president from time to time about some of these things, even if they're in

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the opposite party. After all, if the majority leader is a Democrat and the vice president is a Republican, the majority leader has the majority vote, but he also wants to know what the vice president proposes to do so that he will know how to run the show.

Well, after all these parliamentary inquiries and responses pursuant to the unanimous consent agreement, when the time for debate had terminated, the vote was taken and the motion to table Anderson's motion was adopted by a vote of 55 yeas to 38 nays, so that concluded the procedures for the session to change the rules of the Senate.

Ritchie: So they never actually voted on Nixon's opinion.

Riddick: No, they didn't have a chance to, because it was only a response to a parliamentary inquiry and you couldn't take an appeal.

Ritchie: Now, when he makes an opinion like that, does that go into the precedents of the Senate? Would the parliamentarian keep that opinion in mind in the future?

Riddick: The parliamentarian keeps all of these data available because at a subsequent time somebody might want to know what the vice president said on this occasion. But you don't use that as a precedent of the Senate. If there's never been a ruling on a subject, and the vice president or the presiding officer may have expressed his opinion several times and there's nothing else to go on, you might cite it as opinions of the Chair expressed over a long period of time, as a guideline, particularly if the expressions have been consistent. But it is not a precedent binding on the Senate, because the Senate never had a chance to vote or take an appeal on that point of view.

Well, in the 86th Congress, Nixon was still vice president. The 86th Congress convened on January 7, 1959. On the opening day of this new session, in which we had another round on the rules change, Senator [\[Jacob\] Javits](#) of New York inquired as to what rules the Senate was operating under, and Nixon replied that, "under the advisory opinion rendered at the beginning of the last Congress, it is the opinion of the Chair that until the Senate indicates otherwise by its majority vote, the Senate is proceeding under the rules adopted previously by the Senate." But as the Chair also indicated in that opinion, "it is the view of the Chair that a majority of the Senate has a constitutional right at the beginning of each new Congress, to determine what rules it desires to follow."

After certain routine business on that day, the majority leader, Mr. Johnson, and Mr. [Dirksen](#), the

minority leader, submitted S. Res. 5, which provided that section 2 of Rule 22 of the standing rules of the Senate should be amended by striking out "except subsection 3 of Rule 22," that was the provision that excepted amendments to the rules from cloture. Well, if they struck that out, then cloture would be applicable to rules changes. Secondly, it proposed to strike out two-thirds of the senators duly chosen and sworn and insert two-thirds of the senators present and voting. Section 2 of the resolution provided that Rule 22 of the standing rules of the Senate would be amended by striking out "and" of subsection 2 of this rule, that made cloture inapplicable to motions to take up resolutions to amend the rules.

And section 3, Rule 32 of the Senate, is amended by inserting "immediately preceding at" and by adding at the end a new paragraph: "The rules of the Senate shall

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continue from one Congress to the next Congress unless they are changed as provided in these rules."

Ritchie: So, in effect, was this resolution to enact in the rules what Nixon had said in his advisory remarks?

Riddick: To the contrary, because he said if a rule change required a two-thirds vote instead of a majority, that it was unconstitutional. Now this Rule 32 was saying in effect that you cannot change any rule of the Senate unless you do it in accordance with the previous rules. And if it takes a two-thirds vote to invoke cloture, then you are placing a restriction above a majority vote to change the rules of the Senate at the beginning of the session.

Javits submitted some other parliamentary inquiries. For example, he asked the Chair:

Does the Chair propose to rule at the appropriate time that paragraph 2 of Rule 22, dealing with the method of cloture, and paragraph 3 of Rule 22, which prevents cloture on motions to amend the rules, are inapplicable to the debate on the resolution of the senator from Texas?

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And the vice president responded:

The Chair will at the appropriate time indicate his opinion that those rules are inapplicable insofar as they restrict the constitutional right of a majority of the Senate to determine or change the rules of the Senate. But the Chair will submit that question to the Senate itself to decide, because, as the Chair pointed out, it is a constitutional question, and the Chair lacks the power to make decision on a constitutional question. He can indicate his opinion, as he has done, but the Senate itself must make the decision. Then Mr. Javits inquired: "Mr. President . . . when will be the proper time to seek that ruling of the Chair?"

The vice president said that;

That time lies within the discretion of the senators who desire to exercise the right which they consider to be theirs. If, for example, during the course of the debate on the motion of the senator from Texas, which deals with changing the rules, a senator believes that action should be taken and

debate closed, such senator at that time could, in the opinion of the Chair, raise the constitutional question by moving to cut off debate. The Chair would indicate his opinion that such a motion was in order but would submit the question to the Senate for its decision.

On January 8th, of the same year, the Chair responded to a number of parliamentary inquiries. Briefly, one or two things that I should point out, that

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he stated in response to these parliamentary inquiries, was that the Johnson resolution if taken up would be open to amendment, either by perfecting amendments or a substitute, with the former having precedence. That a majority vote only was required to amend the Senate rules. That the Anderson motion to take up the matter of rules would not be in order as a substitute except after one day notice in writing. That the rules continue from session to session of a Congress until the Senate at the beginning of a new Congress indicates its will to the contrary. That any rule adopted in a prior Congress which has the express implied effect of restricting the constitutional powers of the Senate to make its own rules is inapplicable when the rules are before the Senate for consideration at the beginning of a new Congress. And that section 3 of Rule 22 would fall in that category.

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The question involving the constitutionality of amendments would be submitted to the Senate for its decision.

The Senate then continued with the motion to take up S. Res. 5. The Anderson substitute was defeated by a majority vote, and finally S. Res. 5 was adopted by a vote of 72 to 22.

Ritchie: At the end of that vote, how did that leave the Senate?

Riddick: After they had adopted the resolution, that set some changes in the cloture rule, which we've already mentioned, for the Senate to adhere to until they amended it further.

The Senate abandoned any further proceedings on rules changes for that Congress. But the proponents of changes to liberalize the cloture rule continued their fight, determined at some future date to get a more liberal rule. But for that Congress it was finished.

On January 3, 1961, Nixon was still the vice president, and

Mr. Anderson submitted a resolution, S. Res. 4, to amend cloture so as to fix the vote at three-fifths of the senators as opposed to two-thirds.

The vice president again reiterated his opinions on the right to amend the rules at the beginning of a new Congress, and called the last paragraph of Rule 32 unconstitutional, but again said any such question would be submitted to the Senate for decision. He further said:

Let the Chair add that the opinion of the Chair expressed in 1957 was that once the Senate proceeds to substantive business without acting upon its rules, or declining to act, as the Senate did at the beginning of the last Congress, then after that point the rules cannot be changed except under the rules previously adopted by the Senate whenever they may have been adopted.

After the resolution which Anderson had submitted had gone over a day under the rules, it was laid before the Senate and debated until 2:00 o'clock, which is the established procedure of the Senate. At the end of the Morning Hour, which is 2:00 o'clock when the Senate convenes

at noon, the resolution not having been disposed of, was placed on the calendar. On January 5, 1961, the Senate began to debate S. Res. 4, and on January 11, the resolution was referred to the Committee on Rules and Administration by a vote of 50 yeas to 46 nays. So that concluded that year's effort to change the rules of the Senate.

On January 9, 1963, the 88th Congress was convened and no action on the continuity of the Senate was raised until after the President's address to Congress on January 14th -- that was by an agreement. We had Lyndon Johnson as vice president, and Senator Anderson submitted S. Res. 9, proposing to amend cloture rule by three-fifths of the senators present and voting. That resolution again was ordered to lie over a day. Now we had a new vice president in the Chair, with whom I also worked, just as I had with Nixon, to resolve what

he should do. He had some other people working with him, too, to get their advice.

Ritchie: Who were they?

Riddick: Mr. [Harry] MacPherson, later became the general counsel to the President when Johnson was President, and a person named [Ken] Teasdale from Missouri who was MacPherson's assistant. They were concocting a lot of material on the subject. Johnson was always anxious to get everything he could that was available to him before he would decide what he was going to do.

Ritchie: Now he had been majority leader for all those years. He must have had some pretty strong opinions on all this. He had not been part of the Anderson group that was trying to change the rules that drastically. Held been something of a compromiser.

Riddick: I think in final analysis he accepted our point of view as parliamentarians of the Senate even though he gained information from all of the others. For

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example, there were a lot of parliamentary inquiries made on the opening as to what rules we were working under and things of that nature, and what the situation would be. If you go back to the record you will see what the vice president said. But here I have a copy of a proposal I gave to him for his ruling. It reads as follows:

The Chair would like the record to show that the present occupant of the Chair has no intention of issuing advisory opinions on hypothetical cases. Advisory opinions or responses to parliamentary inquiries by the Chair are not subject to an appeal by the Senate and hence the Senate would have no chance to work its will thereon. Under the above circumstances such opinions could serve no purpose other than to give a particular conclusion of the Chair a propaganda effect. The Chair does not propose to get into advisory opinions on hypothetical questions. On the other hand, rulings by the Chair on points of order are subject to appeal, and the Chair will be ready to rule, or submit the same to the Senate when the points of order are made. Also, the Chair will try to be helpful in responses to inquiries relating to the pending motions as they arise. In response to any points of order as to constitutionality of procedure, or as to continuity of the Senate, the Chair may state under the uniform precedents of the Senate in a case where a question

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is raised as to the constitutionality of a measure it has been uniformly held that the presiding officer has no jurisdiction or authority to pass on such a question. It is the duty of the Chair to submit the question immediately to the Senate, and the present occupant of the Chair will follow that practice.

Ritchie: This was something of a response, in effect, to Nixon's statements. Johnson was saying he wasn't going to do that.

Riddick: That's right, he wasn't going to make these responses to parliamentary inquiries.

Ritchie: And you said you proposed this point to him.

Riddick: Well, what you do is always talk with them before you do anything. You've got to see what their interests are, what they really want to say to the Senate, how they really want to perform. After you get their point of view, their feelings, then you concoct a proposed answer, within the confines of the precedents and practices. So it isn't always yours. What you are doing is advising the Chair as to how he should

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respond to this after you get a feeling of what he wants to do.

Ritchie: So from this, Johnson was feeling that Nixon's statements hadn't really gotten anywhere, and he wasn't going to get into that same situation?

Riddick: Well, I'm not sure. In other words, I think he still had his eye on the presidency, and I think that he was concerned not to muddy the waters. Since he saw that nothing could be gained by just expressing his opinions, why muddy the water? I think that he was a practical politician, and unless he had to act he didn't propose to act.

Now there were several things, I remember there was a ruling or two that he made. I remember on one instance he said: "I know, Doc, there's something coming up shortly, and I wish you would go and prepare me something on this." So I went down to the office and worked very rapidly, because he was expecting a point of

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order to be made right away, and I went down and worked on that and was back within twenty to thirty minutes with it all typed up. Lo and behold by the time I entered the side door to the chamber the point of order was being made right then and there and I handed this to him, about a two page typed opinion. He read every word of the opinion, and said: "And this is the opinion of the Chair." So he had to have faith in you, otherwise he wouldn't do that. He didn't have a chance to read it over even before he had to present it to the Senate.

Like in the case of Vice President Nixon, I enjoyed working with Vice President Johnson. They were both very clever, intelligent people. Frequently, if you had the time to tell them something, they could restate it better than you told them in the first place. I was amazed at their ability to do that.

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Going back to the Anderson resolution, S. Res. 9, in the first session of the 88th Congress. It was laid down the next day after it had been ordered to go over under the rule, the normal procedure, and at the end of the Morning Hour it went to the calendar. Then a motion was made by Anderson to take up the resolution. Debate on the motion continued through from January 14 until January 28, when Anderson moved that the Chair put the question without further debate, under the constitutional right of the Senate to change its rules at the beginning of a new Congress without any restraints. The vice president put the question as a constitutional question: "Does a majority of the Senate have a right, under the Constitution to terminate debate at the beginning of a session and proceed to an immediate vote on a rule change notwithstanding the provisions of the existing Senate rules?" The Senate

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recessed on January 29 and agreed that they would vote on a motion to table.

The question was put by the Chair at the proper time on January 31 under the agreement, and the motion to table was carried by a vote of 53 yeas to 42 nays. Then the Senate turned again to the debate of the motion to take up S. Res. 9, the first ploy having failed. On February 7 the Senate adjourned by a vote of 64 to 33 which killed the motion to consider. You see, a motion to take up a bill, or a motion to take up anything when not agreed to, dies at the end of a legislative day. If you recess, that motion to take up would continue. But when you adjourn, you kill the motion. By a unanimous consent agreement, S. Res. 9, and all other resolutions on the subject were referred to Rules and left there without any further action by that Congress.

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On January 6, 1965, the 89th Congress, Johnson had gone to the White House, and Senator [Carl] Hayden of Arizona was the president pro tem. Anderson submitted S. Res. 6 at the opening of this Congress, to amend Rule 22 again by requiring three-fifths of the senators present and voting instead of a two-thirds vote. The resolution was ordered to go over under the rule by the president pro

tem, when an objection was heard to its immediate consideration. On January 7, the resolution was laid before the Senate and [Everett] Dirksen moved to refer the resolution to committee. Anderson moved to add instructions to the motion, part of which was ruled out of order as instructions to the Senate and not to the committee. You can always refer anything to a committee with instructions, but those instructions have got to be instructions to the committee, not instructions on what the Senate is going to do when the

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resolution is reported back. That's what he was trying to do, instruct the committee to report the resolution back under certain conditions, and that when reported back the Senate would proceed to its consideration. The Senate can't instruct itself under that situation; they can only instruct the committee what to do (like holding hearings on the resolution, report it back at a said date, and so forth).

Ritchie: So what was an illegal move was to say that the Senate would then proceed to the question.

Riddick: Well, I don't know about "illegal," but it's contrary to parliamentary law.

At 2:00 o'clock the resolution went to the calendar. Anderson then moved that the Senate proceed to the consideration of the resolution. So the motion to refer was not then pending until the resolution itself was before the Senate. In other words, if you offer an amendment to a resolution it doesn't become the pending question

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until the Senate has agreed to proceed to the consideration of that resolution. So, likewise, a motion to refer the resolution with instructions was not before the Senate until after the Senate proceeded to consider the resolution.

Senator [Mansfield](#), the majority leader, got unanimous consent to refer, after some debate, S. Res. 6 and 8 to the Rules Committee with instructions that the committee file a report by March 9, 1965. The report was filed, but it was an adverse report. It was placed on the calendar, and that was the end of the activity to amend Rule 22 for that Congress.

Ritchie: At this point, could you describe just what the role of the Rules Committee is in cases like this. The Rules Committee seems so dormant in the Senate by comparison to the House committee.

Riddick: Well, the Rules Committee is not a policy committee like the House Rules Committee is. It has never been established in the Senate for the Rules

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Committee to report specific resolutions to provide for the consideration of proposed legislation. In the House, a bill that is not otherwise privileged, a representative can introduce a resolution that will be referred to the Rules Committee to provide for the immediate consideration of that bill once it's on the calendar. That gives the specific procedure for the consideration of that bill. The Senate has no such procedure. In the first instance, that's tantamount to a cloture rule in itself, because if you can write a rule of procedure, or prescribe a procedure for the consideration of a specific bill, and that resolution can be agreed to, by a majority vote, which is privileged to consider, and in the House debate on it is limited to one hour, you in effect don't have freedom of debate. So if you allowed such a procedure in the Senate, you would be shutting out the unlimited

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debate concept, or the freedom of debate aspect of Senate procedure. And this is one of the things that makes the procedure in the House and the Senate greatly different.

Ritchie: So, in effect, the House has allowed its Rules Committee to take up this power because it enables it to do its business more quickly, but the Senate has restricted its Rules Committee because it doesn't want it to influence floor business so greatly.

Riddick: I don't know as you would put it quite that way. The Rules Committee in the House, as I remember, was about a five-man committee membership, with the Speaker being its chairman at the beginning. And he always, as the writers on the subject have said, had his henchmen on the Rules Committee until way late in our history, that is in the 1900's when the "Cannon Revolution" occurred. By that time the House had established its procedure that the Rules Committee would play the

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role of determining and scheduling in effect what procedure the House was going to follow on a certain bill and when it could be taken up, because that special rule reported out of the Rules Committee was privileged business.

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The Senate, on the other hand, had freedom of debate established, particularly after they abandoned the so-called "previous question," way back in the early 1800's, and left the Senate with unlimited debate all the way down to the cloture rule in 1917. Even then you get freedom of debate until you invoke cloture, which is a very restricted procedure. The Senate had no place for such a procedure. It had no role for the Rules Committee in that capacity. The Rules Committee of the Senate has specific jurisdiction, defined in Rule 25, as to what it shall consider, and the role it is allowed to play in Senate procedure. But one

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of the procedures is not to report special rules for the consideration of particular bills.

Ritchie: So in this case when Senator Dirksen moved to send the resolution to the Rules Committee . . .

Riddick: Mansfield and Dirksen.

Ritchie: . . . what they were doing was saying: Take it off the floor for a while, let them write a report on it, and then we'll deal with it later. In other words, the report didn't necessarily have any effect on the bill except to remove it from the pending business for the time being.

Riddick: Well, a little more than that, I'd say. After all, the resolution specifically provided for three-fifths to invoke cloture. Now the Senate likes to think that it doesn't, except by unanimous consent procedure, take up legislation on the floor until one of its standing committees has had an opportunity to examine and study the proposition. This, of

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course, could be a delay tactic. it could be they thought that's the way to get rid of it, and kill it. It could be that they wanted constructive findings and constructive proposals as opposed to what the resolution embodied when it was referred. I never questioned the motives of the senators when they made motions. But whatever their motive was, or whatever the intent was, certainly it gave the Rules Committee a chance to hold hearings, get points of views of the different senators as to what should be done with respect to amending Rule 22, and give a report with arguments pro and con to the Senate as to whether they should amend Rule 22. It would then have the sanction, if it were reported out of the Rules Committee favorably, of one of its standing committees that something ought to be done. But the Rules Committee voted it out adversely.

Ritchie: Could the Senate have then proceeded on it?

Riddick: The Senate could have proceeded on it even though it was reported adversely, and could have acted just the opposite of what the Rules Committee recommended. However, at this late stage in the session, the resolution having been reported adversely, and not being able to invoke cloture to bring such a resolution before the Senate, there wasn't much opportunity of getting it adopted, and the leadership concluded not to waste the time of the Senate for the rest of that Congress.

On January 10, 1967, the 90th Congress, Mr. Humphrey had become vice president. On the opening day, Senator [\[George\] McGovern](#) of South Dakota submitted S. Res. 6 and asked for the immediate consideration of the resolution. Objection was heard, and the vice president stated the resolution would go over under the rule. Senator [\[Thomas\] Kuchel](#) of California

submitted another resolution which went over under the rule. On January 12th, the McGovern Resolution was laid down, and when the hour of 2:00 p.m. arrived, not having been disposed of by that time, it went to the calendar, as is the established procedure in the Senate. Later in the day, Senator McGovern moved to proceed to its consideration. On January 18th, Senator McGovern moved immediate consideration of the resolution, under the following conditions: that the question be put immediately by yea and nay vote, and after two hours time limit on motion to consider the Senate vote. Russell demanded that the question be divided, which it was.

Ritchie: What do you mean by "the question be divided"?

Riddick: Under the rules of the Senate, any time that a question is pending, an amendment, or any other motion or what have you, if it involves two issues and can rightly be divided, a senator can demand that

the question be divided. And if the question is divisible, it will be divided. That would permit you to vote on each issue separately. That is in the rules of the Senate.

So Senator Russell demanded that the question be divided. Senator Dirksen, the minority leader, made the point of order against the motion as not being in order. It's contrary to the rules that you put the question immediately. The vice president stated the question raised a constitutional question again, and submitted the question to the Senate for decision. Senator Mansfield, on January 18th made five parliamentary inquiries, namely: (1) is a point of order debatable, to which the vice president responded in the affirmative; (2) if a motion to table a point of order were made and prevailed, would that in effect confirm the propriety of the motion of the Senator from South Dakota, and

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the vice president responded in the affirmative, that the McGovern motion would then be the pending question; (3) does the motion to table require but a simple majority, to which the vice president responded that under Senate precedents it requires a majority vote; (4) he asked if the Senate by an affirmative vote tabled a point of order, would the pending question at that time be to proceed to consideration of S. Res. 6, to which the vice president responded that that would be the only question left before the Senate; and (5) he asked if the Senate affirmed the propriety of the McGovern motion would any further debate on the pending question be allowed, and would the Chair order the clerk to call the roll on the motion to proceed to the consideration of S. Res. 6, to which the vice president replied that the wording of the motion so states, with the two hour proviso.

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Later in the day, McGovern moved to table the point of order, but the motion was lost by a vote of 37 yeas to 61 nays. Then the point of order was sustained by a vote of 59 yeas to 37 nays. Debate then continued on the motion to take up S. Res. 6, and a cloture motion was filed on January 19. On January 24 the cloture lost by a vote of 53 yeas to 46 nays. That was the end of such activities for that session.

Ritchie: Vice President Humphrey was in a different position from either Nixon or Johnson. He was actively part of the Anderson group that had been moving to reform the rules, and now he was sitting in the Chair, although representing the Johnson administration. This must have put him into something of a tight spot. Did you deal with him at this point when he was making up his mind on how to proceed?

Riddick: What you say is true, there isn't any question that he was a proponent of

the change. But he told me at the very beginning of our discussions that he was now the vice president of the United States and he wanted to live within the confines or the guidelines of the rules as far as it was possible. After all, he too had looked forward in hope of becoming president of the United States. You try to make the two jibe, or dove-tail, so that you don't go way out on a limb and destroy your future in some desired direction. You also want to play as close to the regular procedure as possible, without stirring up too much animosity on the part of the Senate itself. So you weigh all of these factors. I don't say which way you've got to go; in this role you weigh all factors and figure out what's the best for the country, what's the best for the Senate, and what's the best for you as an individual.

Ritchie: It seems like Mansfield played quite a role in this. He put the

questions to Humphrey, I guess that was prearranged.

Riddick: Exactly; they talked this over to see what they could do to set the guidelines again, set the stage as to how you were going to play the game. I worked very closely with Humphrey just as I had with Nixon and Johnson. I was warned; I shouldn't say warned but advised, by Mr. Humphrey that he wanted to play as closely to the established procedure as possible, without wrecking the ship.

Ritchie: What would be the procedure in this case; at the beginning of the session would they contact you and give you some idea of what they intended to do, and then ask you to prepare reports for them?

Riddick: This is always the case when you get a new vice president coming in. You spend more time with him because you've got to work with him throughout the session. You talk over the problems and he sort of instructs you

what he expects of you. When a new Congress begins, he wants to be instructed what's expected of him in comparison to what's been the case in the past.

Ritchie: The vice president, as we've mentioned, doesn't come down that often anymore.

Riddick: He does at the opening of a Congress and the beginning of his term as vice president.

Ritchie: So he's informed in advance when some of these motions are going to be made, and he prepares for that and sits during the opening session.

Riddick: That's correct. Whenever there's something crucial coming up and you need the vice president, he's informed and he's prepared or you discuss with him what he's up against and what he plans to do and what he wants you to do for him, so that he can perform properly.

Ritchie: Would there be any case in which the vice president wouldn't be informed.

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in advance, in which a senator would stand up to make a major point of order or parliamentary inquiry in which the vice president was not there? And would you then try to bring the vice president in?

Riddick: Well, you get these things all the time unexpectedly. Yes, my experience with the vice presidents I've mentioned, and including Vice President [Agnew](#), they always assured me that if they were around the Chamber be sure to alert them if I needed them and they would come in; the vice president as you know can always bump the president pro tem or any other senator that might be presiding.

Ritchie: Is there any feeling that the ruling of the vice president carries any more weight than say the ruling of a senator who just happens to be rotating at the Chair?

Riddick: Oh, I think so. The Constitution assigns the vice president with the responsibility of presiding over the

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Senate. Through the years that's been our history, that he is the top presiding officer, and likewise he's vice president of the United States, one breath away as they say from the presidency. That makes him a more important public figure. While the Senate is always operating on the assumption that the vice president is not one of their members, and that he's maybe a part of the administration, the Senate has always given a great deal of deference to the vice president. Unless the vice president, as [Charles Dawes](#) did, came in with the assertion that he proposed

to do away with some of the archaic procedure found in the Senate. Well, that didn't do him much good.

Ritchie: I suppose there are quite a few stories about that.

Riddick: Well, that was before my day, and my observations would be no more important than anybody else's.

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On January 3, 1969, the beginning of the 91st Congress, request was granted to hold over proceedings on rules changes until January 9, at which time Senator [\[Frank\] Church](#) submitted S. Res. 11. The argument had been pretty well established by Vice President Nixon that once you proceed to substantive legislation without changing the rules you've assumed that you've acquiesced in the previous rules of the Senate and then it becomes too late to change the rules under the constitutional guaranty. So they got a unanimous consent request to protect their rights in that regard, and asked that any proceedings be put over until January 9, which was agreed to. At that time, Senator Church submitted S. Res. 11, which went over a day under the rule, and on January 10, was laid down and debated until 2:00 o'clock, when it

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went to the calendar. Church moved to proceed to its consideration.

On January 14, cloture was filed on the motion to take up, and on January 16, the vote on the motion to invoke cloture was 51 to 47, just a bare majority. But Vice President Humphrey then announced the vote and arbitrarily announced that the motion to invoke cloture was agreed to, just as he had advised he would do in response to a parliamentary inquiry. Senator [\[Spessard\] Holland](#) took an appeal from the ruling of the Chair and the decision of the Chair was reversed. I might say I had advised the vice president that he would never get away with such an announcement.

Ritchie: How did he respond to that?

Riddick: I think he felt politically obligated to do that at this stage of the game. The Chair was just not sustained. The Chair had held that the appeal was not

debatable -- the funny thing of it is he'd ruled that a majority vote was sufficient to invoke cloture, but he likewise held that Rule 22 (which holds that appeals are not debatable) provided that appeals were not debatable. He was applying one part of the rule, but not allowing the other part to be operative.

On January 24, another motion to invoke cloture was filed, and on January 28, it was defeated by 50 yeas to 42 nays. On January 29, the motion died when the Senate adjourned instead of recessing. And that was the end of action for that Congress.

Ritchie: So Humphrey's action was a sort of last-gasp attempt?

Riddick: Well, I don't know if it was the last, but maybe he felt he might have the chance to run for the presidency and it was getting a little popular to do something about the cloture rule; he might have felt that this was one way of doing it. I don't know. Again, I

certainly would not ever question the motives of a vice president.

Ritchie: But you had recommended against his action.

Riddick: When he raised the question with me if there would be a chance of ruling that a majority vote was sufficient, I said: "Absolutely no, Mr. President, Rule 22 says it takes two-thirds, and until the rule is amended to allow it I don't see how you could rule that way."

August 25, 1978

Ritchie: We were talking about the role of the vice presidents in the question of the Senate as a continuing body and in the filibuster and cloture problems, up to when Vice President Humphrey left office in 1969. At that point, Spiro Agnew became vice president. Perhaps you can tell me a little about how Agnew faced these questions.

Riddick: The 92nd Congress convened on January 21, 1971, and the action on whether the Senate was a continuing

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body or whether there was a constitutional right to change the rules without filibuster at the beginning of a new Congress was renewed again. As I stated previously, the argument had been pretty well established by Vice President Nixon that once you proceed to substantive legislation without changing the rules, you have assumed that you have acquiesced in the previous rules of the Senate. Then it becomes too late to change the rules under the constitutional guaranty.

So at the beginning of this Congress they got a unanimous consent agreement to defer action on rules changes until January 25. On that date, Senator Church of Idaho submitted S. Res. 9, which went over a day, as requested, and on the next day it was laid down and debated until 2:00 o'clock, when it went to the calendar. Senator [\[James\] Pearson](#) then moved to proceed to its consideration. At the very

beginning of the session, when the question was raised, that was on January 27, the new vice president sort of followed the lead that [Lyndon] Johnson had given, a course that I recommended to him, as well as to Johnson, when he was asked some questions, particularly by Senator [Allen](#) of Alabama. Senator Allen submitted a parliamentary inquiry as to whether the present occupant of the Chair intended to issue an advisory opinion on proposed changes of the Senate rules. The vice president responded, which I think is significant, so I'll quote his ruling:

The Chair wishes to state at this time that he has no intention of issuing advisory opinions on hypothetical cases. If it is an inquiry involving immediate disposition of a pending matter, the Chair will judge each on its own merit. Advisory opinions or responses to parliamentary inquiries of the Chair are not subject to appeal by the Senate. Hence, the Senate would have no opportunity to work its will thereon. Under the circumstances stated, such opinions could serve no useful purpose other than to give a particular conclusion of the Chair.

On the other hand, if points of order are made, the Chair is ready to rule or to submit the same to the Senate for decision. As you know, any ruling by the Chair is subject to appeal by the Senate, and the Senate, in such instances, has an opportunity to work its will.

Likewise, the Chair will try to be helpful in responding to inquiries relating directly to pending questions. In response to any point of order as to the constitutionality of the procedure or as to whether or not the Senate is a continuing body which involves a constitutional question, the Chair, under the uniform precedents of the Senate, will submit the same to the Senate for decision.

That set the stage that he didn't propose to get into a lot of colloquy between the senators as to what he thought about whether the Senate was a continuing body, or whether there was a constitutional right to change the rules with limit on debate. I have stated that Senator Pearson moved to proceed to its consideration, and on February 11, a cloture motion was filed on the motion to take up the resolution. On February 18, the vote on cloture failed by 48 yeas to 37 nays. On February 19, a second cloture motion

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was filed, and a vote on that motion on February 23 lost by a vote of 50 yeas to 36 nays. On February 26, another cloture was filed, and on March 2, the motion lost by 48 yeas to 36 nays. I might say, this is the first time the Senate started the use of a whole series of cloture motions and thereby try to limit debate so as to bring up the resolution.

Ritchie: What was the reason behind bringing up the series? Didn't they realize they were losing on the first vote, so why continue?

Riddick: That would seem to be reasonable, but I guess the leadership wanted to show that it was determined to do what it could to give the Senate a chance to vote on whether or not the rules should be changed. We had no precedent in the early history of the cloture rule, but in my humble opinion the framers of that rule never intended that you would run *ad infinitum* with different cloture motions. I think their feeling

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was that they drafted the rule to give the Senate an opportunity to bring debate to a close if it wanted to. If they had had a point of order on such a basis early in the history of the rule, I'm inclined to believe the Senate would have established the precedent that you wouldn't be permitted more than one vote to invoke cloture on a particular question. But in the absence of such precedents the leadership began to establish a procedure, particularly under Senator Mansfield, that you would keep on trying, as long as you felt that there was a chance, or as long as you felt it was necessary to convince the country that you were trying to bring the issue before the Senate so as to get a vote on whether or not to take such action. So in keeping with this new practice, on March 5 another cloture was filed on the motion, and on March 9 by a vote of 55 yeas to 39 nays, the motion to

invoke cloture lost again. The Chair stated that "two-thirds not having voted in the affirmative, the motion is lost." But Javits appealed the decision. The Chair was sustained by a vote of 55 yeas to 37 nays. That concluded the action on any attempt to invoke cloture that year, or to change Rule 22.

In the 93rd Congress, the Congress convened in January 1973, but no action was taken at all to change the rules of the Senate. In conversation with various senators, even the proponents, I noticed that they had become conscious of the fact that this cloture was a two-edged sword. By this time the strong proponents of cloture rule, who were basically in support of civil rights, realized that they had passed about as much civil rights legislation that was being pushed pretty strongly in the Senate was contrary to the desire of the so-called liberals, and they felt that they didn't particularly need to

liberalize the cloture rule. I had begun to conclude that the fight on this problem, or this issue, was over. But I was surprised that it was renewed at the beginning of the next Congress.

Ritchie: What issues in particular do you think were on the minds of the liberals?

Riddick: I think one of the things, for example, as I recall right at the moment, was the busing issue, that if they got it too liberal they would have without question had enough votes to pass a limitation on busing issue, but they didn't have enough votes to get two-thirds. It wouldn't have surprised me if they couldn't have gotten a three-fifths. That was one of the issues, and then also there had been a lot of agitation to place some restrictions on labor legislation, that was becoming a very hot issue. I think that there were number of such issues that were coming to the forefront that made the liberals question if they shouldn't

just sort of slow things down as far as changing Rule 22 was concerned.

Ritchie: Up to that point there were a number of senators who refused to vote for cloture just on principle, I remember Carl Hayden was one, and a number of southern senators did because they were afraid of the precedents on civil rights; but were they changing their minds about cloture?

Riddick: Slowly that was happening. That was another consideration that would have permitted them to get enough votes to invoke cloture to pass some legislation, and the liberal senators began to realize that. There are a few still who refuse to vote to invoke cloture, even though it be for something that they would be favorable to. I think Senator [\[John\] Stennis](#) is one case, but I believe even he has voted once or twice for cloture now. So the old concept that a southern senator would not vote for cloture under any circumstances began to change, and the

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conservatives were beginning to pick up votes that were going to frustrate the liberals if the issues came before the Senate with a three-fifths requirement. So it was quite a surprise to me, in the light of the conversations that I had heard among a number of senators, particularly the liberals, and in discussion with them when they were asking questions about cloture, to find them again in '75 renewing the issue. If you go back after '71 to the *Record* you'll see where even Church of Idaho, who had been pushing for reform, made a statement to the effect that he wasn't so sure that cloture should be changed. There were a number of senators who made speeches on the floor to that effect. I had begun to conclude that they had accomplished what they figured they needed to accomplish and were going to abandon any further proposals for change. So again to repeat I was sort of surprised in '75 that they renewed the issue and fought

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it to the extent of making a definite change and getting the three-fifths requirement for invoking cloture on everything but a change in the rules -- that's a constitutional three-fifths to invoke cloture on all issues except for proposals to amend the rules which still requires a two-thirds vote of those present and voting, a quorum being present. Then on January 14, 1975 when the 94th Congress convened, Senator Mondale submitted S. Res. 4, to amend Rule 22 to provide for three-fifths to invoke cloture. On January 16, they considered S. Res. 4 with the resolution going to the calendar at 6:00 p.m. if no action had been taken on it by that time; that was an agreement. It went to the calendar as the agreement provided. On January 21, Mondale moved to consider the resolution, but at the end of the day the Senate adjourned, and therefore, the motion to take up died. It was renewed, however, by Senator [Pearson](#) of

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Kansas, and on February 20, Mr. Pearson made a motion, which was as follows:

Mr. President, I move that the Senate proceed to the consideration of Calendar item No. 1, Senate Resolution 4, amending Rule XXII of the Standing Rules of the Senate with respect to limitation of debate; and that under article 1, section 5 of the Constitution I move that debate upon the pending motion to proceed to the consideration of Senate Resolution 4 be brought to a close by the Chair immediately putting this motion to end debate to the Senate for a ye-a-and-nay vote; and, upon the adoption thereof by a majority of those senators present and voting, a quorum being present, the Chair shall immediately thereafter put to the Senate, without further debate, the question on the adoption of the pending motion to proceed to the consideration of Senate Resolution 4.

That was his motion, which is tantamount to a previous question motion, which had never been sustained by the Senate.

Ritchie: What do you mean by tantamount to a previous question motion?

Riddick: Well, in the House, where you have got the previous question provided for in the rules, it can adopt

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a motion on the previous question by a majority vote, because the rules so specify. Under general parliamentary law, particularly *Roberts' Rules of Order*, a motion to close debate, which is a previous question motion, requires a two-thirds vote. While this in the absence of a rule on the part of the Senate to that effect is tantamount to pulling out of the thin air a motion to close debate, or a previous question motion by a majority vote in the absence of any rule to support you or to sustain that concept. This had been attempted before, as we have discussed, involving constitutional questions each time; each time previously the Senate had maneuvered so that it got the issue debatable. Whenever a parliamentary question is submitted to the Senate for decision under all the precedents of the Senate that is a debatable issue. The only way, theretofore, that they had

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tried to reach that end was by letting the constitutional question being submitted to the Senate which was debatable and then moving to table that question, and if the motion to table (that was their stage play in that regard) should fail, then it would be assumed that the Senate was ready to vote by a majority vote to bring the issue to a close without any rule to sustain or support it. Because the argument was the Senate would have in effect said that "we're ready to bring this issue to a close by a majority vote." But this was in the absence of any such attempt, as you will find, and I should say that I should very quickly bring this to

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a close because I was no longer the parliamentarian then; I'd become the parliamentarian emeritus and was not advising the Chair; but I just thought it a good idea to bring the review up to when the Senate finally

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amended the rule to invoke cloture by a constitutional three-fifths vote.

So Mansfield made a point of order against this motion. Parliamentary inquiries pursued and responses favorable to get an immediate vote, if a point of order were made would the vote come immediately? In response to this question, Vice President [Rockefeller](#) stated that the Chair wished to clarify the answer to a previous parliamentary inquiry by the senator from New York.

The point of order raised by the Senator from Montana challenges the propriety of the motion offered by the Senator from Kansas. The Chair has stated that if the point of order raised by the Senator from Montana is tabled, the Chair would be compelled to interpret that action as an expression by the Senate of its judgment that the motion offered by the Senator from Kansas to end debate is a proper motion. Therefore, since the motion offered by the Senator from Kansas to end debate provides that it shall be immediately put to the Senate for a yea-and-nay vote the Chair would be compelled to abide by such requirement, the Senate having determined the requirement to be a valid one. (*Congressional Record*, 94th Congress, 1st session, February 20, 1975, p. 3841).

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The motion to table the Mansfield point of order was agreed to by 51 yeas to 42 nays. Then a division of the question was demanded on this motion that Senator Pearson had made, and the Chair ruled that it was debatable. The Senate adjourned and the motion to take up again died. The motion to consider was renewed and the senator from Montana, Mr. Mansfield, the majority leader, again made a point of order against that motion, but it too was tabled. The leadership was not in accord with this procedure. So, making a long story short, they vitiated all of this proceeding. Apparently the leadership had talked it all over and figured out that that was a bad precedent to establish in the Senate, so they in effect vitiated all of the rulings of the Chair and the tabling action and the procedure to get immediately to the issue, but with the tacit understanding, I guess, that

They were going to invoke cloture and do it the proper way. By indirect action they voted to reconsider the vote by which the Mansfield point of order had been tabled, and then the point of order was agreed to by a majority vote, this understanding having been crystalized, should I say, so that they knew what they were going to do. A cloture motion was then filed on the motion to consider S. Res. 4, and adopted by 73 yeas to 21 nays. Then they voted to consider S. Res. 4, by 69 to 26, and the [Byrd](#) substitute for S. Res. 4 was agreed to, to be treated as original text for the purpose of further amendment. Cloture was then filed on the resolution, and on March 7, the cloture was invoked by a vote of 73 to 21 on the resolution itself. The Byrd substitute, for all practical purposes, was agreed to as submitted. It provided that thereafter cloture on all issues except changes in the rules

could be invoked by a three-fifths vote (constitutional three-fifths) which meant 60 senators, as opposed to the former requirement of 67 if all were present, except in the case of proposals to amend the rules. Proposals to amend the rules would still require two-thirds of the senators present and voting, a quorum being present.

Ritchie: Was Rockefeller's action in effect a set-up with Pearson? Did Pearson tell him in advance his strategy?

Riddick: Well, I would assume that that was the agreement between the liberals and Rockefeller. Who was advising him, I don't know. I'm informed that he wrote a note to the present parliamentarian that he wanted it understood with him that it was a decision on his own as opposed to the advice of the parliamentarian. Certainly it was contrary to the practices and precedents of the Senate, and I think that that is why the leadership, under

Mr. Mansfield as majority leader, wanted to vitiate in effect all of the statements made by the vice president and come back and do it under the rules, practices, and precedents of the Senate as we say according to Hoyle.

Ritchie: If Rockefeller's ruling had stood, what effect would that have had on the Senate?

Riddick: If that had been accepted without question and the Senate had accepted that procedure, it would certainly have left the doors open for any future Congress to follow any kind of a motion they wanted, as long as it was a rules change or what have you, under the so-called constitutional right to do anything they wanted by a majority vote -- which is a dangerous thing under the established Senate procedures. Now if they want to go the way the House proceeds of establishing a procedure that you can move the previous question by majority vote you can always get to a vote

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without any debate any time you want to. But the Senate has always operated under the so-called concept of unlimited debate; but the Senate is restricting this more and more by rules and special laws (with provisions for procedure that say that the Senate under its constitutional mandate to make its rules as it sees fit, shall hereby establish a procedure for the Senate that subsequent legislation pursuant to this law that we are passing may be debated for only a certain length of time, and that motions to discharge committees are highly privileged and debatable for only a specified length of time). All of these laws, and we've got a great number of them now, are gradually allowing the case history to encroach upon the established procedure of the Senate of unlimited debate, and permits more and more issues and questions to be resolved in the Senate under an absolute restricted debate, like

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under the so-called Congressional Budget Act, involving the impoundment resolutions, the deferral resolutions, and the waving resolutions (which waves provisions of the so-called Budget Act). All are under restricted debate for so many hours; it specifies that in each case how long it can be debated and whether a motion can be repeated, and so-on and so-forth. All of these encroach on that so-called established procedure of unlimited debate of the Senate, which the Senate has lived by for nearly two hundred years.

[end of interview #4]

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