EX-SENATOR RISES

On the Senate Filibuster Rule

The Editor of The Star:

I would like to comment on a recent column by William S. White dealing with the impending effort to modify the Senate filibuster rule. In general, I am an admirer of Mr. White's writing and oratorical talents, but the column in question was not, I fear, an impartial commentary. It was too much slanted in a southerly direction.

I was certainly taken aback by Mr. White's implicit thesis, namely, that the Senate's present filibuster rule is a safeguard for liberal causes and principles. I was a member of the Senate from 1849 to 1957, and had some experience fighting for liberal causes and principles. I always found the filibuster rule (Rule XXII) working against those causes and principles rather than for them.

As a matter of fact, the present form of Rule XXII, as adopted in 1949, was drafted with only one purpose in mind; to perpetuate the power of Southern Senators to block civil rights legislation, even if such legislation was desired by a substantial majority of the Senate and of the country.

I know something of the history of the filibuster rule, and of previous Senate filibusters, dating back to the early days of the Republic. Until 1806, the Senate had no rule prohibiting the filibuster. The Senate and the country got along pretty well without it.

In a compilation of Senate filibusters back to 1841, made by the Legislative Reference Service of the Library of Congress in 1951, 41 filibusters are recorded. During this period, 40 legislative bills and 82 appropriation bills were killed by means of filibusters. Until about 20 years ago, filibusters were frequently conducted against appropriation bills, and rivers and harbor bills, seeking to force the inclusion of some local pork barrel item into these bills.

Since 1938, almost all filibusters have been conducted against civil rights bills. In general, the filibuster, and the threat of filibuster, are responsible for the fact that until 1957 the Senate had not, for 75 years, been able to reach a vote on a civil rights bill.

When I use the word "filibuster," I mean genuine filibusters. A true filibuster, by definition, is an effort to prevent a proposal from coming to a vote. A speech or a series of speeches, intended solely to delay a vote to a later time, is not a filibuster. It is a filibuster only when its purpose is to prevent a vote entirely. Mr. White accepts this definition, when he says that a filibuster "is endless talking to prevent a vote."

But Mr. White forgets about his own definition, when, in asserting that liberal Senators have used the filibuster to further their own views and principles, he cites a marathon speech by Senator Wayne Morse in 1953, in opposition to the tidelands oil give-away bill. Mr. White overlooks the fact that Senator Morse's speech on that occasion was not a true filibuster. It was not an effort to prevent a vote. It was an effort to present a case so that public opinion could be mobilized prior to the vote. The opponents of the tidelands oil give-away repeatedly asserted at the time that they were not trying to prevent a vote, but would, at the conclusion of the presentation of their case, welcome a vote. There was a vote.

Mr. White makes his further departure from the standards of impartial commentary when he refers to the current proposal being urged by Senators Douglas, Humphrey, Javits, Case and others to amend the filibuster rule. Under the terms of the Douglas, Humphrey, Javits, Case proposal, Mr. White says, "The slimmest Senate majority, after 15 days, could adopt any kind of a bill under public pressure, informed or uninformed." This proposed change in Rule XXII is sweepingly characterized by Mr. White as "so extreme that its adoption would end the Senate as a unique deliberative body."

This is a very misleading and untrue statement. The Douglas, Humphrey, Javits, Case proposal is actually a very moderate one, which carefully preserves the role of the Senate as a deliberative forum for extended debate and appeal to the public conscience and opinion. But under the terms of this proposed change in the rules, practical means are provided to bring controversial legislation eventually to a vote—and 1 mean, eventually.

The Douglas, Humphrey, Javits, Case proposal provides for an end to debate, in the case of emergency legislation, by a vote of two-thirds of those present, or, for other legislation, by a vote of constitutional majority (a majority of the total membership of the Senate) after three periods of extended debate: (a) Unlimited debate up to the time of the filing of a cloture petition signed by at least 16 Senators; (b) 18 days of debate following the filing of a cloture petition; and (c) unlimited debate, limited to 30 Senators, in which each Senator is permitted to speak for one hour after cloture has been ordered by the affirmative vote of at least 50 Senators.

Moreover—and this is frequently forgotten—the first cloture motion to limit debate would ordinarily be applied to a necessary preliminary motion to "take up" a substantive measure. In other words, there could be a practical minimum of one month of debate on just a preliminary procedural motion. When there could be at least another month of debate on the substantive measure itself until all debate could be shut off. This mandate could proceed to vote on the legislation.

Can a proposed rule which would permit a practical minimum of two months of debate, before a piece of legislation could be forced to vote, be properly described as "extreme" or dangerous to the status of the Senate as a "deliberative" body? I scarcely think so. Of course, Mr. White in his "analysis" of the Douglas, Humphrey, Javits, Case proposal seems to admit that the present filibuster rule is not a perfect one. Indeed his "analysis" seems to point in the direction of a particular modification which has been referred to as the Lyndon Johnson proposal—to permit cloture by a vote of a simple two-thirds—two-thirds of the Senators present—instead of a constitutional two-thirds now required. In fact this is a mere shadow proposal without substance. A study of the cloture votes of the past 40 years shows that not a single motion on a civil rights bill would have prevailed even if the requirement had been a "simple" two-thirds, instead of a constitutional two-thirds. This change in the filibuster rule would be virtually meaningless.

There is much more I could say in support of the Douglas, Humphrey, Javits, Case proposal for a change in the filibuster rule. But I have already gone on too long.

Basically, this is a complex and technical subject, although its essence is simple. Surely the effect of the present filibuster rule is very simple. It prevents the Senate from considering and voting on any legislation to which there is a determined opposition by a minority which is willing to paralyze the work of the Senate, of the Congress, and of the Government in order to frustrate the will of the majority.

Mr. White has unfortunately sought to justify the present rule. In my judgment, it cannot be justified.

In my judgment, the present rule—rather than the proposed change in the rule—threatens not only the status of the Senate, but the most vital interest of our country. By preventing the Congress from dealing constructively with the subject of civil rights—which Congress should have done years ago—the filibuster rule has helped to bring about the present civil rights crisis.

The hour is already very late on the clock of history. But if the new Senate, with a fresh mandate given by the people on November 4, moves promptly to rectify past errors, it may still not be too late.

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This letter by former Senator Herbert H. Lehman (D., N. Y.) is in reply to a column by William S. White published Nov. 19, 1958, in the Washington D. C. Star and other papers.