Floyd M. Riddick

Senate Parliamentarian, 1964-1974

Interview #9
Senate Procedure
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Interviewed by Donald A. Ritchie

Ritchie: I'd like to move from a discussicn of the rules of the Senate to the precedents of the Senate. You've been involved with both sides, and there really are two volumes on each of these, and two traditions. We talked earlier about your first job with the parliamentarian's office, which was to read through Mr. Watkins' compilation of precedents, and then to come up with a publication of them. I wonder if you might describe just what the need was for the publication of the precedents, and what the difference is between the precedents and the rules of the Senate, at least for the layman to understand.

Riddick: As I said earlier, I think, I finally decided to accept the assistant parliamentarianship because I had been assured that I would be permitted to write the volume on *Senate Procedure*. I always had that interest in mind.

The precedents of the Senate are just as significant as the rules of the Senate. The rules are very vague in some regards, and the practices of the Senate pursuant to those rules are developed and established, and as they are established they become the rules of the Senate until the Senate should reverse this procedure.

To illustrate what I mean, the rule on roll call votes says "a roll call vote may not be interrupted." Well, what does that mean? In general language that means one thing, but in practical day-to-day operations in the Senate it means an entirely different thing. When does a roll call vote begin? Does it begin when the chair directs the clerk to call the roll? Does it begin when the chair directs the clerk to call the roll and the clerk calls the first name? Or does it begin when the chair directs the clerk to call the roll and the clerk calls names until a senator

responds? Obviously, the latter is the case. Now, it's like a mosaic picture. Every little detail has to be fitted in so you get a complete detailed picture.

This becomes very important, because if a senator is debating an issue and at the last split second he decides he wants to offer another amendment, or he wants to talk further before they vote, he's got to know when his last split second is available to him to get recognition and do this. Well, this is just one illustration of how you have to fill out the gaps of general instructions or general rules that are maybe ambiguous or maybe not detailed enough, which almost certainly could not, when they were drafted, be anticipated enough to take care of every possible situation. So the rules provide or allow an established procedure that when the Senate is operating contrary to a rule, a senator can make a point of order that the

procedure is not in accordance with the rules, and the chair will rule.

Of course, that too presents a case sometimes, because when can a senator make a point of order? We've got also established precedents that if a senator has been recognized and is speaking, even though you think he is going to do something contrary to the rules, you cannot interrupt him to make a point of order except by his consent, or after he has concluded his remarks. If a senator in his speech refers offensively to any state of the Union or reflects adversely on a senator, or says something unbecoming a senator, while you can't make a point of order you can rise and say: "Mr. President, I call for the regular order," without being recognized. That calls a halt there.
But if you are trying to make a point of order on some action that the Senate is proposing to take, it has been established that you may not

make such a point of order until the senator having the floor yields for that purpose or gives up the floor. No right of the Senate is lost on such grounds because as long as the senator is speaking the Senate can't take any action anyhow. So you still will have time to make your point of order before that action is taken and prohibit it if it's not in accordance with the rules. Anytime that a point of order is made, and the chair rules, if no appeal is taken from the decision of the chair, that becomes the order of the day for the Senate, and remains just as binding on the Senate in future procedure as the rules themselves where they are specific. If an appeal is taken, and the decision of the chair is sustained, that too becomes binding on the Senate. But if an appeal is taken, and the chair is reversed, the decision of the Senate becomes binding on the Senate. This is how precedents are established.

Precedents are established pursuant to points of order and rulings of the chair, or points of order and the question being submitted to the Senate for decision. But parliamentary inquiries are not binding on the Senate like a ruling of the chair, because a ruling of the chair pursuant to a point of order can be appealed. A response to a parliamentary inquiry is not subject to appeal and therefore is not necessarily the will of the Senate, because whatever the chair says is in effect only a guidance as to how he would rule if a point of order should be made, but it is not binding on the Senate. Now, in writing *Senate Procedure*, if we have case histories, say hundreds of times or a few times, that parliamentary inquiries have been made and responses have been made by the chair, but nothing has ever occurred contrary to it, and it has become the accepted procedure, we would list that as the

way the Senate does it, but the footnotes designate that they have been responses to parliamentary inquiries as opposed to rulings by the chair.

Ritchie: It seems that there is a lot of overlap as well, that one precedent doesn't necessarily replace completely what was done in the past but just in this specific instance. Wasn't there a lot of problem in deciding the whole history of each ruling, in selecting what was the most recent ruling? It seems to me such a complex job to figure out the exact precedent that covers everything.

Riddick: It is. I've never counted them, but I imagine that when I sat down to do the work I had to deal with at least a million precedents. You see, any thing, any practices that had become established practices of the Senate prior to 1884, which were not reversed by the last adoption of the rules, and 1884 was the last time the Senate has

adopted its rules in entirety, and that wasn't at the beginning of a session, any of the practices prior to 1884 that had become well established, were picked up too, to point out what the procedure of the Senate is, or was and still is. But basically most of our precedents were written from the practices of the Senate since 1884, the last time of general readoption.

Over that period of time there have been a lot of times that a practice would go a certain way, we'll say from 1884 to about 1905, hypothetically speaking, but after

1905 the Senate had reversed that practice. I would just ignore all of those previous practices if that practice had been developed pursuant to rulings of the chair and votings of the Senate so that they began the new procedure after 1905 and I would only write the precedents since that date, totally ignoring those others. Now, if a precedent had been established, we'll say in 1915, and

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in 1940 they had a comparable precedent but it supplemented that first precedent some, I would explain both and point out "as modified by the precedent of 1940" or whatever. So it was a rather difficult assignment to pick up all of these precedents, some contrary to the practices of today, some not completely contrary but somewhat different, and then select those and put them down so that all you would be doing really was to spell out the current practices of the Senate.

There were a lot of them, say all the precedents occurred since 1935, that would mean it was a modern practice of the Senate. I'm thinking about those precedents set under unanimous consent procedure, where at one time the wavy a unanimous consent was drafted the chair held that no further amendments would be in order after the hour had arrived to vote on the bill. Since that date, we've

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got uniform practices to the effect that even though we have agreed under unanimous consent to vote at 4:00 o'clock, when 4:00 o'clock arrives if there is a pending amendment, you'll vote on it, and then you can call up endless other amendments if you want to (unless the agreement specifically prohibits it), but no more debate. And you'll vote on these, because the idea is that the greatest right of a senator is a chance to offer an amendment to get something modified before you pass the bill. This today is the uniform practice, that you can call up amendments even though the hour to vote on the final passage of the bill has arrived, according to the unanimous consent agreement. But when we wrote this up we put both in: we put the established practice first and then at the bottom we'll say "but in 1935 the Senate did this ..." That doesn't deprive the senator of the knowledge that he's

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entitled to, if a fight should occur on that issue again.

Ritchie: That brings up a question, the last volume of *Senate Procedure* in 1974 is over 1,000 pages long, and the others have been similarly lengthy, and yet you said you went through a million precedents, so are there other precedents that you just had to leave out because of size limitations?

Riddick: Well, we didn't cite the precedents necessarily, but if you'll note there are often many precedents on the same procedure. For example here's page 142 where there are three lines of text and about five hundred citations that sustain those three lines.

Ritchie: As the parliamentarian, would most of your responses come from what's available in *Senate Procedure*, or would you have to go back to the files to look at more specific cases?

Riddick: Well, since Mr. Watkins started compiling precedents back to 1884, until I came in and began to do them myself,

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he had gone through every one of the Records from that date until the current date to pick up the precedents of the Senate under that situation. As I said, a lot of them we abandoned. Say, for example, Rule IX, that sets up an established procedure giving precedence to appropriation bills over other bills and so on. We've not used Rule IX since the turn of the century, and consequently if there were precedents on Rule IX, I didn't worry about them. We were not using them anymore, why incorporate them in there? On the other hand, if we had established some of the procedure set forth under Rule IX under another rule, I would include them. In other words, like there is nothing in the rules to the effect of preferential recognition, but the procedure has been established that the chair will give preferential recognition to the Majority Leader first, the Minority Leader second,

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and then on down, the manager of the bill, and so forth. You establish that procedure in the absence of any particular place that has been set forth in the rules. Now, if there is something set forth in the rule, giving preferential treatment to general appropriation bills, which were given some preferential treatment under Rule IX, that was transferred to under Rule XVI or some other rule -- we would bring those in, even though they might have been originally established under Rule IX.

Ritchie: If the Senate should adopt the new codification of the rules that you're proposing, what would that do to *Senate Procedure*?

Riddick: The codification is in keeping with the practices and precedents. Rule IX, I'm proposing to be eliminated, since the Senate doesn't use it anymore, and there is no reason to encumber the rules with that rule.

Ritchie: Would a member be able to go to the new rules and basically get the procedure, or would they still have to refer back to *Senate Procedure*?

Riddick: Oh, well now we don't include the precedents in the compilation of the codification. All we are doing is picking up all provisions of the rules and compiling them into one package which otherwise one might have to go to five books to run down details. If you've got them pulled into the rules themselves they'll be all in one body of rules, numbered. So you will have the rules all in one place.

Ritchie: I was thinking of one of the most vocal critics of the precedents, Senator Joseph Clark of Pennsylvania, who at one point argued that the precedents should not be considered binding, that the written rules should be made plainer, and that the Senate should operate more on its rules than its precedents. Is that a practical solution?

Riddick: I don't think that would do much good. I don't think it would accomplish much. On a few things you would. It could be what he had in mind at that time, and I think he argued this at one time; he was on the Labor and Public Welfare Committee, and he at that time was very much concerned about getting food stamp legislation before the Labor and Public Welfare Committee. Well, the reference of legislation to dispose of food surpluses began back soon after the Depression when we had plenty of agricultural products that were bogging down the prices of agriculture, and people were going hungry. So Congress passed legislation to give school lunch programs money or at least make food available to schools for free lunch programs. That was to get rid of the surplus agricultural commodities and also in the hopes of increasing the price of agricultural commodities so that farmers would have a better income. Obviously,

that should have gone to Agriculture and Forestry.

Well, then as they began to expand this idea of making food stamps available, which was also to make surplus food available to communities, or to use so much food that the price of agricultural commodities would go up, as well as helping people who couldn't buy food. It still went to the Agricultural Committee. In the 1946 reorganization act, as amended by the 1970 act, the jurisdiction of the Committee on Labor and Public Welfare specifically stipulated that food stamp programs should go to Labor and Public Welfare. But that never occurred, and since the chairman of the Agriculture Committee, and the members of that committee, were rather powerful figures, they insisted that that legislation keep coming to the Agriculture Committee, regardless of the fact that the rules said it should go to Labor and Public Welfare.

Or, another case that would be of interest to you; when they wrote the 1946 act, becoming effective beginning in the 80th Congress, Senator Vandenberg was the President *Pro Tem*. He was also the chairman of the Foreign Relations Committee, and under the rules at that time, all foreign banking legislation was to be referred to the Committee on Foreign Relations; Bretton Woods, for example, should have gone to Foreign Relations. But it didn't work out that way, because Vandenberg was then President *Pro Tem*, the former Vice President, Harry Truman, being in the White House as President. The reference was to be made by the President *Pro Tem*, and he instructed Mr. Watkins to refer all international banking legislation to the Banking and Currency Committee. He didn't like handling banking legislation, he wanted it to go to Banking and Currency, so that's where we referred it. It went

that way until Senator Fulbright, who had been chairman of the Banking and Currency Committee, wanted it to go to Foreign Relations when he became chairman of the Foreign Relations Committee. Because of his insistance, and conferences with the leadership, that's what occurred. So without any rule change at all, we went back to following the written rule of the Senate that said that all foreign banking legislation would go to Foreign Relations.

Ritchie: So, in effect, it's what the Senate at any moment, and particularly its more powerful leaders, wish rather than whatever the rules that were established in the past say.

Riddick: That's how they establish precedents. Some of these precedents and some of these issues I was just talking about were established at different times when appeals were taken from the decision of the chair, and the chair was sustained.

Ritchie: As parliamentarian, sitting up there, how do you juggle between a rule that says clearly that something should be sent to the Foreign Relations Committee and the precedent that says that it will go to the Banking Committee?

Riddick: We follow the precedent until they reverse it, once that precedent has been established. Now, in the first instance, like when Senator Fulbright wanted to take over the jurisdiction of legislation that had been going to the Banking Committee with him to Foreign Relations, we (parliamentarian) wouldn't do it just because he individually said so; we consulted the chairman of the Banking Committee; we consulted with the leaders, and they were all in accord that since Fulbright had expertise on this and had handled it before the other committee, and since the rules said so, we should go ahead and refer it that way. Then it would be up to a senator to take an appeal, if he

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wanted to, and if he didn't like the way it was being referred.

Ritchie: So the Senate precedents are more influential in the operation of the Senate than the Senate rules?

Riddick: Yes and no. You follow the rules in the absence of instructions to the contrary. You get these instructions to the contrary by the ruling of the chair; of course, he normally rules what we (parliamentarian) tell him, and it's because the powers-that-be have said that they want this change done; the chair rules and then an appeal will be taken and the solution will be agreed upon.

Ritchie: Some of the members, I gather, have the feeling that the precedents are a maze of things, that it has a tendency to frustrate them from time to time when they would like to get something passed and yet the precedents are established against them. Clark one time called the precedents "nutty" and "outdated, having no relationship with the modern world."

Riddick: Well, that's what kept them up to date! In other words if your rules get antiquated and you don't amend your rules (and they haven't been readopted since 1884), you bring these rules abreast of the times by modifying them by precedents and practices. This is pursuant to a majority action of the Senate, in effect.

Well, getting back to our real problem of compiling the *Senate Procedure*, it is no easy task. It has been quoted at length so much in the Senate that the Senate now gives deference to it, as Senator [Thomas] Eagleton once said, when he was debating an issue on the floor, he was trying to prove his case, and he said "I quote from *Senate Procedure*, the nearest thing to the Bible that the Senate has." They do give deference to what's put in there, because in putting it down I had no desire to change the procedure

of the Senate, I compiled them to the best of my ability to carry out the practices and precedents of the Senate in accordance with the rules of the Senate, unless they conflicted on some particular like those we've just been talking about.

Ritchie: I have sort of a general question now. You said that you used to hold seminars for the incoming senators, and you still talk to the new senators. We have twenty new senators coming in in 1979. As the compiler of *Senate Procedure* and a longtime parliamentarian, what would you recommend to this new group of incoming senators? How should they go about learning the ropes to become effective senators?

Riddick: Well, I think they're planning to put on, as they did at the beginning of the last Congress, what you might call a mini-school for a few days. They run these senators through brief seminars of instruction by letting the Secretary of the Senate and some of his

staff talk to them; the parliamentarian talks to them, the Majority and Minority Leaders talk to them in group and so on and so forth, to give them an overall feeling of the Senate, not just the technical procedures; then after that each senator can very quickly pick up the procedure for himself.

I think the best way for him to learn it, is to preside. Because he gets the feel of it; because the parliamentarian is there to advise him on every procedure that he

must rule on, or everything he should say even, except for recognition. The parliamentarian never intervenes in whom he is going to recognize, but in every other regard the parliamentarian whispers to him what the procedure is. If the new sennator presiding doesn't understand exactly the situation after he's ruled on it, and he has some time for discussion, he can quiz the parliamentarian about it and talk over the particular procedure.

Now it isn't that some of the senators don't know some of this. The parliamentarian always whispers because he doesn't know positively whether the senator knows the facts or not, and it's better to whisper and not let the presiding officer get embarrassed than it is not to whisper every time. So as a result I always whispered when I was there; and the parliamentarian still does it. He tries to keep the chair posted on each step of the procedure before it arrives, if he can stay ahead; or if it's too complex and he can't be ahead, sometimes he has to whisper one sentence at a time to be sure that the chair states what the procedure is.

Ritchie: How can they ever go about mastering that complex assortment of precedents?

Riddick: It's impossible. The thing that they can do is when a bill is coming up, or when a situation is developing, that is going to involve a point of order, or what have you, consult *Senate*

Procedure which is indexed according to subject matter and the chapters are even indexed, so that if they see something coming, or a problem arising, that they expect some trouble about, they can rapidly go to that book and get the exact section and read through it and be equipped. Or, if they are managing the bill, and they know what their problems are going to be, they can read through these sections and be prepared to manage that particular bill.

Ritchie: Who were the best parliamentarians that you saw in the Senate?

Riddick: It depends in part whether you are talking about managing a bill, or presiding over the Senate, or general over all knowledge of the whole picture. I never talk about the incumbents. I would say that Senator Russell and Senator Allen were as good as any that I've ever encountered. There are a lot of them now,

including the leader, who work hard at it, and know their subject matter very well, but I wouldn't like to compare them.

Ritchie: Is the most effective senator the one who absorbs the precedents and applies them when necessary, or the one who figures out the loopholes, the way around the precedents?

Riddick: I think it pays off to know your rules, and know them well, in rapid action by the Senate, because you can block certain things being done that shouldn't be done, certainly from their respective points of view. It blocks action being taken hurriedly that an individual senator doesn't think should be taken hurriedly. But if you don't know your rights you don't want to get up and make a fool out of your self. It does pay to know the rules, and to know them in a split second and be ready to act, because you can't call in an assistant, or go up and consult with the parliamentatian in rapid action by the Senate. You can, if you know your way around, you can always call for a quorum, if you know you've got a right to call for a quorum

at that time, and find out what your rights are. But if you call quorums too often, you might be called a nuisance before long, and lose your image, so to speak. So in many regards it's very advantageous to know your procedure, and know it well.

On the other hand, some of the senators who accomplish most in the enactment of legislation have not necessarily been those who know most about the rules and procedures. PR (public relations) becomes a great thing in dealing with people, and particularly if you are able to present your case well. Some people know the rules, but they are not able to present their case sufficiently, or successfully, to convince the others that they are right. So the ability of an individual to present his case, his PR, his personality, his ability to see the needs and wants and desires of the other senators -- all of these things come into play in enacting legislation.

I remember one of the best presiding officers that we ever had, as far as I was concerned, with which my predecessor, Mr. Watkins, agreed, was Senator Fred Payne of Maine. It wasn't that he knew more of the rules necessarily. He had a quick grasp of the rules if you explained to him what his problem was or what he

was up against. But he had a knack to do the job, and he was so gracious in his conduct in presiding. He was able not to rub anybody the wrong way. He was able to understand when he should interrupt and when he shouldn't get into it.

I remember recently a senator was talking about a certain procedure in the House and the chair interrupted to tell him something, and the senator said, "I don't remember asking the presiding officer a parliamentary inquiry!" It rubbed the speaking senator the wrong way. A number of these things have occurred. I remember a shouting match once between Senator [Clifford] Case

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of New Jersey and the Majority Leader, Mr. Mansfield. I wasn't in the chair at that particular time, but if the presiding officer had taken care of that situation in due time we'd have never gotten into that situation. So it's a knack of knowing when to intervene, when not to intervene; how to control your PR all the time, how to be graceful, gracious, and all the rest combined, and be able to use that gavel after an expert fashion.

Ritchie: I have a feeling that very few can fit that definition.

Riddick: It's hard to be a great presiding officer. Some are more firm than others, and we've had quite a few who have been very successful.

Ritchie: Do you have any in mind?

Riddick: I was thinking of Senator [Prescott] Bush of Connecticut. Now, the vice president [Walter Mondale], there have been quite a few of them who have been able to preside very successfully. Today they don't stay in the Senate long enough to really learn

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the procedures. They only preside in crises, and the crises are so durn hot that they're going to follow the lead of the parliamentarian.

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