

SENATE—Monday, July 26, 1999

The Senate met at 11 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear Father, focus our attention on You, on our calling to be leaders, and on the people around us. Meet our inner needs so that we can meet the needs of others. Replenish our own energies so that we can give ourselves unreservedly to the challenges of this new week. Give us gusto to confront the problems and to work on applying Your solutions. Replace our fears with vibrant faith. Most important of all, give us a clear assurance of Your guidance that we will have the courage of our convictions.

Bless the women and men of this Senate with a personal experience of Your grace, an infusion of Your spirit of wisdom, and a vision of Your will in all that must be decided this week. In the name of our Lord and Savior. Amen.

PLEDGE OF ALLEGIANCE

The Honorable JON KYL, a Senator from the State of Arizona, led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader is recognized.

Mr. LOTT. I thank the Chair.

SCHEDULE

Mr. LOTT. Mr. President, the Senate will immediately begin debate on the resolution to reinstate rule XVI. By a previous order, there will be 6 hours of debate on the resolution with one amendment in order regarding scope in conference.

As a reminder, a cloture motion on the motion to proceed to the House-passed juvenile justice bill was filed also on Thursday. That vote, then, will take place in a series of stacked votes this afternoon at 5:30, along with the rule XVI resolution and the amendment regarding scope in conference.

Further, it is the intention of the majority leader to begin debate on the Interior appropriations bill, and the reconciliation legislation will also come up this week, probably on

Wednesday. Of course, under the rules, 20 hours of debate is permitted, and I am sure there will be a number of amendments, so we will have to begin on that promptly sometime early Wednesday morning.

Senators should be prepared to vote throughout each day and into the evenings, although we probably will not go late into the evening today other than the three stacked votes. But on Tuesday, Wednesday, and Thursday late evenings should be anticipated in order to get this important work done.

RULE XVI

This is a day I have been waiting for because we have needed for some time now to reinstate rule XVI which would make a point of order against legislation on an appropriations bill.

More and more, the Senate has been abusing that process, making it very difficult to move the appropriations bills through the Senate, even though there is a lot of work done on both sides of the aisle by the leadership. For an example, last Thursday we would not have completed the State-Justice-Commerce appropriations bill had it not been for the dedicated efforts of Senator REID in his position as whip on the Democratic side, working with the chairman of the committee and the ranking member of the committee to get that legislation through. This is a responsible thing to do; the Senate will run better and we will still have the opportunity to offer amendments on legislative issues. So I hope, when the day is over, we will have reinstated rule XVI, and we will all be better off because of it.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. KYL). Under the previous order, leadership time is reserved.

RESTORATION OF THE ENFORCEMENT OF RULE XVI

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. Res. 160, which the clerk will report.

The legislative clerk read as follows: A resolution (S. Res. 160) to restore enforcement of rule XVI.

The PRESIDING OFFICER. Time on the resolution shall be limited to 6 hours.

Mr. REID. Mr. President, I have been designated by the Democratic leader to control the time on this resolution that is now before the Senate.

I feel a certain affinity toward rule XVI because it was my point of order that was appealed and overruled. In short, what this meant is that we were here on an appropriations bill. It had been standard procedure in the Senate for decades and decades and decades that when an appropriations bill came before this body, we did not offer legislative matters on that appropriations bill; it should be for the 13 subcommittees to deal with the money of this country and not append extraneous materials, extraneous legislative matters to an appropriations bill.

However, that is what happened on such a matter, a supplemental appropriations bill. The junior Senator from Texas offered an amendment dealing with the Endangered Species Act. I raised a point of order. The Chair upheld my point of order and that was appealed, a vote taken in the Senate which overruled that decision, and it changed the precedence of this body.

It has caused legislating on appropriations bills as standard operating procedure in this body since then. For more than 4 years, that is what has taken place.

There is going to be a vote taken later on rule XVI. The minority is going to vote against it. We recognize that we will be overruled by virtue of the fact that we are in the minority. We are protesting basically because of what has gone on in the Senate these past several years. The fact is that we are not able to offer amendments to bills coming through this body. In short, the Senate has been treated similar to the House of Representatives. For those of us who served in the House, there is not much difference anymore between the House and the Senate. When a bill comes to this Chamber, there is, in effect, an order placed on that bill just as in the House saying how many amendments you can offer, how long you can debate each amendment, and in effect how the bill is going to be treated.

That is very much unlike the Senate. In decades past, when a bill came before this body, debate took place on amendments that were offered relative to that piece of legislation. That is not the way it is now.

The reason that is important is that we Democrats believe we need—the country needs—to debate campaign finance reform. In the State of Nevada, a small State populationwise, my opponent and I spent over \$20 million last year in the election. It is hard to believe. The State of Nevada had less than 2 million people in it. But my opponent, Congressman Ensign from the

State of Nevada, and I spent over \$20 million.

How could that be done? It was done because in the so-called hard money counts in our campaign we spent about \$4.5 million each, and in State party money we spent over \$6 million each. That does not take into consideration the independent expenditures that took place for me and against me. That is not the way campaigns should be, I don't believe. In the small State of Nevada, I repeat, over \$20 million, probably closer to \$25 million, \$26 million was spent when you add in the independent expenditures about which I have talked.

That is an issue we should debate in this body. Maybe I am wrong. Maybe the American public, the people from individual States, want all that money spent. I doubt it. I think we should have a debate as to whether soft money, that is, corporate money, should be used for State parties and spend all this money on negative ads. I don't think so.

There should be a time, I believe, that we are able to debate education. The State of Nevada leads the Nation in high school dropouts. We are not proud of that, but that is a fact. I think we should be able to debate issues relating to that issue.

Senator BINGAMAN and I have legislation that would create within the Department of Education a dropout czar so that we could debate whether or not we should have in the Department of Education a person whose sole job it would be to work on curbing dropouts. Three thousand children drop out of high school every day in the United States. Over 500,000 kids drop out of high school every year in America. That is not the way it should be. Education is an issue we have not debated nearly enough in this body.

There are other issues we need to talk about: child care, minimum wage, the environment. There are so many issues we have not had the ability to talk about. That is what this debate is about.

I see my friend from the State of New York is here. I am managing this bill. I do not want to take a lot of time because I am sure there will be time later today to speak about issues. But the point is, rule XVI is being debated today as a result of a ruling of the Chair that was appealed. It was my point of order to the Chair that brought about this situation in which we now find ourselves. The point we in the minority want to make is that we should have full debate on issues, all issues. There should not be any arms or legs tied. We should be able to speak as we want on issues. We have not been able to do that.

I ask my friend from New York, how much time does the Senator wish?

Mr. MOYNIHAN. Might I have, say, 15 minutes?

Mr. REID. The Senator from New York is happily yielded 15 minutes.

Mr. MOYNIHAN. I thank the Senator.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, it is a special pleasure to rise on this important subject on this fateful day in the aftermath of the Senator from Nevada, whose vigilance, if I may say, as minority whip, led him to see a clear violation of rule XVI, the rule against legislation on appropriations bills, and so he made the point of order. In a casual way, having to do with the seeming inconsequence of the measure that had been proposed, the Senate overruled that point of order, and a century and more of fixed senatorial practice crashed and burned and has been burning all around us ever since.

There is a larger context, I suggest, in which to consider this matter. I am now in my last term in the Senate. I have been here almost a quarter of a century. I am frequently asked what has changed in the Senate in my time here. Without hesitation, the one thing I say is the procedures by which we work.

When I arrived, there was a recognizable symmetry and balance to the distribution of responsibilities, duties, and powers in the body. We had evolved over the 19th century a two-layer pattern of committees—committees being very special and distinct to our Government.

We are one of the few governments in the world that has them. The House of Commons has none. Recently they have been appointing committees of inquiry but no legislative committees of any kind. All authority rests with the Prime Minister. On those used-to-be celebrated occasions when the Chancellor of Exchequer at No. 11 Downing Street would come out, and he would hold up a briefcase called the budget, that, sir, was, in fact, the budget. There was not going to be a chance of change in the government's proposal. It has been that way for more than two centuries.

It is not the government that the founders put in place. They put in place a government of checks and balances of the assumption of opposed interests, of the resolution by debate, and by the recognition that there were, in fact, opposed interests. We were not all happily subject to the Queen, under her rule—or his if it were a King—and a harmony in the realm. Our founders thought no such thing. They did not depend on virtue. They depended on self-interest and being equally opposed in a mode of negotiation to resolve matters.

We had a series of authorizing committees, and they had jurisdiction over principal areas of government service. There were four—well, the principal committees were Foreign Relations,

Finance, Armed Services, and then Interior, Commerce, Labor and Public Welfare, as it then was, Environment and Public Works, having previously been just Public Works.

Their jurisdictions changed. New issues came along. Public Works became Environment. Public Works, under the tutelage of Senator Muskie of Maine, brought the issue of the environment to our body. They would make laws which more often than not required expenditure. That expenditure would be provided by the Appropriations Committee in terms of the laws that had been passed by the authorizing committees. There was a parallel.

The Finance Committee, in the earliest years, from 1816 I believe, was principally concerned with raising the revenue of the Federal Government. In the early years, up until the beginning of this century, those were tariffs. That is why the tariff legislation, the "tariff of abominations," things similar to that are so prominent in American 19th century history.

We moved to the income tax as our principal source of revenue. Tariffs are still not insignificant. In the Finance Committee, of which I am a member—for a period I was the chairman; now ranking member—we looked after the revenues of the Federal Government. Then Social Security came along; it was a tax. Whether it ought to have been a tax, sir, is an issue you could debate.

But 54, 55 years ago, at a garden party here in Washington, Frances Perkins, the Secretary of Labor who was responsible for developing a Social Security plan—a Justice of the Supreme Court kindly asked her about her work, and she said she had this great plan, but she was very concerned because the great Justices always said it was unconstitutional, whatever the New Deal was then going through that period. The Justice asked her to tell him more. She did, and he leaned down and whispered: The taxing power, my dear; all you need is the taxing power.

So in that famous photograph of President Roosevelt signing the Social Security Act, the person to his right is the chairman of the Committee on Ways and Means of the House of Representatives, a gentleman from North Carolina named Robert Doughton—little noted in history but enormous in his impact.

So the Finance Committee has taken over these other areas as well. Still our basic task is to raise revenue that the Appropriations Committee will spend in accordance with the laws passed by the authorizing committees. A workable system—rational, understandable, comprehensible and functioning.

Then in 1974 came the Budget Act and the creation of the Congressional Budget Office, the creation of the budget resolution. In part, this was a reaction to events in the Nixon administration—political and contemporary. But

just as important, if I may be allowed a certain excursion into political science, if that is the term, it is a pattern that one observes in governments the world over, and you can see in ours. It was with the proposition, sir, that organizations in conflict become like one another.

A German sociologist at the end of the 19th century noted that even Persians finally determined it was better to have Greeks fight Greeks. And you can trace these patterns of imitation and competition through our own government.

Item. In 1904, or thereabouts, Theodore Roosevelt built the West Wing for the White House. He now had an office, the President had an office with a desk, and he could ask reporters in to tell them about things. Suddenly an office that had not been that eminent, certainly not compared to the Speaker of the House of Representatives, took on a quality previously unnoticed.

Right away the House built the Cannon Office Building named for their Speaker, Joe Cannon. We built what is now the Russell Building. Franklin Roosevelt built the East Wing of the White House. They built Longworth; we built Dirksen. In the meantime, the Supreme Court, which had worked happily down the hall for a century and a half—or, well, from the time we moved in to the new quarters in 1859, I believe—they came up from the basement and lived happily down there, and they said: Why don't we have a building? And they produced a building which eventually was across the park here. This pattern goes on and on.

Presidents travel abroad now. We travel abroad. There are more judges in the executive branch than there are in the judicial branch, and the like.

In 1921, Warren Harding created the Bureau of the Budget. Suddenly there was a consolidation of Presidential authority. Departments used to send their budgets to the Congress on their own. The President would know about them, of course, but there was no unified Presidential executive budget. That made for a real shift of authority toward the President.

It took almost half a century, but then we got our Bureau of the Budget in the Congressional Budget Office, and we started having our budget. This suddenly intrudes on the authority of the authorizing committees. Each year they would be given a notice of how much money they could spend, which was to be tolerable, of course, but it was somebody else telling them what previously they decided on their own. In this context, there was a centralization of authority in the Senate which did not serve it well.

Then came the decision to overturn rule XVI. Our government became incomprehensible. I cannot think of the number of hours I have stood on this floor, sometimes there at the desk for

the chairman of the Finance Committee or ranking member, sometimes back here, looking at the final product of some massive, mysterious, impenetrable conference that went on somewhere in this building, downtown, elsewhere, that would bring to our desks at the end of the Congress 1,500-page bills that did everything, combined the appropriations with the legislation, with this, with that, with nobody knowing its contents. Not one Member of this body could attest to having read the bill, probably no one person. Obviously, some persons had read some parts, but that is not a democratic procedure. That is not a wise procedure.

It came about through a combination of the Budget Committee and this breaking away of a long, established unrestraint on ourselves that there are 13 appropriation bills, each must pass, and, therefore, if somehow you could get a measure on an appropriations bill, it would become law, even if it might not make it through the authorizing committees.

Well, yes, but what law? Whose law? Who knew? Those committees haven't been up there, the Foreign Affairs Committee, Armed Services Committee, for two centuries without acquiring some experience in their matters; and here, sir, we are heading for the same thing because the rule was overturned. Appropriations bills don't get passed any longer. Now it is we have 2 weeks left in July and August, really, because of the recess.

Mr. President, if my time has expired, may I ask for 5 additional minutes.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. REID. I yield the Senator another 5 minutes.

Mr. MOYNIHAN. We are heading for this situation. There is even talk that the tax bills, which we will bring to the floor tomorrow or Wednesday, need not be resolved in this period of time. They can lay over until September. Well, that means they will lay over until the last day of the Congress, the last moment of the session. In the meantime, we can expect over half the appropriation bills to have passed.

I wonder if I might address a question to my friend from Nevada, if I might interrupt. How many appropriation bills have passed this year? Would he happen to know? No reason to know.

Mr. REID. I say to my friend from New York, surprisingly, in spite of the legislating on appropriation bills, we have passed, I think, seven appropriation bills at this stage, give or take a bill or two. But, for example, we were able, on Thursday, to pass Commerce-State-Justice, which had hundreds of amendments filed. It was only through the cooperation of the membership.

Mr. MOYNIHAN. We begin to come to our senses; that has brought us to this point. We passed seven. I don't think

we will pass 13. I think our tax legislation has every prospect of being an abomination. The Senate cannot pass legislation which it has never read and does not understand. That is what has been the consequence of this new situation.

In addition to which, the distinguished minority leader is proposing an amendment to the fine initiative of the majority leader that says: No more writing legislation in conference committees. That is against all of our rules, too, but has crept into our practices. Again, the authorizing committees are gradually being marginalized and have no role. Power is centralized.

Mr. REID. Will the Senator from New York yield for a question?

Mr. MOYNIHAN. I surely will.

Mr. REID. The Senator has graphically illustrated what happened under our present situation. Last fall, being more specific, that huge document we were asked to vote upon, we all came from our individual States, because we had been out of session, while a few people negotiated this bill for all of us.

Mr. MOYNIHAN. Right.

Mr. REID. It was well over 1,000 pages, and it was something that you or I didn't read or anyone else read, isn't that true?

Mr. MOYNIHAN. I stood here and said: I haven't read it. I know no one who has read it.

Mr. REID. I say to my friend from New York, the same thing is happening now. The mere fact that the Senate has passed an appropriations bill doesn't mean it is going to become law because we have to go to conference with the House. If we are fortunate enough to come up with a bill, it goes down to the President. He has said he is going to veto most of these appropriations bills. So that means we will be right back where we started last year, isn't that the case? We will have a bill written in conference that you or I, or even the members of the appropriations subcommittees, have never seen; is that fair?

Mr. MOYNIHAN. That is exactly so, sir. I can say to you, for example, that Senator ROTH, our distinguished chairman of the Finance Committee, and I have jointly been sending letters regularly to the Appropriations Committee saying: You have Social Security Act or tax matters in this appropriations measure you are dealing with; surely, you don't want to do that. We don't get answers somehow.

Mr. REID. But under our present rules, I say to my friend, that is not only the rule, it is being done.

The minority leader has offered an amendment to this change we are discussing today regarding rule XXVIII, so that when you go to conference, the conferees could only work on the bills they have, the one from the House and the one from the Senate, and have to work on matters that are before them.

They can't go outside that scope and start talking about wild horses in Nevada or they can't start talking about the wheat crop in North Dakota, if it is not in the conference report.

Mr. MOYNIHAN. If it is not in the conference report.

I will close, sir, by simply saying this is a subject that is said to be arcane, to be incomprehensible, to be something on the margin. The Constitution of the United States is a bit arcane. It was not something immediately obvious to everyone, what its principles were. But they were powerful, and they have persisted. So, indeed, have the rules of the Senate, developed in the early 19th century, and then later, starting in 1868, with regard to germaneness and the like. Language very similar to our Rule XVI dates to 1884. We have here the question of whether we are going to be able to govern ourselves in the future. If we should fail in that regard, what else, sir, will there be said of us when the history of the decline of the American Congress is written?

I thank the Chair for its courtesy in allowing me to extend my time. I thank my friend, the minority whip, and I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I think the statement made by the Senator from New York and the wisdom that he imparted to us is something we should all listen to.

Some have said: Well, we have to treat the Senate like the House of Representatives. We really can't debate measures.

I say to my friend from New York, and anyone else within the sound of my voice, we used to debate matters and let the cards fall where they did. A good example of that was the Budget Deficit Reduction Act of 1993. As Senators will recall, we had all kinds of statements of doom regarding that. The chairman of the House Budget Committee said: This plan will not work. If it does work, then I will have to become a Democrat.

Well, it has worked. We have now a budget surplus. But my friend from the House has not become a Democrat.

My friend, the chairman of the Finance Committee, said: It will flatten the economy. That has not been the case.

My friend, the senior Senator from Texas, said: I want to predict here tonight that if we adopt this bill, the American economy is going to get weaker, not stronger. The deficit 4 years from today will be higher than it is today, not lower. When all is said and done, people will pay more taxes. The economy will create fewer jobs. The government will spend more money, and the American people will be worse off.

Every statement made by my friend from Texas was absolutely wrong. The

fact is that we had that bill. We had a debate. Without a single vote from my friends on the other side of the aisle, we passed that bill, with the Vice President breaking the tie. The deficit did not rise. In fact, it went away.

The economy got stronger, not weaker. More jobs were created; in fact, almost 20 million new jobs have been created since that legislation was passed.

The point I am trying to make is that we can debate issues, debate them in their entirety. We should do more of that. That is what this is all about.

Mr. MOYNIHAN. Will my friend yield for a comment?

Mr. REID. I am happy to yield.

Mr. MOYNIHAN. I was chairman of the Finance Committee in 1993 when that deficit reduction act passed. It was a risk. We risked that what we understood of markets and of the economy was right. We could have been wrong. But it was not a casual affair. Day after day and evening after evening in the Finance Committee we debated it. We voted on it. It came to the floor, admittedly under a time limit from the Budget Act, but it was adequate to the purpose.

We legislated, and it was done in the open. The consequences are here to see. The \$500 billion deficit reduction package contained in the 1993 reconciliation bill has been re-estimated by the Office of Management and Budget as having saved a total of \$1.2 trillion. We had a \$290 billion deficit that year. The 10-year projection was \$3 trillion, and more, of cumulative deficits. Now we are dealing with a \$3 trillion surplus. But that is because the process worked—and in the open. The oldest principle of our Government is openness and responsibility. We have been abandoning both, and the consequences show.

Mr. REID. I say also to my friend, he will remember when we had the debate about uninsured people who had no health care—who needed health care but had no insurance. That was a debate that came early in the Clinton administration, and we had a full and complete debate on that issue. It was debated at great length.

At that time, we had 38 million people with no health insurance. Now we have 43 million people with no health insurance. But the fact is, when you are in the majority, you have to take chances, as did the former chairman of the Finance Committee, the senior Senator from New York. You have to take chances. Health care was a good debate for the country. Does the Senator agree?

Mr. MOYNIHAN. I much agree.

Mr. REID. So I hope this debate will allow the majority to give us more opportunities to debate issues. It doesn't hurt to talk at length about issues. It is good for the country to talk about issues. It is good for the body politic. But we should legislate the way the

Founding Fathers determined we should, and not have 1,500 bills that are prepared by 8 or 9 people when we have 535 Members of Congress. We have less than two handfuls of people that came up with that bill, and that is wrong. I think we need to change rule XVI, of course. We are going to protest and probably vote against that. But we also need to change rule XXVIII while we are doing it. If we do that, we will have a much more open and better legislative body. Does the Senator agree?

Mr. MOYNIHAN. Well said, sir.

Mr. REID. Mr. President, I yield the floor.

Mr. COCHRAN addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I ask unanimous consent that I may speak as in morning business and that the time I consume be counted against the time on the resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NATIONAL MISSILE DEFENSE ACT

Mr. COCHRAN. Mr. President, this morning I noticed in the Washington Times newspaper that President Clinton has signed the bill we authored here in the Senate, the National Missile Defense Act. This is very important legislation which the Senate passed after a lot of debate. The House and the Senate then reconciled differences between the House-passed measure and the Senate bill and sent the bill to the President.

The President made a statement in connection with his signing the bill which raises some questions that I thought should be addressed by a comment this morning. After talking about the fact that he is signing the bill to address the growing danger that rogue nations may develop and field long-range missiles capable of delivering weapons of mass destruction against the United States and our allies, he then has this to say in his message. He is referring to the fact that authorization and appropriations measures will be a part of the process in terms of when and how and to what extent the funding is available for national missile defense.

This interpretation, which is confirmed by the legislative record taken as a whole, is also required to avoid a possible impairment of my constitutional authorities.

The President is suggesting that the bill doesn't mean what it says. I think that has to be brought to the attention of the Senate. The bill is very clear. It provides that it is the policy of the United States, upon enactment of this law, to deploy a national missile defense system as soon as technologically possible. That is unequivocal. It does not say "but if." It is a change in policy of our Government. It has passed