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JANUARY 20, 2010

RECOVERED HISTORY: HOW THE SENATE DEMS BLEW THEIR CHANCE FOR MAJORITY RULE (AND HOW THEY COULD FIX IT NEXT JANUARY)

SISSIES IN THE SENATE

Sam Smith

Feb 5 2009 (2 weeks after Obama's inauguration)

One of the reasons that politics is less appealing these days is that politicians have become such wimps. Nowhere is this more apparent than in the watering down of the Senate filibuster.

A filibuster used to be a filibuster. But now, as Wikipedia notes, "In current

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practice, Senate Rule 22 permits filibusters in which actual continuous floor speeches are not required, although the Senate Majority Leader may require an actual traditional filibuster if he or she so chooses. This threat of a filibuster can therefore be as powerful as an actual filibuster. Previously, the filibustering senator(s) could delay voting only by making an endless speech. Currently, they need only indicate that they are filibustering, thereby preventing the Senate from moving on to other business until the motion is withdrawn or enough votes are gathered for cloture."

What's the use of having a tradition as ridiculous as a filibuster if the Senate ignores the tradition? Besides, if we had used the current rules in the past, we might never had gotten some of the civil rights legislation of the 1960s approved at all.

Why the change? Nobody talks about it much, but here are three good explanations:

- **Both sides like to use the technique** (or, more precisely, the threat of the technique) these days. For example, here is a Senator speaking a few years ago: "When legislation only has the support of the minority, the filibuster slows the legislation . . . prevents a Senator from ramming it through. . . and gives the American people enough time join the opposition. Mr. President, the right to extended debate is never more important than when one party controls Congress and the White House. In these cases, the filibuster serves as a check on power and preserves our limited government." The senator speaking was Harry Reid, now leading the body at a time when one party controls Congress and the White House.

On another occasion, Reid sang a different tune:

"It would be one thing for Republicans to vote against this bill. If they honestly believe that 'stay the course' is the right strategy - they have the right to vote no. But now, Republicans are using a filibuster to block us from even voting on an amendment that could bring the war to a responsible end. They are protecting the President rather than protecting our troops. They are denying us an up or down - yes or no - vote on the most important issue our country faces."

- **The Senate is now on C-SPAN.** This makes rambling, non-pertinent speeches such as Huey Long's recitation of his favorite fried oyster and potlikker recipes less likely to be appreciated by the viewing public. It's hard to keep a TV fan base after 15 hours, the length of one of Long's filibusters, which was finally busted by his need to go to the bathroom.

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Your editor has been a musician for many decades. He started the first band his Quaker school ever had and played drums with bands up until 1980 when he switched to stride piano. He had his own band until the mid-1990s and has played with the New Sunshine Jazz Band, Hill City Jazz Band, Not So Modern Jazz Band and the Phoenix Jazz Band.

NOTES ON THE MUSIC

Here are a few tracks:

SAM SMITH'S DECOLAND BAND

SAM'S BAND

JELLY ROLL

PHOENIX JAZZ BAND

APEX BLUES Sam playing with the Phoenix Jazz Band at the Central Ohio Jazz festival in 1990. Joining the band is George James on sax. James, then 84, had been a member of the Louis Armstrong and Fats Waller orchestras and had appeared on some 60 records. [More notes on James](#)

WISER MAN Sam piano & vocal

OH MAMA Sam piano & vocal



- **The Senate has gotten older.** It simply doesn't have as much energy as it did, say, in the 1960s and earlier. They can't even have an inaugural lunch without having to call an ambulance; imagine what would happen after several nights sleeping on cots in the Senate out rooms as in the past.

I was fortunate enough to have covered a number of real filibusters. Once I reported that "This afternoon it was JW Fulbright who said the issue of discrimination was non-existent -- raised every four years for political reasons." Fulbright at the time was participating in a southern filibuster that had already been going 69 hours, far longer than any previous effort.

Among those also taking part were Sam Ervin and the rambunctious, hard-drinking Russell Long who managed to hold the Senate floor for eleven hours. This, however, was no record. Senator Wayne Morse had once gone over 18 hours and two years earlier, Strom Thurmond had held the floor for more than a day.

Thurmond reportedly described to Rep. Wayne Hayes in some detail how he managed this feat without having to relieve himself, noting that he had taken saunas, avoided liquids and so forth. Hayes listened thoughtfully and then said, "Strom, I can understand how you went that long without pissing, but what I can't figure out is how someone so full of shit as you could have done it."

One filibuster would drift into another and the hours turned into days. A group of reporters gathered around the minority leader, Everett Dirksen, in the middle of a night and one asked, "How are you doing?" The Wizard of Ooze told us he was doing all right "but at some point I suppose I shall have to lie down and let Morpheus embrace me . . . After two weeks the flesh rides herd on the spirit."

That was a real filibuster. Today, Dirksen would have just called Harry Reid and said, "Chalk me up for a filibuster."

There's a way out of this dilemma. Change the Senate rules. But you can't do that without a filibuster? Not really, as well argued by Ronald D. Rotunda of the Cato Institute a few years ago:

"The modern filibuster is much more powerful than its historical predecessor because it is invisible: The Senate rules do not require any senator to actually hold the floor to filibuster. Instead, a minority of 41 senators simply notifies the Senate leadership of its intent to filibuster. Other Senate business goes on, but a vote on a particular issue -- a nomination -- cannot be brought to a vote. . . .

"The Senate, unlike the House, is often called a continuing body because only one-third of its members are elected every two years. But that does not

give the senators of a prior generation (some of whom were defeated in prior elections) the right to prevent the present Senate from choosing, by simple majority, the rules governing its procedure. For purposes of deciding which rules to follow, the Senate starts anew every two years."

To be fair, the activists also play both sides of the filibuster game, depending on whether the politically anointed are on their side or not. I prefer the majority vote in either case; it's worked pretty well in the House. But even if you want to keep the filibuster, then at a bare minimum, its advocates should be required to show a little gumption and not treat it as a dial up option - the political equivalent of phone sex - but rather get out there on the floor and read Shakespeare for 18 hours and 32 minutes. If you're going to be bumptious recalcitrant, at least give us something to laugh about.

1/20/2010 

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