

Testimony of Walter J. Stewart  
Secretary of the Senate Emeritus  
before the  
United States Senate Committee on Rules and Administration  
June 17, 2003

Chairman Lott, Senator Dodd, and distinguished members of this committee. It has been my great good fortune to have spent more than fifty years of my life in or around the floor of the United States Senate. I came to work here in 1951, the same year that freshman Senator Lyndon Johnson assumed the post of Democratic Party whip. Anyone who has read Robert Caro's recent biography of Johnson, *Master of the Senate*, will appreciate what dramatic times those were. Whether or not one agrees with Johnson's style, or his politics, one cannot help but admire his intuitive grasp of the Senate's institutional culture. Robert Caro makes the case that Johnson, as majority leader from 1955 to 1960, guided the Senate more effectively than any predecessor in one hundred years. However, I would add that Senator Johnson also accumulated and utilized more leadership powers than most previous leaders, and subsequent leaders on the Democratic side of the aisle lacked many of those powers, since Senator Mansfield ceded (under pressure) many of those leadership prerogatives to the caucus upon assuming the leadership. He regretted this action, and at a later point in his leadership attempted to regain some of those powers, but was unable to gain caucus support for returning these powers to the leadership.

Majority Leader Johnson took on his duties as party leader in a political climate very similar to that of today=s. In 1953, Senate Republicans held a tenuous one-vote majority over the Democrats. In fact, early in the second session of that 83rd Congress, the deaths of several incumbents and the arrival of their appointed replacements actually

gave a slim working majority to the Democrats.

In that Congress, Republican Leader William Knowland had all the responsibilities of the majority leadership without having the necessary votes. Early in 1954 he complained "that we cannot have an effective legislative program if the responsibility is here but the power is exercised on the other side of the aisle." In what has become a classic statement, Minority Leader Johnson quickly replied, "Mr. President, the Senator from California frequently refers to himself as a majority leader with a minority; and he has made reference to all the problems that go with that situation. If anyone has more problems than a majority leader with a minority, it is a minority leader with a majority."

In this closely divided Senate, LBJ learned the importance of protecting minority rights both as minority leader for two years and then as majority leader for six years. It was during this period that Leader Johnson first paid attention to holds.

The practice of allowing members to place a hold on a pending measure is as old as the practice of passing legislation by unanimous consent. (Unanimous consent agreements were first offered in the Senate of 1789). Any member who feels that he or she has not had sufficient time to study the issue, or to make a speech, or to offer an amendment can reasonably be expected to object to approval by unanimous consent.

Lyndon Johnson's innovation to the well-established practice of allowing members to request holds was to insist that the name of the person placing the hold be kept secret. This allowed him to negotiate directly with that senator without what he saw as the further complications of publicity. If Johnson could satisfy the author of the hold through a private conversation, he saw no reason to have to explain his inside dealings to the press and public.

I am not here today to defend the secret hold.

In the legislative arena, if one works hard enough, it is usually quite possible to find out who is behind a particular secret hold. Considering the trend in the Senate of the past quarter century toward the greater openness of its operations, whether in committee reforms or in the televising of floor proceedings, one could fairly conclude that secret holds go against this spirit of full disclosure.

My concern at this hearing is with the concept of a hold, irrespective of whether the identity of the holding senator is kept secret or made public.

In my experience, as a member of the leadership staff, a hold is sometimes simply an example of the working of two major and closely related Senate traditions. The first is the right of careful and unhurried deliberation. The second is the protection of minority rights. When a senator places a hold, that member is, in many cases, acting to keep the dialogue going, or to force a dialogue when that member feels that previous discussions have been deficient.

James Madison, writing just after the signing of the Constitution in 1787, made a classic case for keeping the dialogue going. He did this in supporting the Senate's role as a restraining body against the larger House of Representatives whose members, serving shorter terms than senators, were subject to swings in public opinion. In the House, Madison feared, there might be a tendency "to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions." He believed the Senate could counter such political frenzy until "reason, justice, and truth" again prevailed. That was the lofty ideal of the Senate of 1787, and nothing better could happen to the nation today, than to have the Senate return to those ideals.

From the 18th Century of James Madison, through the era of Lyndon Johnson, and down to our own time, the right to explore complex issues at length-between the time of final committee review and final floor action-is what, in my opinion, has made the United States Senate the "world's greatest deliberative body."

However in the contemporary Senate of today, a different legislative culture has developed, especially as it concerns holds and the ability to make "legislative mischief" through their use. Anything I have to contribute to this dialogue pales in comparison to the knowledge base and experience of Senators Lott, Byrd and Daschle, each a current or former Leader of the Senate and each a distinguished members of this Committee. Each of you is intimately familiar ad nauseam with contemporary holds, which unfortunately are not always placed to expand discussion, but rather to kill an issue by delaying it into oblivion or obstructing it to death. Each of you, as well as former Leaders, not currently serving in the Senate, have attempted to control with varying degrees of success, the degree to which these holds can impede the business of the Senate. However, with the "quality of life" schedule of the Senate and the pressure to meet adjournment and recess deadlines, mid-level controversial issues become particularly vulnerable to a "delaying" hold. Two days before a recess period, the threat of a filibuster is almost as effective as the filibuster itself. The larger mainstream issues tend to be scheduled and debated, regardless of the number of holds or the threats of a filibuster.

Despite the Herculean attempts by Leaders and individual members to change the "hold system" to improve the legislative flow of business, it is still alive and functioning, primarily because the Leaders, while sincerely attempting its reform, still find it either helpful or necessary, in exceptional circumstances to recognize the use of it, or use it themselves. Even infrequent uses tend to revive its legitimacy, despite their sincere ongoing efforts to achieve reform to curtail its use as a delaying tactic.

Senate "holds" on legislation or nominations are not sanctioned within the Senate rules. This Senate custom exists solely because the leadership continues to recognize and honor it as a courtesy and as a service to their respective members. However, since it so embedded and accepted as a part of current Senate procedure, Senate Leaders will find it extremely difficult to terminate this practice or severely curtail it's effectiveness. Upon reflection, Leaders may carefully weigh the pros and cons of seriously abridging this practice. The Leaders would probably want a majority vote of their respective caucus membership before taking such action, and they may find members reluctant to relinquish their individual rights on issues of high importance to them, particularly on a secret ballot.

The pending legislation before the Committee, authored by Senator Grassley and Wyden is a step in "fine tuning" this practice. However, I believe that Leaders may need to retain some ability to use this procedure without public disclosure on a very limited basis. Senate Leaders have limited options to enforce party loyalty within their respective ranks except for a little bit of fear and an abundance of persuasive reasoning. These holds, which are also referred to as consultation letters, are one of the few remaining ways in which Leaders can accommodate their members. Although a sitting Majority Leader and his caucus would usually support curtailment of this practice, to enhance the progress of the Senate=s legislative agenda, a Minority Leader and caucus would think long and hard before relinquishing a legislative tool of this magnitude to guarantee consideration of minority views.

I thank the members of this Committee for their attention to this legislation. I would be pleased to answer any questions.

