

**CIVILITY IN THE HOUSE OF REPRESENTATIVES
STATEMENT OF DONALD R. WOLFENBERGER
BEFORE THE SUBCOMMITTEE ON RULES AND ORGANIZATION OF THE HOUSE
HOUSE COMMITTEE ON RULES
THURSDAY, APRIL 17, 1997**

Mr. Chairman and members of the Subcommittee:

I am grateful for this opportunity to testify today on civility in the House, though I did not think my first visit back to the committee since my retirement last January would be as a witness. I was sort of looking forward to just sitting in the audience for a change and watching other people do the work.

I want to commend the chairman of this Subcommittee for his leadership along with Representatives Skaggs, LaHood, and others, in putting together the recent bipartisan retreat in Hershey, Pennsylvania. But more importantly, he and this Subcommittee are to be commended for following through on the "spirit of Hershey" to develop concrete suggestions for improving civility and comity in the House.

When Congressman Skaggs appeared before this committee last September to explain the purpose of the retreat he made clear that much more was needed than a friendly weekend of bipartisan schmoozing. To quote from his testimony:

It seems to me that what we are really talking about here is changing a culture and creating a different sense within the membership of the House of Representatives as to what the norms are here and what is appropriate and what isn't.

I was profoundly struck by his statement at the time, and it has gnawed at me ever since. Sometimes, when you are so close to a situation for so long, it's not until somebody puts it to you in such stark terms that you recognize just how much the culture has changed around you. What is this new House culture, what is behind it, and how do you change it? My own analysis has led me to conclude that the shift taking place has been from a culture of governing through deliberation to a culture of perpetual campaigning through confrontation.

This culture of campaigning is not confined to one party or the other, or even to one branch or the other. The President and the Congress seem to be following the same patterns and tactics, and listening to the same or similar political advisers and pollsters. This cultural shift would not be so bad if campaigns were primarily about competing political philosophies and ideas of how best to solve our most pressing national problems. But, more and more campaigns are driven by polls, promises, pandering, personalities, and peccadillos. Candidates are told by their professional managers that to wage a successful campaign nowadays, you must demonize your opponent, define all issues as a choice between good and evil, avoid discussing the tough issues, oversimplify and magnify the importance of your key wedge issues, and attack, attack, attack.

To the extent that governing becomes a mere extension of such political campaigns, the nature of our deliberative system will suffer since there will be no middle ground left for the kind of compromise that is essential to effective governance. Congress should be a place where competing political philosophies clash, but unlike a campaign, it is not a zero sum game in which your opponent

must be destroyed for you to succeed. Here you must continue to work with the political opposition. The more partisan campaign tactics and wedge issues are allowed to replace genuine political differences and deliberation in the Congress over truly vital issues, the more there will be a breakdown in the decorum and comity necessary to sustain the system.

That is my analysis of the cultural shift you are experiencing. It is not intended as an indictment of anyone. Indeed, Eric Uslaner's thesis in *The Decline of Comity in Congress* is that it merely reflects what is happening in our society at-large. I think most Members are genuinely concerned about the institution and where it is headed, and would prefer to return to the culture of governance and deliberation. Campaigning isn't all that much fun. And there are certainly more important issues that must be dealt with. I do not think this culture of campaigning has yet become dominant or pervasive, but it is increasingly intruding on your ability to govern effectively.

You are undertaking a long overdue self-examination of this institution's culture, and you are doing so in a bipartisan manner which is the only way you can begin to transform that culture. So, overall, I am encouraged rather than discouraged because you are beginning to confront and deal with the problem.

The transformation away from the culture of campaigning is not one that can be achieved with a few discrete rule changes or procedural fixes, as helpful as those might be in calling attention to the problem and forcing Members to begin thinking about the need for a changed mind-set and attitude. The transformation back to a culture of governing through deliberation does not lend itself to a legislatively-imposed solution. Just as it has been said that you cannot legislate morality, I do not think you can legislate a restoration of civility. But in both instances you can take affirmative steps to create an environment in which desired conduct is encouraged and rewarded, and undesirable conduct is discouraged and punished.

It seems to me that the first step you can take towards creating a climate for civility and restoring the culture of governing through deliberation is to better educate Members on existing House rules and precedents relating to decorum in debate, and to devise better means of enforcing those rules and precedents.

The rules of decorum in debate, which trace back to the first set of rules adopted by the first House on April 7, 1789, were designed to protect the House against a breakdown in the order and comity that are so essential to conducting its business. Jefferson, in his *Manual of Parliamentary Practice*, which has been incorporated by reference in House Rule 42 as part of the Rules of the House, speaks of the need for the adherence to a uniform set of rules of proceeding in business, "not subject to the caprice of the Speaker, or captiousness of the members." And he goes on, "It is very material that order, decency, and regularity be preserved in a dignified public body."

The essentials of decorum as laid out in House Rule 14 are quite simple: Members shall address themselves to the Chair and not to other Members; they shall confine themselves to the question under debate; they shall avoid engaging in personalities, including questioning other Members' motives or integrity; and, if called to order for transgressing the rules, they shall immediately sit down unless permitted by motion to explain.

From my observations over the years, there are three types of breaches of decorum, each of which needs to be dealt with in a different way. First, there is the "unknowing breach" in which a Member transgresses the rules because he or she has not been properly educated as to what is and is not appropriate during debate. This is not something which should only be dealt with during freshman orientation. The fact is, there are still plenty of junior and senior Members who are not sufficiently conversant with the rules. This knowledge gap requires an ongoing educational process by the occupant of the Chair, the respective party Leaderships, and Members' peers.

In this regard, I want to commend Chairman Solomon and the Rules Committee on its recent publication of a handy, pocket floor guide for Members entitled, "Key Forms of Proceedings in the House of Representatives," the final page of which includes a summary of "Rules of Decorum and Debate." This should be available to all Members on the floor at all times and read with care. I also want to commend the Parliamentarian's Office on taking the time to patiently explain to Members in private why certain practices are not acceptable under House rules and precedents. Real education involves teaching why certain conduct is required, and not just what the standards are.

The second kind of breach of decorum is what I call the "unthinking breach" that is committed by Members who probably do know better but nevertheless engage in certain unacceptable conduct in the heat of the moment -- in a fit of passion or anger. There is obviously no sure-fire safeguard against such spontaneous outbursts. However, it has been my observation that these are more likely to occur at the end of a session, particularly during a late night session, or during the consideration of issues affecting deeply held, but divisive, personal beliefs.

In such situations, tensions rise, nerves are taut and frayed, and there is an impatience with or intolerance of those espousing opposing opinions. I would not recommend, as some have, that late night sessions be completely banned, because I think sometimes such sessions are the only way to bring things to closure. However, I think these are times when the leadership on both sides of the aisle should maintain a constant presence on the floor to immediately help de-escalate such situations when they arise.

The third kind of breach of decorum is the most egregious; it is the "intentional breach" that is designed to provoke confrontation and/or media coverage. This kind of breach should be dealt with the most severely by the occupant of the Chair and the respective party Leaderships because there can be no excuse for Members knowingly engaging in this kind of conduct. While such Members may feign ignorance of the rules, it's pretty easy to tell when they are intentionally flouting them: the same Members tend to commit the same violations over and over again, day after day, despite repeated warnings and rulings from the Chair -- sometimes even during the same set of remarks.

I understand that the Chair is often reluctant to intervene unilaterally for fear of appearing heavy-handed or partial. Consequently, the Chair waits until after the Member has completed his remarks to remind the House of the rule that was being violated. I also understand the reluctance of other Members to raise a point of order since this only plays into the hands of those who are attempting to provoke a confrontation and call further attention to their particular cause by claiming they are being "gagged" and by forcing a House vote on the Chair's ruling.

The Chair has adopted a seemingly unequal approach to dealing with personal attacks on the President and personal attacks on other Members. The rationale for this is that the President is not present to defend himself while other Members are present to defend their colleagues. I would recommend, however, that in both situations the Chair intervene immediately by cautioning the Member.

If the Member persists in violating the rule of decorum on personalities, the Chair should exercise his prerogatives under House Rule 14, clause 4, and order the Member to immediately sit down. You can call this a "two strikes and you're out" approach. I think it will be accepted and get the desired results if Members are made aware of its possible use in advance and it is uniformly applied.

I would apply a similar approach to exhibits that have been held to be violative of the standards of House decorum. If the Chair has held that an exhibit is in violation of House decorum, the Sergeant-at-Arms should remove the exhibit from the House floor. The Chair should not be required to rule on the same exhibit with every new Member who attempts to use it later on that day, or on any subsequent day, for that matter. In this case, it should be, "One strike and you're out."

Furthermore, I would recommend that House Rule 30, on the Use of Exhibits, be repealed. It now reads that, "When the use of any exhibit in debate is objected to by any Member, it shall be determined without debate by a vote of the House."

This rule was used in the last Congress by the minority on one of its own exhibits, simply to force a dilatory vote, just as the predecessor rule on the reading of papers was occasionally abused by the then Republican minority for the purpose of forcing dilatory votes. But, more importantly, it seems to me, the rule gives the majority party, by virtue of its numbers, a potentially unfair advantage since it could prevent the use of perfectly legitimate exhibits by the minority. If this rule is repealed, the point of order still exists against exhibits that are a breach of House decorum; and the opportunity still exists for a vote on appealing the ruling of the Chair. But the Chair's ruling is more likely to be respected and upheld by both parties, and not be a matter of partisan abuse.

On the other hand, if an objectionable majority party exhibit is first approved by the adoption of a majority-originated motion on a party-line vote, it is unlikely the Chair would subsequently choose to rule on a point of order from the minority since the House would already have determined the exhibit to be appropriate by adopting the earlier motion that was triggered by an objection.

The third breach of decorum that I have identified, the "intentional breach," is most often used during party-orchestrated one-minute speeches. Last year, Representatives Archer and Beilenson testified before this Committee and urged that one-minute speeches either be postponed until the end of the day on grounds that they literally poison the well. Others have suggested they be abolished altogether. While there is some appeal to postponing one-minutes, I would not recommend they be totally eliminated. Instead, I would suggest a compromise approach be implemented on a trial basis that would allow for a period of one-minutes at the opening of each day's session for the purpose of making announcements -- a sort of "House bulletin board." Members could announce bills they have introduced or discharge petitions filed, and invite cosponsors or co-signers; they could call attention to an important hearing that is scheduled in their committee; they could announce some proud national achievement by one of their constituents or sports teams; hype the upcoming congressional baseball game, etc.

It would be understood that this period could only be used for the purpose of conveying factual information to other Members, and could not be used for engaging in attacks on the Administration or the other party, or for engaging in a preliminary debate on the merits of legislation to be considered later that day or week. Instead, one-minute speeches designed to convey political opinions and views would be deferred until the end of the day's legislative business, just prior to the five-minute and other special order speeches. If the respective party "theme teams" still wished to carry out their coordinated messages of the day, this would be the appropriate time for them to do so, and not at the opening of the day's session.

I know this will be met with objections by some in both parties who cling to the belief that one-minute speeches can only be useful if they are delivered well before the evening news so that the networks will pick them up and use them. To this I would offer two observations. First, there is only one House Member's one-minute speeches that ever make the evening news with any regularity, and he doesn't happen to be a member of either party's theme team.

Second, even if in the off-chance a network does use a slice from each party's one-minutes for that day, you can be sure they will use the most outrageously vituperative remarks from each that will in turn leave the public with the most unfavorable view of both parties and of the House in general. Put another way, while the inside-the-Capitol-dome view might be that your side scored more political points with your clever zinger than the other side did with theirs, to the average American TV viewer you are simply confirming their stereotype that all you do is engage in partisan bickering rather than work together for the good of the country.

My high school English teacher had a particular fondness for the poet whom she referred to as "Bobby Burns," though I don't think they ever met. If there are no other lines of his we remember, it is the following from the poem, "To a Louse":

Oh wad some power the giftie gie us
To see oursels as others see us!

That would be my advice to the House not only with respect to your use of one-minutes, but also with respect to your vigilance in preserving the dignity and decorum of the House. Step back and look at yourselves as others see you, and act as you want them to see you and your stewardship of their House.

I think my extended discussion of one-minutes has addressed two interrelated issues you have raised in your letter of invitation for this hearing -- the role of the media in exacerbating acts of incivility and the public's perception that the level of incivility is at an all-time high. Yes, the media tend to focus more on the moments of heat in debate than on the moments of light, and that does tempt some Members to play to the cameras; and yes, the public consequently thinks Members are always at each other's throats. But, I would submit that even if you succeed in adhering strictly to the rules of decorum, and even if you restore an environment of relative civility, the public will still think there is far too much political fighting going on and not enough productive work being done.

I think there is an inherent public impatience and frustration with the deliberative process as we know it. Former House Speaker Sam Rayburn once said, "Too many critics mistake the deliberations of Congress for its decisions." It's little wonder then, that more often than not the public gives the Congress a very low job approval rating: most of a Congress is spent in prolonged deliberations and negotiations. It's only towards the end of a session that the people see any results.

In the midst of the government shutdowns in the last Congress, for example, the job approval rating for Congress had sunk to 22%. But, by the end of the Congress, it had shot up to 42% -- the highest it had been in a decade, mainly due to the productive final weeks of the session.

We all need to do a better job of educating the public as to the nature of our system of representative and deliberative democracy -- that it is sometimes messy and noisy, that it takes time to work things out, and that politics is the means by which we resolve our differences and make decisions. And yet, how many times have you heard people say that, "Congress would be o.k. if it weren't filled with all those politicians;" or, "the government would work just fine if the president and Congress just stopped playing politics." This latter attitude is confirmed by a recent survey commissioned by the non-partisan Council for Excellence in Government. It reveals that 50% of those surveyed agreed that the bigger problem with the federal government is that "Politics has prevented government from serving the people well," whereas only 35% thought it was that "government programs have gotten too big, expensive, intrusive." Another 13% thought it was a combination of both.

I suspect the explanation for this is that most people think of politics as being actions designed to achieve partisan political gain for election purposes rather than as a process for determining how the government should allocate its resources to better serve the people.

But this misconception about the true nature and function of politics brings me back to my original comments on the decline in the culture of governing and rise in the culture of campaigning. To the extent that Congress is increasingly influenced by the culture of campaigning, the more the distinctions between the politics of campaigning and the politics of governing will be blurred. And that in turn will only confirm the popular stereotype of Congress as being driven more by a self-interested partisanship than by a desire to work for the public good and in the national interest.

Let me hasten to add that I do not think partisanship is a bad thing or a bad word. In the best sense of the term partisanship is an adherence to the principles and programs of a political party. Our partisan or political differences are what enable our system of government to have a free and full-ranging debate over our problems and competing solutions -- something that is not possible in one-party or no-party states. We should celebrate our differences and the freedom of engagement our parties enjoy over their differences, and our freedom to choose between them. Through an adherence to the rules of decorum, and acting in an environment of mutual respect, trust, and civility, Members can disagree without being disagreeable, and eventually come together in making decisions in the best interests of the people. Congress, after all, literally means "a coming together."

Let me close by recounting the comments of a Russian named Boris Marshalov who visited America early in this century. After he watched the House of Representatives in action from its visitors' gallery, he came away with the following observation, and I quote:

Congress is so strange. A man gets up to speak and says nothing. Nobody listens -- and then everybody disagrees.

I have related this story to make two concluding points. First, some things don't change. And second, an American tourist observing the same scene probably would not have thought it "strange" at all since we tend to take for granted our great tradition of open dissent and disagreement. May you continue thrash-out your differences and disagreements with deliberation and civility.

Thank you.