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**Civics 101**

**Episode 19: - SENATE RULES**

**Virginia Prescott:** [00:00:00] I'm Virginia Prescott and this is Civics 101. The podcast refresher course on how democracy works, things that you may have forgotten since middle school. So far the Senate has confirmed a handful of presidential nominees only some 500 plus more to go. Even if you did not follow the hearings for the key cabinet post you may still have heard about this scolding on the chamber floor.

[00:00:41] She was warned. She was given an explanation. Nevertheless she persisted.

**Virginia Prescott:** [00:00:51] That is Senate Majority Leader Mitch McConnell defending his decision to stop Massachusetts Senator Elizabeth Warren from speaking during the debate over Jeff Sessions nomination for attorney general. McConnell barred Warren from further discussion for violating rule 19, a rarely invoked rule prohibiting a member of the Senate from impugning another senator or conduct a motive unworthy or unbecoming a senator. There are 44 rules governing how the Senate operates. The more questions we got about Senate rules the less we understood which parts of conduct are rules and what is custom. To sort it all out we found Alan Frumin who is Senate parliamentarian emeritus. He served in the Senate Parliamentarian's office from 1977 to 2012 and was on two occasions chief parliamentarian from 1987 to 1995 and again from 2001 to 2012. Alan, welcome to Civics 101.

**Alan Frumin:** [00:01:51] I'm delighted to be here.

**Virginia Prescott:** [00:01:53] What does the Senate parliamentarian do.

**Alan Frumin:** [00:01:57] The Senate parliamentarian is basically the referee on the floor of the Senate. It's the parliamentarians responsibility to advise whoever's presiding over the Senate as to appropriate Senate procedure at any point in the proceedings.

**Virginia Prescott:** [00:02:12] It's an interesting term parliamentarian. I mean when the framers were designing our Constitution and Bill of Rights and conduct, there was a kind of avoidance of references to Englishness. Are the Senate rules in the Senate parliamentarian established in the Constitution.

**Alan Frumin:** [00:02:29] No.

**Virginia Prescott:** [00:02:30] So who makes them up?

**Alan Frumin:** [00:02:32] Well the rules that the Senate uses, the standing rules go all the way back to 1789 or several of them go back to 1789 and 1789 and the first Senate they did look to English practice for the basic Senate rules. But over the years they have evolved away from that.

**Virginia Prescott:** [00:02:52] So there are forty four Senate rules now. You look through them you can see there are about you know morning business voting procedures committee procedure which are actually used most often.

**Alan Frumin:** [00:03:05] Well you started this discussion by mentioning Elizabeth Warren running afoul of Rule 19, that's the rule that governs debate and decorum in debate. And it's a rule that Senate parliamentarians shall we say are skeptical of or leery of.

**Virginia Prescott:** [00:03:22] What do you mean?

**Alan Frumin:** [00:03:22] Well if somebody raises a Rule 19 violation on the floor of the Senate that means that tempers are running very hot. And it means that senators are angry at each other and it's the rule that we referred to as the shut up and sit down rule, and Elizabeth Warren's experience illustrates that. She was made to shut up and sit down and it's really something that a Senate parliamentarian is loath to be involved in, because believe it or not senators are not delighted when a Senate staffer tells them to sit down and shut up.

**Virginia Prescott:** [00:03:53] I was wondering about that. You said that your role was as a referee. So did anybody say to Mitch McConnell after that, well actually Senator there is precedent for this. I mean what happens in a case like that.

**Alan Frumin:** [00:04:05] Well we try to research the precedents. If if we know in advance that somebody might challenge a senator for a language that he or she is using on the floor of the Senate we will look for precedents so that we can tell a senator that the language you used is comparable to the language used in the past that resulted in a violation of Rule 19. But as I said it's something that when we hear and when I heard that there was a rule 19 issue as a safely retired Senate parliamentarian what that meant to me was that things had gotten very nasty on the floor of the Senate.

**Virginia Prescott:** [00:04:41] Who educates incoming senators about all these rules?

**Alan Frumin:** [00:04:45] The Senate parliamentarian does give orientation sessions. There is usually one or two orientation sessions that are set up formally by the secretary of the Senate and individual senators certainly are free to make appointments to come to the Senate to the parliamentarian's office. Smart senators will use that time in the chair to ask the parliamentarian a whole host of questions about how the Senate operates.

**Virginia Prescott:** [00:05:12] What is the difference between a rule, a precedent, and a procedure?

**Alan Frumin:** [00:05:17] Well procedure is more or less the generic term that encompasses both rules and as you pointed out the standing rules of the Senate 44 of them and activity that occurs precedents, which are interpretations of the Senate's rules, were simply decisions about procedure. One example I like to cite is that there's nothing in the standing rules about English as the official acknowledged language on the floor of the Senate.

**Alan Frumin:** [00:05:46] And yet when senators would wish to speak in a foreign language would make them get unanimous consent requiring the permission of every senator and so that would be a precedent basically telling a senator that you would need unanimous consent to speak in Spanish let's say or French or Russian on the floor of the Senate. There's no rule whatsoever that addresses that.

**Virginia Prescott:** [00:06:10] How about the manner of speaking on the floor of the Senate. You know the chair recognizes the honorable Senator from Delaware kind of thing they don't refer to each other by their first name. The way they mention motions is that a rule or custom?

**Alan Frumin:** [00:06:25] That's pretty much custom. The rule does require the presiding officer to recognize the first senator who addresses the chair. That's by rule but by by custom and precedent, Senators do not address each other directly. They don't use the word 'you'. So if Senator Warren wanted to speak to let's say Senator Shaheen, she wouldn't look at Senator Shaheen and say you. And they are supposed to address each other through the chair. So Senator Warren to follow proper practice procedure, would say Madam President or Mr. President "will the senator from New Hampshire yield for a question," and say "Madam President I'm addressing a question to the senator from New Hampshire. Isn't it true that that New Hampshire gets much more snow than than Massachusetts and has much better skiing?"

**Virginia Prescott:** [00:07:23] So how often are new rules made. I know from speaking to a previous guest about Rule 22 on cloture added in 1917. Do the rules get amended or appended?

[00:07:36] It's quite rare for the standing rules to be amended, as you said there are XLIV of them 44 of them and I believe there were 44 them when I began working in the Senate, or maybe 42. So it is very rare to actually amend the standing rules it's even more rare to add a new rule. From time to time the existing rules are tweaked.

**Virginia Prescott:** [00:07:59] How about the difference between committee rules of course. There are many committees that operate in the Senate and Senate rules in general.

**Alan Frumin:** [00:08:08] The committees are almost completely autonomous in the rules that they enact to guide their proceedings. They are pretty much free to do whatever they want.

**Virginia Prescott:** [00:08:18] Standing rule number six is about quorum and states absentees senators may be sent for. Did that ever happen where senators were summoned to the floor when you were a parliamentarian.

**Alan Frumin:** [00:08:29] Oh yes it did.

**Virginia Prescott:** [00:08:30] Really they would go and get a senator.

**Alan Frumin:** [00:08:32] Oh yes they would. And sent for means, and I think motion there is either explicitly in the rule or by precedent. The motion that is involved in sending four Senators is to quote compel attendance.

**Virginia Prescott:** [00:08:49] Whoa.

**Alan Frumin:** [00:08:50] Yes. What was right and what compel means is arrest.

**Virginia Prescott:** [00:08:54] So you could go arrest a senator who didn't show up for a vote on the Senate floor or even deliberation.

**Alan Frumin:** [00:09:01] Well not me. I would send you to arrest them. But since you were not around in February of 1988 we needed to send the Senate sergeant at arms out to arrest certain senators. This was a filibuster. The Republican minority was filibustering against a proposal to, to impose campaign finance reform and the Republicans were filibustering in part by hiding. By denying the majority Democrats a quorum and in frustration the Democratic leader at the time the majority leader Senator Robert C. Byrd of West Virginia made a motion to compel the attendance of absent senators. And what that meant was arrest warrants. And so I had to have my assistant in my office dust off decades old arrest warrants which we filled out and had them signed by the most senior Democrat present at the time and that was William Proxmire of Wisconsin. And with that he handed the arrest warrants to the Senate sergeant at arms and the first senator that the Sergeant at Arms encountered apparently was Lowell Weicker of Connecticut and Lowell Weicker stood 6 foot 8 and I think had a substantial body on that 6 foot 8 frame. And as rumor had it he simply looked at the sergeant at arms and said you and what army. At which point the sergeant at arms went looking for more senators and found Sen. Robert Packwood of Oregon.

**Virginia Prescott:** [00:10:36] Considerably smaller.

**Alan Frumin:** [00:10:38] Somewhat smaller than Lowell Weicker and who conveniently already had his arm in a cast and he was well he was willing to play along. And so that night Bob Packwood of Oregon entered the Senate chamber feet first being carried by the sergeant at arms and I think one assistant. It was it was a wonderful wonderful visual.

**Alan Frumin:** [00:11:02] So yes I've seen senators arrested.

**Virginia Prescott:** [00:11:04] Wow that's so dramatic I mean we think of the Senate as the deliberative chamber or genteel I guess in comparison with the kind of hot headedness of the house. But are there more rules in the Senate or House or let's say how are the rules different in the Senate than in the House.

**Alan Frumin:** [00:11:22] Well I tell people the most remarkable and significant feature of the Senate's rules is what's not in the Senate rules. And that's a simple motion to end debate by a majority vote. It is the absence of that one motion. That is why in the Senate you can have a filibuster and a motion to end debate is basically a motion to compel action. It's a motion to force the will of the majority on the minority. That motion is absent in the Senate. And what that means is the entire culture of the Senate the entire ethic of the Senate the entire way of doing business in the Senate is governed by the fact that the Senate minority has leverage. That it, there's no majority motion to compel action. The Senate minority can say we're not going to vote, we're not going to vote on this nomination we're not going to vote on this bill. This particular aspect of Senate procedure the very absence of a motion empowers the Senate minority and requires some buy in by the Senate minority for virtually any action to take place.

**Virginia Prescott:** [00:12:29] Alan Frumin it is wonderful to speak with you thank you so much for joining us.

**Alan Frumin:** [00:12:35] It's my pleasure. Thank you very much. And I hope you're enjoying New Hampshire's winter as I am enjoying my winter down here.

**Virginia Prescott:** [00:12:41] The skiing is terrific. Alan Frumin is a Senate parliamentarian emeritus. He served in the office from 1977 to 2012 and was promoted on two separate occasions to Chief parliamentarian. By both political party the only Senate parliamentarian to hold that distinction.