AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

CHAPTER 1

Assembly of Congress

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Commentary and editing by Peter D. Robinson, J.D.

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Assembly of Congress

A. MEETING AND ORGANIZATION

§ 1. In General; Law Governing

An understanding of the body of procedure through which the United States House of Representatives fulfills its functions and exercises its prerogatives must be based, in the beginning, on a comprehension of how the Congress comes together, and of the methods through which it arrives at an organizational structure and at a body of rules to govern its proceedings.

This chapter is principally confined to the specific steps and principles of procedure which apply to the initial organization of the House of Representatives. The discussion is chronological, following the progression which the House itself follows at organization. Although this chapter focuses on circumstances indigenous to the organization of a new Congress, parallels are drawn to the mode of operation at the start of new sessions during a term of Congress as well.

This chapter discusses the general law which governs the House as soon as it has come together, but before organization has been consummated, the provisions of law directing the assembly of Congress, and the steps of organization which occur at the convening of Congress. The four types of "assembly," and their relationship to the sessions of Congress, are described, as are the time and place at which Congress meets both at assembly and during sessions.

The first division of this chapter sets forth, schematically, the various organizational steps, including the election of the Speaker, and describes the proceedings over which he presides in completing organization. The functions and authority of the Speaker and of the other officers of the House at the opening of Congress are detailed.

The second division deals with the principles of organizational proceedings, before and after standing rules have been adopted. The use of motions, miscellaneous floor procedure, and the consideration and passage of bills and resolutions during the organizational period are covered, as well as the

procedure and substantive law relating to the adoption of the rules themselves. How the House resumes business, and what business is resumed, is likewise included.

A word first is in order about the general body of procedural law which governs the House during the period of organization. It is a general principle that in the absence of the adoption of rules of procedure and in the absence of statutory regulation, a public deliberative body is governed by the generally accepted rules of parliamentary procedure.[1] In the House of Representatives, however, the general parliamentary law applicable is that body of parliamentary law generally based upon precedents and rules of past Houses.[2] Obsolete provisions of Jefferson's Manual, inconsistent with the prevailing practice of the House, do not apply.[3]

Past rules from a prior Congress may be relied upon to admit certain motions before the adoption of rules,[4] and those relating to organization procedures, though technically inapplicable, exert persuasive effect.[5] This is

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1. See 59 Am Jur 2d *Parliamentary Law* §3. The general rules of parliamentary procedure applicable to any membership organization have been variously described as: those treating participants with fairness and good faith, *Re Election of Directors of Bushwick Sav. & Loan Assoc.*, 189 Misc. 316, 70 N.Y.S. 2d 478 (1947); those used by all American deliberative assemblies, *Theofel* v *Butler*, 134 Misc. 259, 236 N.Y.S. 81, affd. 227 App. Div. 626, 235 N.Y.S. 896 (1929).

Collateral references: George S. Blair, *American Legislatures; Structure and Process*, Harper and Row (N.Y., 1967). Lewis A. Froman, Jr., "*Organization Theory and the Explanation of Important Characteristics of Congress*," 62 AMERICAN POLITICAL SCIENCE REVIEW 518–562 (June, 1968). *Guide to the Congress of the United States*, Congressional Quarterly, Inc. (Wash., D.C. 1971). Paul Riddick, *The United States Congress Organization and Procedure*, National Capitol Publishers (Manassas, Va. 1949).

2. See *House Rules and Manual* §60 (comment) (1973). See also 5 Hinds' Precedents §§6758–63; 8 Cannon's Precedents §§3383–86.

3. See 5 Hinds' Precedents §§6757, 6761–63. Rule XLII, *House Rules and Manual* §938 (1973) provides for the application of Jefferson's Manual to House procedure where not inconsistent with standing rules.

4. For example, the motion to recommit was admitted before the adoption of rules on Dec. 7, 1931, 71 CONG. REC. 12, 72d Cong. 1st Sess. (Speaker John N. Garner), because it was within the "spirit" of the rules of the preceding Congress (see §9.5, infra).

5. Rule II (election of officers and administration of oath to them), §635, and Rule III clause 1 (duties of Clerk

not to infer, however, that past rules are generally controlling.[6] A rule of a past Congress assuming to control a future House as to rules at organization is not binding,[7] and a statutory enactment incorporated into the rules of a preceding Congress and enacted under the rule-making power of the House and Senate has no effect in a new Congress until expressly adopted.[8]

§ 2. Types of Meeting; Sessions

Congress assembles in various ways, as determined by the status of Congress at its last meeting and by the provisions of the twentieth amendment, requiring assembly at least once a year.[9] The two types of "assembly" contemplated by the twentieth amendment include the convening of the first session of a new Congress and the convening of the second or following session of an existing Congress.[10] A third category of assembly, the extra session, may arise when the Congress is convened pursuant to Presidential proclamation after the final adjournment of one session but before the constitutional day for the convening of the next session.[11] When the President ex-

at commencement of new Congress), § 637, *House Rules and Manual* (1973), prescribe the procedure at organization which is generally followed, although the rules are not technically in force at that time.

6. See, *e.g.*, 5 Hinds' Precedents §§ 5590, 5604.

7. 5 Hinds' Precedents §§ 6765–66.

8. The requirements of the Legislative Reorganization Act of 1970, Pub. L. No. 91–510, 84 Stat. 1140, incorporate as an exercise of the rule-making power into the rules of the 91st Congress, were ruled not applicable to the proceedings of the 92d Congress before the adoption of rules. 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971 (Speaker Carl Albert, Okla.) (see § 12.9, infra).

9. Section 2. The twentieth amendment, ratified Feb. 6, 1933, superseded U.S. Const. art. I, § 4, clause 2.

10. See *House Rules and Manual* § 590 (1973). See § 3, infra, for determination of the meeting time of Congress.

11. For the President's authority to convene Congress, see U.S. Const. art. II, § 3. For characterization of meetings called by the President, and whether they constitute a new session, see § 3, infra. See also *Ashley* v *Keith Oil Corp.*, 7 F.R.D. 589 (D. Mass. 1947); compare Jefferson's Manual, *House Rules and Manual* § 588 (1973). For instances of extra sessions since 1936, see §§ 2.1–2.2, infra.

In the 93d Congress, the concurrent resolution adjourning *sine die* the 1st session (H. Con. Res. 412) provided that the leadership could reassemble Congress.

ercises his power to convene, a Congress may hold three or more sessions during its term.[12] The last category of assembly, as the term is used generally to connote a meeting, occurs during a session of Congress, after adjournment either to a day certain or from day to day.

The final adjournment of one session, preceding the opening of a new session, is usually but not always accomplished by a *sine die* adjournment resolution.

For example, the 76th Congress, 3d session, terminated and the 77th Congress, 1st session, began at noon on Jan. 3, 1941, pursuant to the twentieth amendment; neither a concurrent resolution providing for adjournment *sine die* nor a law changing the convening date of the 77th Congress had been passed. The House adopted a simple motion to adjourn on Jan. 2, and the Senate stayed in session up to noon on Jan. 3 when the 3d session of the 76th Congress expired.[13]

These distinctions are important in determining the procedure of the House and the power of its Members when it meets. At the beginning of the first session of a new Congress, the House is without the anchors of rules of procedure, elected officers, or duly sworn Members. At the beginning of a consecutive session of an existing Congress, on the other hand, Members have been sworn and rules and officers remain the same. The openings of new sessions, however, whether of a new Congress, or of an old Congress, or by Presidential proclamation, share one common procedural characteristic: the ascertainment of a quorum must be the first order of business. Congress is not "assembled" until a quorum is present in both Houses, and each House has been notified of the quorum in the other.[14] That re-

12. For historical commentary on the number of sessions per term, see § 3, infra.

13. See 86 CONG. REC. 14059, 76th Cong. 3d Sess., Jan. 3, 1941. See also § 2.4, infra, and 8 Cannon's Precedents § 3375.

14. 6 Cannon's Precedents § 5.

A message from one House that a quorum has appeared is not delivered in the other until a quorum has appeared there also. 1 Hinds' Precedents § 126.

Although art. I, § 5, clause 1 of the Constitution requires a quorum to do business, the House has proceeded to business at the beginning of a second session despite the lack thereof in the Senate (1 Hinds' Precedents § 126), and both Houses have permitted the oath to be administered in the absence of a quorum (1 Hinds' Precedents §§ 174, 181, 182; 4 Hinds' Precedents § 875).

quirement distinguishes the opening of a session from the assembly of Congress during a session, where a quorum is not required unless the lack thereof is challenged.[15] There are, of course, other proceedings on the opening day of a session which do not occur at regular daily meetings, such as the notification to the President of the assembly of Congress.[16]

The point in time at which the elected Congress becomes the Congress "assembled" has been a subject of much discussion, as the determination of that question may define the authority of Congress to act in an official capacity.[17] The language of the Constitution, in empowering each House to determine the rules of its proceedings and to elect its officers, clearly contemplates the assembly as being a "House" before the adoption of rules or election of officers.[18] No definitive rule can, however, be laid down as to the authority of Congress to act before organization, without looking specifically at the act in question and at the stage of organization, factors which receive detailed analyses elsewhere in this chapter. As a rule, only housekeeping resolutions are considered during organization, although a major bill may on occasion be acted upon before organization is completed by the adoption of rules.[19] A related question, whether Congress was in session at a particular time, may become a justifiable controversy when the effectiveness of a congressional or Presidential act depends on the determination.[20]

15. See Ch. 20, infra. On at least one occasion, a quorum was not present at the opening day of the second session. 10 ANNALS OF CONG. 782, 6th Cong., 2d Sess., Nov. 17, 1800 (the date Congress moved permanently to the District of Columbia).

16. See § 7.1, infra.

17. See 1 Hinds' Precedents §§ 87–88.

18. See 1 Hinds' Precedents § 82.

19. See, in general, § 12, infra. For consideration of legislation before rules adoption, see § 12.8, infra.

20. On the question whether a legislative body was technically in session at the time a bill was passed, there are two rules of statutory construction: under the conclusive presumption rule, courts refuse to go beyond authenticated bills to inquire whether the legislative body was in session; the opposite view admits extrinsic evidence. Sutherland, *Statutes and Statutory Construction* § 406 (3d. ed. 1943). Federal courts accord a presumption in favor of regularity to the proceedings of Congress. See *Yellin* v *U.S.*, 374 U.S. 109, 146 (1963); *Barry* v *U.S. ex rel Cunningham*, 279 U.S. 597, 619 (1929).

Whether Congress was in session at a particular time may become a justifiable controversy when the ef-

Extra Sessions; Presidential Proclamation

§ 2.1 On two occasions since 1936, Congress has held three sessions, the second, or special session, being convened by Presidential proclamation following the *sine die* adjournment of the first session.

Following the *sine die* adjournment of the first session of the 75th Congress on Aug. 21, 1937,[21] Congress was convened for its second session on Nov. 15, 1937, before the constitutional day of meeting, by Presidential proclamation.[22] The third session of the 75th Congress met on the constitutional day, Jan. 3, 1938,[23] following the final adjournment of the second session.

Similarly, the second session of the 76th Congress was convened by Presidential proclamation on Sept. 21, 1939,[24] before the constitutional day of meeting for the second session, Jan. 3, 1940. The third session of the 76th Congress convened on Jan. 3 subsequent to the final adjournment of the second session.[25]

§ 2.2 When the House convenes, pursuant to Presidential proclamation, following the *sine die* adjournment of a session, the Speaker calls the House to order and the Clerk reads the proclamation of the President convening the extraordinary session.

On Nov. 15, 1937,[26] following the *sine die* adjournment of the first session on Aug. 6, 1937, Speaker William B. Bankhead, of Alabama, called the House to order and directed the Clerk to read the following proclamation:

> CONVENING THE CONGRESS IN EXTRA SESSION BY THE PRESIDENT OF THE UNITED STATES OF AMERICA
>
> A PROCLAMATION
>
> Whereas public interests require that the Congress of the United States should be convened in extra session at 12 o'clock noon on the 15th day of November 1937, to receive such communication as may be made by the Executive:

fectiveness of a Presidential veto depends on the determination. *Wright* v *U.S.*, 302 U.S. 583 (1938); *Pocket Veto Case*, 279 U.S. 655 (1929). Generally, see Ch. 24, infra.

21. 81 CONG. REC. 9678, 75th Cong. 1st Sess.

22. 82 CONG. REC. 7, 75th Cong. 2d Sess.

23. 83 CONG. REC. 6, 75th Cong. 3d Sess.

24. 85 CONG. REC. 7, 76th Cong. 2d Sess.

25. 86 CONG. REC. 5, 76th Cong. 3d Sess.

26. 82 CONG. REC. 7, 75th Cong. 2d Sess.

Now, therefore, I, Franklin D. Roosevelt, President of the United States of America, do hereby proclaim and declare that an extraordinary occasion requires the Congress of the United States to convene in extra session at the Capitol in the City of Washington on the 15th day of November 1937, at 12 o'clock noon, of which all persons who shall at that time be entitled to act as Members thereof are hereby required to take notice. . . .

§ 2.3 When Congress is convened by the President for a special and additional session, it may provide appropriations, by joint resolution, for extra mileage expenses of Members and additional wages of House employees thereby incurred.

On Sept. 25, 1939,[27] the House agreed to a joint resolution appropriating payment for expenses incident to the second and extraordinary session of the 76th Congress, convened by Presidential proclamation. The appropriations covered mileage expenses incurred by the Members, Delegates, and Commissioners of Congress and by the Vice President, and wages for the pages of the Senate and the House during the term of the second session.

Interval Between Sessions

§ 2.4 On one occasion since 1936, the Senate stayed in session until the date and hour when one Congress expired and the next one began pursuant to the twentieth amendment.[28]

On Jan. 3, 1941,[1] the Senate of the 76th Congress, 3d session, convened at 11:30 a.m. At 11:43 a.m. the Senate took a recess until 11:55 a.m. Further proceedings were carried as follows in the Record:

The third session of the Seventy-sixth Congress expired automatically, under constitutional limitation, when the hour of 12 o'clock arrived.

§ 3. Time of Meeting

The Constitution requires that the Congress assemble at least once a year on either the date specified by the Constitution—January 3—or on a date appointed by the Congress.[2] Since

27. 85 Cong. Rec. 16, 76th Cong. 2d Sess.

28. For other instances where one session of Congress followed another without appreciable interval, see 5 Hinds' Precedents § 6690; 8 Cannon's Precedents § 3375.

1. 86 Cong. Rec. 14059, 76th Cong. 3d Sess. The House had adjourned pursuant to a simple motion to adjourn on Jan. 2, 1941.

2. U.S. Const. art. I, § 4, clause 2, providing for annual assembly on the first Monday in December, was superseded by the twentieth amend-

the First Congress, the Senate and House have frequently provided by law for a convening date different than that designated by the Constitution: by resolution of the Continental Congress the first session of the First Congress convened on Mar. 4, 1789,[3] up to and including May 20, 1820, 18 acts were passed altering the constitutional day;[4] between 1820 and 1934 Congress met regularly for a new session on the first Monday in December.[5] Since January of 1934 the Congress has convened pursuant to the twentieth amendment, requiring the Congress to meet on the third day of January unless otherwise provided.

The twentieth amendment is not the only law relating to the time of meeting. Not only the Congress, but also the President has constitutional authority to convene the Congress earlier than on the constitutional day;[6] in addition, the twenty-fifth amendment to the Constitution requires Congress to assemble to determine the President's ability, when challenged, to discharge the powers and duties of his office,[7] and section 15 of title III, United States Code, appoints the sixth day of January for the count of the electoral vote by the Senate and the House of Representatives.[8]

The constitutional provisions relating to the time of meeting and to the annual assembly were construed by early Congresses to permit them to convene early, either by resolution or by proclamation, and then to continue the same

ment, ratified Feb. 6, 1933, requiring in section 2 that Congress assemble on the third day of January, unless otherwise provided.

Laws appointing a different day for assembling since ratification of the twentieth amendment, see *House Rules and Manual* § 279 (1973) (comment). Time of convening for a session, see Everett S. Brown, The Time of Meetings of Congress, American Political Science Review 955–960 (Nov. 1931).

3. 1 Hinds' Precedents § 3; 8 Cannon's Precedents § 3371.

4. 8 Cannon's Precedents § 3371.

5. 8 Cannon's Precedents § 3371.

6. U.S. Const., art. II, § 3. The President has often convened the Congress, and on one occasion reassembled Congress on a day earlier than Congress itself had provided for. 1 Hinds' Precedents §§ 2, 10–12. Congress provided in the concurrent resolution adjourning *sine die* the 1st session of the 93d Congress (H. Con. Res. 412) that the leadership could call the Houses back into session.

7. Ratified Feb. 23, 1967.

8. On at least one occasion Congress has changed the date for the electoral count. Act of Mar. 24, 1956, Ch. 92, 70 Stat. 54. For the procedure of the count, see Ch. 10, infra.

session up to and beyond the day appointed by the Constitution for annual assembly.[9] The ambiguity of that construction and the extension of power over the time of meeting to the President led to the current practice under which an existing session necessarily terminates with the day appointed by the Constitution for the regular annual session.[10]

Since the adoption of the twentieth amendment, Congress has met either on Jan. 3 or shortly thereafter, maintaining two sessions per Congress with the exception of the 75th and 76th.[11] In the event that Congress adjourns *sine die* and the President convenes an extraordinary session, an entirely new session is begun, and is terminated by the arrival of the constitutional day.[12] Where, however, the President convenes Congress while adjourned to a day certain, the existing session is maintained; no longer is the presidentially-convened session necessarily an extra or additional one.[13]

9. The majority of the first 15 Congresses held only two legislative sessions. 1 Hinds' Precedents §§ 5–11; see also 8 Cannon's Precedents § 3371, describing the first instance where four sessions were convened.

10 2 Hinds' Precedents § 1160; 5 Hinds' Precedents § 6690; 8 Cannon's Precedents § 3375. See § 2.4, supra.

11. A second session of the 75th Congress was convened by the President on Nov. 15, 1937, between the *sine die* adjournment of the first session and the convening of the third session on the constitutional day, Jan. 3, 1938. 82 CONG. REC. 7, 75th Cong. 2d Sess. The second session of the 76th Congress was convened in like manner on Sept. 21, 1939. 85 CONG. REC. 7, 76th Cong. 2d Sess. See § 2.1, supra.

12. 2 Hinds' Precedents § 1160; 5 Hinds' Precedents § 6690.

13. *Ashley* v *Keith Oil Corporation*, 7 F.R.D. 589 (D. Mass. 1947) held that the first session of the 80th Congress was not terminated by a Presidential proclamation convening Congress while adjourned to a day certain, where the Congress itself had construed the reconvention as a continuation of the first session and where the Presidential proclamation did not refer to an extra or additional session. (The issue before the court was the effective date of amendments to the Rules of Civil Procedure, to become law three months after the termination of the first regular session of Congress.) *Ashley* departed from the early view expressed in Jefferson's Manual (*House Rules and Manual* § 588 [1973]) that the convening of Congress by the President automatically begins a new session, a theory formerly propounded in the House. 1 Hinds' Precedents § 12.

See also the remarks in the Senate of Sen. Alexander Wiley. (Wis.) on the *Ashley* issue, 93 CONG. REC. 10575, 10576, 80th Cong. 1st Sess., Nov. 17, 1947, and a Library of Con-

The opening date of the First Congress operated to fix not only the start of a session, but also the beginning of the terms of the Members of the House and of the Senate; thus the term of Congress began on the fourth of March of odd numbered years and extended through two years.[14] Under the twentieth amendment, however, the terms of the Members begin on January 3 of the odd-numbered years, regardless of an alternate convening date.[15]

In addition to the authority of Congress to set the convening date of a session or of a new Congress, each House has plenary power over the time of its meetings during the session. By simple day-to-day adjournment, the House meets on the next following day, with the usual exclusion of Saturday and Sunday;[16] similarly, an adjournment to a day certain fixes the next meeting day of the House. If the time of meeting has not been previously set by either a standing order or by a resolution, the simple resolution to adjourn may be amended to set the convening time.[17]

By a new procedure adopted at the opening of the 93d Congress,[18] a privileged and non-debatable motion may be made at any time to provide for adjournment to a day and time certain.[19] On some occasions, particularly

gress memorandum inserted by him in the Record at 10576, concluding that the Congress was reconvening pursuant to the Presidential proclamation to resume the first regular session.

14. A joint committee of the First Congress determined that under the resolution of the Continental Congress and under art. I, § 2, clause 1, of the U.S. Constitution, the terms of Representatives and Senators of the first class commenced on the fourth of March, to terminate with the third of March of the odd-numbered years. 1 Hinds' Precedents § 3. That construction was followed until the adoption of the twentieth amendment. See the act of Jan. 22, 1867, Ch. 10, § 1, 14 Stat. 378, cited at 1 Hinds' Precedents § 11.

15. Section 1 of the twentieth amendment. The amendment was ratified on Feb. 6, 1933. For commentary, see *House Rules and Manual* § 6 (1973). See also 2 USC § 34 (salary begins for Representatives-elect at beginning of term, even if before Congress assembles).

16. The House may provide for Sunday sessions, although Sunday is a *dies non* in the regular practice of the House. 5 Hinds' Precedents §§ 6728–32, 7245.

17. 5 Hinds' Precedents §§ 5360–63. For adjournments for a specified time and adjournments for a specified purpose, see Ch. 40, infra.

18. 119 CONG. REC. 26, 27, 93d Cong. 1st Sess., Jan. 3, 1973.

19. Rule XVI clause 4, *House Rules and Manual* § 782 (1973).

when the Senate does not acquiesce in the request of the House for an adjournment for more than three days, the House may provide that meetings be held only on specified days of the week, often for merely pro forma sessions without transaction of legislative business.[20]

Any proposition relating to the days on which the House shall sit is within the jurisdiction of the Committee on Rules;[1] the Committee on the Judiciary considers proposed bills to change the convening date of Congress or to amend the constitutional provisions as to the time of meeting.[2]

On the opening day of a new Congress, or on the opening day of a new session of an existing Congress, the House meets at 12 o'clock meridian time. That hour of meeting, a practice dating from 1816, has come to have the force of common law.[3]

On the opening day of a new Congress, one of the first steps in organization is the adoption of a standing order fixing the hours of daily meeting for the remainder of the session;[4] that order expires with the termination of the first session, and a new order must be adopted at the beginning of each new session of the same Congress.[5] While a motion to adjourn does not usually fix the hour of the next meeting, it may so fix the hour where no standing order has yet been adopted.[6] In early Congresses, a motion to change the

20. 5 Hinds' Precedents § 6675; 8 Cannon's Precedents § 3369.

1. 4 Hinds' Precedents § 4325; see also Rule XI, *House Rules and Manual* § 715, and comment thereto, § 717 (1973).

2. Rule XI clause 13, *House Rules and Manual* §§ 707, 708 (1973); 4 Hinds' Precedents § 4077. Formerly, proposed constitutional changes as to the terms of Congress and as to the time of annual meetings were considered by the Committee on the Election of the President, Vice President, and Representatives in Congress. 7 Cannon's Precedents 2026.

3. 1 Hinds' Precedents §§ 4, 210.

In 1784 the first order of the House fixing the time of meeting provided that the House meet at 9 in the morning, adjourn at 2 in the afternoon, meet again at 4 o'clock p.m., and adjourn at 8 o'clock p.m. in the evening. Beginning with the Eighth Congress, a standing order was adopted for the daily hour of meeting, and since 1816 the hour has been fixed at 12 o'clock meridian. For the history of the hour of daily meeting, see the remarks of Mr. George A. Dondero (Mich.), on Mar. 4, 1946, 92 CONG REC. 1855, 79th Cong. 2d Sess. See also 1 Hinds' Precedents §§ 4, 6, and 10.

4. 1 Hinds' Precedents § 104; see also *House Rules and Manual* § 6 (1973) (comment).

5. 1 Hinds' Precedents §§ 104–109.

6. 5 Hinds' Precedents §§ 5362–63.

hour of daily meeting was made at any time as a privileged motion;[7] later rulings characterized the resolution fixing the hour as a standing order rather than as a rule.[8] The new section of Rule XVI clause 4, provides for a privileged motion to adjourn, subject to majority vote, which may fix the day and hour to which the House may adjourn.[9] In current practice, a resolution to fix the hour of meeting or to change the hour of meeting is offered by the Committee on Rules[10] (the committee may also provide for the convening of daily sessions at a specific hour while a certain bill is under consideration).[11]

The exercise by the House of its formal rule-making power over the time of meeting is strictly construed.[12] In this regard, the leadership of the House has extensive informal authority over the time of meeting during a session subject to approval by the House itself. For example, the leadership

7. 1 Hinds' Precedents §§ 110–112.

8. 1 Hinds' Precedents §§ 110, 113–116.

9. See *House Rules and Manual* § 182 (1973). For debate on the measure when first proposed, see 119 CONG. REC. 26, 27, 93d Cong. 1st Sess., Jan. 3, 1973.

For the former practice, requiring unanimous consent to change the hour of meeting, see § 3.11, infra. If the Committee of the Whole is sitting when the time for the daily meeting of the House arises, the Committee and not the Chairman decides whether the Committee will rise. 5 Hinds' Precedents § 6736.

10. 4 Hinds' Precedents § 4325.

11. Where a special order so provides, the House meets at the specific hour only on days when consideration of the bill is in order. 7 Cannon's Precedents § 763.

12. A general rule of statutory construction is that the acts of a legislature meeting at an unauthorized time may be invalidated. Sutherland, *Statutes and Statutory Construction* § 401 (3d ed. 1943). Federal courts do not, however, question the regularity of the proceedings of Congress as a general rule. *Barry* v *U.S. ex rel Cunningham*, 279 U.S. 597, 619 (1929); *Yellin* v *U.S.*, 374 U.S. 109, 146 (1963).

The Senate has on occasion met in regular session more than once on the same day. 91 CONG. REC. 5470, 79th Cong. 1st Sess., June 4, 1945. (A quorum having failed at the noon session, the Senate adjourned, to await the arrival of absentees, until 2:30 p.m., when a new session began.) See 5 Hinds' Precedents § 6724 for a similar instance, in the House, occurring in 1793.

In one instance, the Senate met at an earlier hour than that provided for at adjournment, adopted a resolution, and then met at the hour to which it had originally adjourned to ratify the earlier *ultra vires* action. 109 CONG. REC. 22697–99, 88th Cong. 1st Sess., Nov. 25, 1963. (The Senate amended the previous adjournment resolution in order to authorize the earlier meeting.)

may propose, in advance, the time of each adjournment to a day certain for the entire session,[13] and may propose times for ceremonies, joint sessions, and joint meetings, whose scheduled dates are announced to the Members by the Speaker or by the Majority Leader or whip. (Such assemblies must be distinguished from regular meetings to conduct legislative business; the House usually stands in recess for attendance at joint meetings and ceremonies.)[14] The House on occasion authorizes the Speaker or the congressional leadership to determine the date on which a meeting shall be held. Likewise, authority may be vested in the Speaker to designate a date on which the regular routine of the House should be resumed.[15] Similarly, a resolution of adjournment to a day certain or a *sine die* adjournment resolution may provide that the congressional leaders may recall the Congress, on a date earlier than that adjourned to, when in their opinion legislative expediency warrants such action.[16]

Setting the Hour or Date of Meeting; Preliminary Matters

§ 3.1 When the legislative day of the House extends beyond the calendar day, the House then adjourns to meet at noon of the same calendar day on which it has adjourned, unless otherwise provided.

On Dec. 9, 1970,[17] Mr. Wilbur C. Daniel, of Virginia, moved that the House adjourn. The House agreed to the motion at 1 o'clock

13. See, *e.g.*, announcement of Majority Leader Carl Albert (Okla.) on Jan. 9, 1969, 115 CONG. REC. 368, 91st Cong. 1st Sess.

14. For procedure in relation to joint meetings, see Ch. 35 and 36, infra. For ceremonial procedure, see Ch. 36, infra.

15. The House may require the giving of notice, issued by the Clerk, for resuming regular business. 8 Cannon's Precedents § 3369.

16. 5 Hinds' Precedents § 6686. For a *sine die* adjournment resolution containing such a provision, see H. Con. Res. 412.

On one occasion, the congressional leadership has exercised authority with respect to a joint resolution changing the meeting day of a new Congress; the resolution was pocket vetoed by the President at the request of the leaders, since the date provided for conflicted with the constitutionally required day for the count of the electoral vote. The veto message, alluding to the request of the congressional leadership, appears at 102 CONG. REC. 15152, 84th Cong. 2d Sess., July 27, 1956. (The message was dated Aug. 8, 1956.)

17. 116 CONG. REC. 40803, 91st Cong. 2d Sess.

and 3 minutes a.m., Thursday, Dec. 10, 1970, and adjourned to 12 o'clock noon on Dec. 10.

§ 3.2 Enactment of a joint resolution changing the convening date of the second session of Congress does not affect the status of pending legislative matters of the first session.

On Dec. 19, 1945,[18] Mr. John W. McCormack, of Massachusetts, asked for immediate consideration of a joint resolution convening the second session of Congress on Jan. 14, 1946. After some debate on the request, Mr. John H. Folger, of Georgia, arose to state a parliamentary inquiry:

> MR. FOLGER: I have a discharge petition on the desk, No. 10, in which I am very, very much interested. I have no objection to this adjournment until the 14th unless I have to go back and get that signed anew. Will that carry over?
>
> THE SPEAKER:[1] It will carry over.
>
> MR. FOLGER: If it will I am all right.
>
> THE SPEAKER: Everything remains on the calendar just as it is now.

§ 3.3 The Speaker may take the floor to ask unanimous consent that the House meet at an early hour on the following day.

On Sept. 11, 1968,[2] Speaker John W. McCormack, of Massachusetts, took the floor to state a unanimous-consent request:

> MR. MCCORMACK: Mr. Speaker,[3] I ask unanimous consent that when the House adjourns today it adjourn to meet tomorrow at 11 a.m.
>
> THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

§ 3.4 The Congress provides by concurrent resolution for a joint session to hear the President deliver a message in person.

On Jan. 3, 1936,[4] Speaker Joseph W. Byrns, of Tennessee, laid the following Senate resolution before the House:

> *Resolved by the Senate (the House of Representatives concurring),* That the two Houses of Congress assemble in the Hall of the House of Representatives on Friday, the 3d day of January, 1936, at 9 o'clock p.m. for the purpose of receiving such communications as the President of the United States shall be pleased to make to them.

The House agreed to the resolution.

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18. 91 CONG. REC. 12346, 79th Cong. 1st Sess.

1. Sam Rayburn (Tex.).

2. 114 CONG. REC. 26488, 90th Cong. 2d Sess.

3. Mr. Daniel D. Rostenkowski (Ill.) was the Speaker pro tempore.

4. 80 CONG. REC. 9, 74th Cong. 2d Sess.

§ 3.5 The House began convening under the twentieth amendment to the Constitution with the 74th Congress.

On Jan. 3, 1935,[5] the Clerk of the House, South Trimble, of Kentucky, addressed the opening session as follows:

> This is the first time in 146 years that an old Congress dies and a new one is born on the 3d day of January.
>
> Since the birth of the First Congress in 1789 this historical event has taken place every two years on the 4th day of March.
>
> Today we inaugurate the first session of the Seventy-fourth Congress, convened under the provision of the twentieth amendment of the Constitution of the United States.

§ 3.6 Any legal holiday, such as Christmas day,[6] is a regular meeting day of the House of Representatives unless the House adjourns over by unanimous consent (or by motion under Rule XVI clause 4).

On Dec. 23, 1963,[7] in response to a parliamentary inquiry by Mr. Charles A. Halleck, of Indiana, Speaker John W. McCormack, of Massachusetts, ruled that unanimous consent was required to adjourn over Christmas.

Resolutions to Set the Date of Meeting

§ 3.7 No concurrent resolution is necessary to authorize meetings of Congress beyond the end of July where a continuing national emergency prevents statutory adjournment under the Legislative Reorganization Act of 1946.[8]

On July 27, 1949,[9] Mr. Joseph W. Martin, Jr., of Massachusetts, arose to state a parliamentary inquiry as to the continuation of the session of Congress beyond July 31, 1949. Mr. Martin stated that under § 132 of the Legislative Reorganization Act of 1946, the Congress could continue to legally meet through either the passage of a concurrent resolution so providing or the proclaiming by the President of a national emergency; he proposed that there was doubt as to the actual continuation of the national emergencies declared by the President on Sept. 8, 1939, and May 27, 1941. Speaker Sam Rayburn, of Texas, held

5. 79 CONG. REC. 9, 74th Cong. 1st Sess.

6. 5 USC 87 (c); Executive Order 10358 of June 11, 1952.

7. 109 CONG. REC. 25496, 88th Cong. 1st Sess.

8. Ch. 753, § 132, 60 Stat. 812, as amended, Act of Oct. 26, 1970, Pub. L. No. 91–510, § 461, 84 Stat. 1140.

9. 95 CONG. REC. 10290, 81st Cong. 1st Sess.

that the national emergencies declared by the President on those dates were still in existence, despite the cessation of actual hostilities. He then ruled that it was not necessary to pass a concurrent resolution for the continued meeting of Congress beyond the first of August.

§ 3.8 A joint resolution changing the convening date of a new Congress may be amended, subsequent to passage, by passage of another joint resolution substituting a newly agreed upon date.

On Dec. 14, 1942,[10] Mr. John W. McCormack, of Massachusetts, addressed the Speaker[11] to ask for immediate consideration of the following joint resolution:

> *Resolved, etc.*, That the joint resolution entitled "Joint resolution fixing the dates of meeting of the second session of the Seventy-seventh Congress and of the first session of the Seventy-eighth Congress," approved January 2, 1942, is amended by striking out "Monday, January 4, 1943" and inserting in lieu thereof "Wednesday, January 6. 1943."

The House agreed to the resolution.

§ 3.9 The Committee on Rules has jurisdiction to report a House resolution providing for pro forma meetings on only specified days of the week, for a certain period of time.

On Aug. 25, 1949,[12] Mr. Edward E. Cox, of Georgia, of the Committee on Rules, submitted the following resolution:

> *Resolved*, That until Wednesday, September 21, 1949, the House shall meet only on Tuesday and Friday of each week unless otherwise ordered.

The House agreed by a two-thirds vote to consider the resolution the same day, and the resolution itself was then agreed to. Speaker Sam Rayburn, of Texas, announced that no business would be transacted on the Tuesday and Friday meetings provided for in the resolution. He also alluded to the failure of the Senate to pass the concurrent resolution seeking adjournment of the House until Sept. 21, which motivated the House leadership to submit the resolution.

Fixing the Hour of Daily Meeting

§ 3.10 On the convening day of a new session of Congress a simple House resolution establishes the daily hour of meeting.

10. 88 Cong. Rec. 9518, 77th Cong. 2d Sess.
11. Sam Rayburn (Tex.).
12. 95 Cong. Rec. 12287, 81st Cong. 1st Sess.

On Jan. 15, 1968,[13] Mr. Ray J. Madden, of Indiana, offered the following resolution and asked for immediate consideration:

> *Resolved,* That until otherwise ordered, the daily hour of meeting of the House of Representatives shall be at 12 o'clock meridian.

The resolution was agreed to and a motion to reconsider was laid on the table.

§ 3.11 Where the House met by standing order at noon, unanimous consent was required to meet at a different hour, before the adoption of rules changes by the 93d Congress authorizing a privileged motion to adjourn to a time certain.

On Dec. 23, 1963,[14] after an announcement by the Speaker[15] that funeral services would be held the next day for a late Member of Congress, Mr. Thomas P. O'Neill, Jr., of Massachusetts, arose to state a parliamentary inquiry:

> MR. O'NEILL: Would it be in order to move that the House meet forthwith when we adjourn today?
>
> THE SPEAKER: Will the gentleman advise the Chair what he means by "forthwith"?
>
> MR. O'NEILL: When we adjourn we will have a new legislative day. Can we then meet at the call of the Chair?
>
> THE SPEAKER: It would require unanimous consent to meet at any hour other than 12 o'clock noon.

Mr. Carl Albert, of Oklahoma, then obtained unanimous consent to address the House for one minute.

> MR. ALBERT: Mr. Speaker, of course any meeting of the House at any hour for the consideration of this matter other than at 12 o'clock noon tomorrow would require unanimous consent, as I understand it. May I inquire of the Speaker, so as to have the matter official, would not any meeting of the House other than 12 o'clock noon tomorrow require unanimous consent?
>
> THE SPEAKER: The gentleman has made a correct statement.

On Jan. 3, 1973,[16] the House agreed to several amendments to the rules of the 92d Congress, including the following:

> In Rule XVI, insert at the end of clause 4 the following:
>
> > It shall be in order at any time during a day for the Speaker, in his discretion, to entertain a motion that when the House adjourns it stand adjourned to a day and time certain. Such a motion shall be of equal privilege with the motion to adjourn provided for in this clause and shall be determined without debate.

Changing the Hour of Meeting

§ 3.12 The House may agree by unanimous consent to meet,

13. 114 CONG. REC. 8, 90th Cong. 2d Sess.

14. 109 CONG. REC. 25498, 88th Cong. 1st Sess.

15. John W. McCormack (Mass.).

16. 119 CONG. REC. 26, 27, 93d Cong. 1st Sess.

for the remainder of the week, at an hour earlier than that provided for in the standing order of the hour of meeting.

On July 25, 1956,[17] Mr. John W. McCormack, of Massachusetts, requested unanimous consent that for the balance of the week the House meet at 10 o'clock a.m. when adjourning from day to day. There was no objection.[18]

§ 3.13 The House may vacate, by unanimous consent, a previous order that the House convene at an early hour on the following day.

On Sept. 1, 1965,[19] the House agreed to a unanimous-consent request offered by Mr. Carl Albert, of Oklahoma, that the House convene at 11 o'clock the following morning. Later on the same day Mr. Albert addressed the Speaker[20] to request unanimous consent to vacate the order providing for an earlier meeting on the next day. There was no objection.

Parliamentarian's Note: The request to rescind the early order was undertaken by the leadership because several committees had notified the Speaker that conflicting committee sessions were scheduled for the morning of the next day.

§ 3.14 A unanimous-consent request that the House meet at an earlier hour is not entertained in the Committee of the Whole.

On Sept. 26, 1966,[1] following agreement on the limit of debate for an appropriations bill to be considered the following day, Mr. Sam M. Gibbons, of Florida, stated that the remaining question was to obtain unanimous consent to convene at 11 o'clock the following morning. The Chairman[2] responded:

> As to any agreement as to when the House comes back tomorrow, that will be settled, of course, when the Committee rises.

The Committee then rose and the House agreed by unanimous consent to convene the following morning at 11 o'clock a.m.

Construction of "Noon" (Senate Decision)

§ 3.15 A standing order of the Senate providing for daily

17. 102 CONG. REC. 14456, 84th Cong. 2d Sess.
18. *Id.*
19. 111 CONG. REC. 22496, 89th Cong. 1st Sess.
20. John W. McCormack (Mass.).

1. 112 CONG. REC. 23785, 89th Cong. 2d Sess.
2. Jack Brooks (Tex.).

meeting at 12 o'clock meridian was construed to permit meeting at 12 o'clock noon when daylight savings time is in effect.

On Apr. 30, 1948,[3] Senator John H. Overton, of Louisiana, arose to make the point of order that the Senate was not legally in session, since the meeting was convened at 12 o'clock noon, daylight savings time, and the Senate had formerly provided that the hour of daily meeting be at 12 o'clock meridian unless otherwise ordered. President pro tempore Arthur H. Vandenburg, of Michigan, stated that the Senate had agreed to recess from Apr. 30, 1948, to May 3, 1948, to meet at 12 o'clock "noon", and not 12 o'clock "meridian." The President pro tempore stated further:

> Under such circumstances, the real question submitted to the Chair is this: What is "noon" in the Senate when the District Commissioners, acting under authority of a law passed by this Congress, advance standard time by 1 hour by an order effective yesterday; particularly when the District Commissioners are acting under a law favorably acted upon by the Senate within the last 60 days which it itself asserts that when daylight-saving time is established by the District Commissioners for the period for which it is applicable, it shall "be the standard time for the District of Columbia."
>
> In the opinion of the Chair, Congress is bound by its own legislation in this respect, and any statutes or rules must be read in this interpretation. There is a vast body of precedent—as, for example, when the Senate recognized so-called daylight-saving time all through the first session of the present Eightieth Congress and consistently fixed its meeting time as 12 o'clock noon instead of 12 o'clock meridian. In the opinion of the Chair, borne out by the clocks in the Senate Chamber, it is now 12 o'clock noon, which is the hour to which the Senate recessed.
>
> The point of order is overruled.

Authorizing the Leadership to Reassemble Congress

§ 3.16 The two Houses may authorize, in the concurrent resolution to adjourn to a day certain, that the Speaker of the House and the President of the Senate, or the party leaders of both Houses, convene the Houses on a date prior to that set in the resolution, on the grounds of legislative expediency.

On July 8, 1943,[4] the House agreed to the following resolution:

> *Resolved by the Senate (the House of Representatives concurring),* That when the two Houses adjourn on Thursday, July 8, 1943, they shall stand ad-

3. 94 Cong. Rec. 5167–68, 80th Cong. 2d Sess.

4. 89 Cong. Rec. 7516, 78th Cong. 1st Sess.

journed until 12 o'clock meridian on Tuesday, September 14, 1943, or until 12 o'clock meridian on the third day after their respective Members are notified to reassemble in accordance with section 2 of this resolution, whichever event first occurs.

Sec. 2. The President of the Senate and the Speaker of the House of Representatives shall notify the Members of the Senate and House, respectively, to reassemble whenever in their opinion legislative expediency shall warrant it or whenever the majority leader of the Senate and the majority leader of the House, acting jointly, or the minority leader of the Senate and the minority leader of the House, acting jointly, file a written request with the Secretary of the Senate and the Clerk of the House that the Congress reassemble for the consideration of legislation.

§ 3.17 Form of announcement of congressional leaders calling for reassembly of Congress on an earlier date than that to which it was adjourned.

On Sept. 5, 1945,[5] the House met at 12 o'clock noon and was called to order by Speaker Sam Rayburn, of Texas. After prayer was offered and the Journal was read and approved, the Speaker laid before the House the formal notification, sent to the Members of the House on Sept. 1, 1945, of the reassembling of Congress:

In our opinion legislative expediency warrants the reassembly of Congress and therefore, pursuant to the authority granted us by House Concurrent Resolution 68, Seventy-ninth Congress, you are hereby notified that Congress will reassemble in Washington at 12 o'clock meridian on Wednesday, September 5, 1945.

The notification was signed by the Speaker, the President pro tempore of the Senate, and the Majority and Minority Leaders of both Houses.

Leadership Authority Over Time of Joint Meetings

§ 3.18 The Majority Leader of the House may announce to the House the time and the place of an informal joint meeting of the Members of both Houses.

On May 23, 1950,[6] House Majority Leader John W. McCormack, of Massachusetts, made the following announcement:

. . . On Wednesday [May 31, 1950], at the auditorium of the Library of Congress, at 12:30 p.m., the Members of both Houses of Congress, as on previous occasions when General Marshall has addressed us, will have the opportunity and the pleasure of having Secretary of State Acheson address us. . . . This will be a very important talk. After the Secretary of State has finished his remarks, Members will be in a position to and may ask him questions.

5. 91 CONG. REC. 8320, 79th Cong. 1st Sess.

6. 96 CONG. REC. 7561, 81st Cong. 2d Sess.

The House then granted unanimous consent for the Speaker pro tempore[7] to declare a recess, subject to the call of the Chair, on the scheduled date.

§ 3.19 By unanimous consent the House may authorize the Speaker, in advance, to determine the date of the joint meeting to hear a guest.

On Oct. 17, 1945,[8] Mr. Brooks Hays, of Arkansas, arose to state a unanimous-consent request:

> Mr. Speaker,[9] I have learned that Gen. Douglas MacArthur will shortly return to this country. I am sure that all the Members of the House will want to hear him address the Congress. I therefore ask unanimous consent, having discussed the matter with the Speaker and having consulted both the majority and minority leaders, that it be in order for the Speaker to declare a recess subject to the call of the Chair, at a date to be later named, during which period a joint meeting shall be held in this Chamber, at which time General MacArthur will address us.

Mr. Hays later added that according to his request, the joint meeting be held on a date agreeable to General MacArthur and to the Speaker. There was no objection.

7. James P. Priest (Tenn.).
8. 91 CONG. REC. 9756, 79th Cong. 1st Sess.
9. Sam Rayburn (Tex.).

§ 4. Place of Meeting

A constitutional provision relating to the location of the meetings of Congress (article I, section 5, clause 4) requires that either House obtain the consent of the other to sit in "any other Place than that in which the two Houses shall be sitting." However, in none of its provisions does the Constitution direct where the annual assembly under the twentieth amendment is to take place.[10]

Congress has appointed by statute a seat of the federal government for the location of public offices and for the place of its meetings. Congress has affirmed its authority, as an attribute of national sovereignty, to establish a permanent seat of government,[11]

10. A general rule of statutory construction is that the acts of a legislative body meeting at an unauthorized place may be invalidated. Sutherland, *Statutes and Statutory Construction* § 401 (3 ed. 1943). Federal courts do not, however, generally question the regularity of the proceedings of Congress. *Barry* v *U.S. ex rel Cunningham*, 279 U.S. 597, 619 (1929); *Yellin* v *U.S.*, 374 U.S. 109, 146 (1963).
11. See the Act of Mar. 3, 1790, Ch. 28, 1 Stat. 30, establishing the seat in the District of Columbia and locating it temporarily in Philadelphia. 4 USC §§ 71–72 now locates the per-

to change the seat of government,[12] and to permit the President to remove public offices or Congress itself under specified conditions.[13]

Congress therefore convenes for an opening session at the place determined by law to be the seat of government. The first two sessions of the First Congress assembled in New York City pursuant to a resolution of the Continental Congress.[14] By the Act of Mar. 3, 1790, the First Congress provided for the permanent seat of government to be located in the District of Columbia as of December 1800, and designated Philadelphia as the interim seat between 1790 and 1800.[15] Since Nov. 17, 1800, the opening of the second session of the Sixth Congress, Congress has met in Washington, D.C.,[16] although there was extended debate after the War of 1812 on a Senate bill to move the seat of government elsewhere.[17]

Although the Congress has had but three seats of government, it has occupied numerous structures or buildings. The New York and Philadelphia Chambers were located in public halls,[18] and Con-

manent seat of government in the District.

12. Act of Mar. 3, 1790, Ch. 28, 1 Stat. 30. See also the post-Civil War debates on the authority of Congress to remove the seat of government, 28 ANNALS OF CONG. 346–75, 13th Cong. 3d Sess., Oct. 5–6, 1814.

13. The President is authorized under 2 USC §27 to convene Congress elsewhere than the seat of government in the case of contagious disease or other hazardous conditions. He may also remove all public offices from the seat of government in the event of disease. 4 USC §73. The Sixth Congress authorized the President by the Act of Apr. 24, 1800, Ch. 37, 2 Stat. 55, to accelerate preparations for the establishment of the seat of government in the District of Columbia.

14. Resolution of Sept. 13, 1788, 4 Journal of Continental Congress 866 (1823 ed.), cited at 3 Hinds' Precedents §3.

15. Ch. 28, 1 Stat. 30.

16. Congress had originally provided to begin meeting in the District of Columbia on the first Monday in December, 1800. Act of Mar. 3, 1790, Ch. 28, §6, 1 Stat. 30. By the Act of May 13, 1800, Ch. 67, 2 Stat. 85, the effective date was moved forward to the third Monday in November, Nov. 17, 1800. On that date a quorum of the House was not present in Washington and the House adjourned to begin legislative business on Nov. 18. 10 ANNALS OF CONG. 782, 6th Cong. 2d Sess.

17. 28 ANNALS OF CONG. 346–75, 13th Cong. 3d Sess., Oct. 5–6, 1814. The Senate bill was defeated in the House.

18. In New York City the Congress sat in Federal Hall, Broad and Wall Streets, and in Philadelphia it occupied Congress Hall, 6th and Chest-

gress has frequently been forced to vacate the Capitol building in Washington due to repairs. Since 1800, the longest period during which Congress has absented itself from the Capitol building was because of the War of 1812, when the British Army nearly destroyed the Capitol by fire.[19] For over a year following the war, Congress sat in a makeshift Chamber located in another public building appointed by Presidential proclamation for the use of Congress.[20] For another five years both Houses sat at a temporary Capitol built on Capitol Hill by private citizens for the express use of Congress,[1] and leased by the federal government.[2] On three occasions during the 20th century, the House and the Senate have vacated their respective Chambers in the Capitol building pending repairs or remodeling.[3] Although the Senate remained during those periods within the Capitol, occupying the former Supreme Court Chamber,[4] the House moved across the street to the caucus room of the New House Office Building.[5] Neither the House nor the Senate construed those temporary shifts in the place of meeting, which altered the structural location but

nut. *Guide to the Congress of the United States* 370 (1971), Congressional Quarterly, Inc.

19. *Guide to the Congress of the United States* 373 (1971), Congressional Quarterly, Inc.

20. A Presidential message appointed the "public building heretofore allotted for the Post and other public offices." 28 ANNALS OF CONG. 10, 13th Cong. 3d Sess., Sept. 19, 1814 (message dated Sept. 17, 1814).

1. See 29 ANNALS OF CONG. 10 14th Cong. 1st Sess., Dec. 4, 1815.

2. Act of Dec. 8, 1815, Ch. 1, 3 Stat. 251 (authorizing the President to lease the new building on Capitol Hill pending repairs to the Capitol building).

3. The first occasion lasted from Nov. 22, 1940, 86 CONG. REC. 13715, 76th Cong. 3d Sess., until Jan. 2, 1941. See the letter of Mr. David Lynn, Architect of the Capitol, at 13715, recommending that the entire roof construction over both Chambers be taken down and replaced by modern fire-proof construction. From July 1, 1949, to Jan. 2, 1950, Congress once again left its Chambers pending repairs. See House resolution, June 28, 1949, 90 CONG. REC. 8571, 81st Cong. 1st Sess. The last period of repairs requiring the removal of the House lasted from Sept. 1, 1950 to Jan. 1, 1951. See House resolution returning the House to its Chamber, Dec. 28, 1950, 96 CONG. REC. 17021–22, 81st Cong. 2d Sess.

4. See, *e.g.*, Senate resolution of Nov. 22, 1940, 86 CONG. REC. 13709, 76th Cong. 3d Sess.

5. See, *e.g.*, House resolution of June 28, 1949, 95 CONG. REC. 8571, 81st Cong. 1st Sess.

not the place of the seat of government, to require the consent of the other House.[6] Therefore, a simple House resolution suffices to adjourn the House to meet in another structure at the seat of government.[7]

On occasion the House provides for meetings elsewhere than in its Chamber for reasons other than repair. Joint meetings may be held in the Senate Chamber,[8] and informal meetings may be held in other facilities, such as the Library of Congress.[9] Those types of assemblies, as well as ceremonies and processions held outside the House Chamber,[10] do not usually constitute official sessions of the House,[11] which stands in recess in order to attend.[12] The House is, however, officially in session for inaugural ceremonies at the east front of the Capitol, as reflected by the traditional form of the resolution to participate in inaugural ceremonies.[13]

6. See § 4.1, infra. Compare the remarks of Mr. Clare E. Hoffman (Mich.), at 90 CONG. REC. 11683, 81st Cong. 1st Sess., Aug. 17, 1949, contending that the House was not a competent, legal tribunal since it was sitting in the caucus room without having obtained prior Senate consent. Mr. Hoffman argued in his remarks that the "over-whelming weight of legal authority . . . is to the effect that, as to courts and legislative bodies, the word 'place' cannot be stretched to cover the territorial limits of the city, township, county, or state." He concluded that a joint resolution was required to ratify the otherwise *ultra vires* action of the House.

7. A simple House resolution provided for the removal of the House from the old Chamber to the new Hall in the south wing of the extension of the Capitol on Dec. 14, 1857. 5 Hinds' Precedents § 7271.

8. For attendance of the House in the Committee of the Whole at impeachment proceedings in the Senate Chamber, see 3 Hinds' Precedents § 2351. See Ch. 36, infra, for joint meetings.

9. See §§ 4.3–4.5, infra.

10. The House does not attend ceremonies outside the Capitol building as an organized body. 5 Hinds' Precedents §§ 7061–64. The House has discussed but not settled the question as to its power to compel a Member to attend an occasion of ceremony outside the Hall. 2 Hinds' Precedents § 1139.

11. Rule XXXI, *House Rules and Manual* § 918 (1973), requires that the Hall of the House be used only for legislative business and caucus meetings, except where the House by resolution agrees to participate in ceremonies therein. Rule XXIX, *House Rules and Manual* § 914 (1973), provides for secret sessions to be held in the Hall of the House.

12. For an instance where the House attended funeral services in the Senate Chamber without an adjournment or recess, see 5 Hinds' Precedents § 7045.

13. See § 4.7, infra.

Meeting in a Structure Other Than the Capitol

§ 4.1 The House may, without the consent of the Senate, provide for a meeting of the House in the caucus room of a House office building without violating the constitutional prohibition against meeting in another place without the consent of the other House.

On Aug. 17, 1949,[14] Mr. Clare E. Hoffman, of Michigan, stated a point of order, as follows;

> MR. HOFFMAN: Mr. Speaker, I make a point of order. My point of order is that inasmuch as the House is now sitting in the committee room of the Ways and Means Committee in the New House Office Building and that the Senate has not consented to the action which the House took some time previously, the House is not a competent, legal tribunal, qualified under the Constitution to act. I want to be heard.
>
> THE SPEAKER:[15] The Chair is ready to rule. The Chair overrules the point of order.
>
> MR. HOFFMAN: May I not cite the provision of the Constitution?
>
> THE SPEAKER: The Chair is ready to rule and has ruled on that question four times.[16] The Chair does not desire to hear the gentleman on the point of order.
>
> MR. HOFFMAN: May I cite the section?
>
> THE SPEAKER: The gentleman may extend his remarks to do that.[17]

§ 4.2 A resolution is necessary to authorize the House to resume sitting in its Chamber after sitting in another structure.

On Dec. 28, 1950,[18] Mr. Albert Thomas, of Texas, offered a resolution to adjourn, as follows:

> MR. THOMAS: Mr. Speaker, I ask unanimous consent for the immediate consideration of House Resolution 894.

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14. 95 CONG. REC. 11651, 81st Cong. 1st Sess.

15. Sam Rayburn (Tex.).

16. The Speaker had ruled on Aug. 1, Aug. 2, Aug. 4, and Aug. 5, 1949, that the House was legally in session despite the provisions of the Legislative Reorganization Act of 1946, Ch. 753, § 132, 60 Stat. 812, requiring adjournment by the end of July; he based his ruling on the decision that a continually existing national emergency precluded the operation of the Legislative Reorganization Act. 95 CONG. REC. 10486, 10591, 10777, 10858, 81st Cong. 1st Sess. See also § 3.7, supra.

17. Mr. Hoffman's extension of remarks, at 95 CONG. REC. 11683, 81st Cong. 1st Sess., proposed that the term "place" in art. I, § 5, clause 4 of the Constitution could not be stretched to include the territorial limits of a city, and that Senate consent was required for the House to sit as an authorized tribunal in the caucus room of the House office building.

18. 96 CONG. REC. 17021–22, 81st Cong. 2d Sess.

The Clerk read the resolution, as follows:

Resolved, That when the House adjourns Thursday, December 28, 1950, it adjourn to meet on Monday, January 1, 1951, at 12 o'clock meridian in the Hall of the House.

THE SPEAKER PRO TEMPORE:[19] Is there objection to the request of the gentleman from Texas?

MR. ARENDS:[20] Reserving the right to object, Mr. Speaker, will the gentleman explain the resolution to the House? I am sure we are interested in it.

MR. THOMAS: This resolution simply makes it legal for the House to move back into the Hall of the House, in the Capitol. It will be ready Monday.

The House agreed to the resolution.

Secret Meetings

§ 4.3 An off-the-record meeting on war progress has been ruled not an executive session of the House required to be held in the House Chamber.[1]

On Oct. 18, 1943,[2] Majority Leader John W. McCormack, of Massachusetts, announced that the Members of the House would meet with the Chief of Staff of the Army and other generals in the auditorium of the Library of Congress, for an off-the-record meeting of the status of the war. Mr. John E. Rankin, of Mississippi, then addressed the Speaker as follows:

MR. RANKIN: Mr. Speaker, If I remember correctly, the statement of the gentleman is that this would be an executive session?

MR. MCCORMACK: Yes.

MR. RANKIN: Now, if we are going to hold executive sessions of the House, there is only one place that we are authorized by law to hold them, and that is in this Hall.

MR. MCCORMACK: This is not an executive session of Congress.

MR. RANKIN: It is going to be a secret session, and it ought to be, and it ought to be held in the Hall of the House of Representatives.

MR. MCCORMACK: This is not an executive session of Congress.

MR. RANKIN: It is unnecessary for the Congress of the United States to be going off to some other building to hear these leaders report on the war when we have the Hall of the House of Representatives built and equipped for that purpose.

Will not the gentleman modify his request to have that meeting here in this Hall?

THE SPEAKER:[3] The Chair would not recognize the gentleman for that purpose and the gentleman would not make such a request.

The time of the gentleman has expired.

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19. Wilbur D. Mills (Ark.).

20. Mr. Leslie C. Arends (Ill.).

1. Compare Rule XXIX, *House Rules and Manual* § 914 (1973) which provides for secret sessions to be held in the House Chamber.

2. 89 CONG. REC. 8433, 78th Cong. 1st Sess.

3. Sam Rayburn (Tex.).

§ 4.4 The Majority Leader of the House, in setting the time of a secret briefing of Members of Congress, did not state the place of meeting, where the place was to be kept confidential.

On Jan. 23, 1945,[4] Speaker Sam Rayburn, of Texas, recognized Majority Leader John W. McCormack, of Massachusetts, to make the following announcement:

> Mr. Speaker, I desire again to announce to the Members of the House that there will be a meeting held tomorrow morning at 9 o'clock. . . .
>
> I am sure it will be a meeting we will all be pleased to attend as General Marshall and Admiral King will be there. I am unable to say who else will he there but these two outstanding leaders of our armed forces will be there to speak to us, as I have said, in an off-the-record discussion.

Parliamentarian's Note: The Members of the House were asked to keep the place of the meeting secret; it was held in the Coolidge Auditorium of the Library of Congress. The meeting, which dealt with the progress of the war, was attended by 316 House Members, the Commissioners from the Philippines and from Puerto Rico, the Delegate from Alaska, and 60 Members of the Senate.

4. 91 Cong. Rec. 435, 79th Cong. 1st Sess.

Joint Meetings and Ceremonies Outside the House Chamber

§ 4.5 The Majority Leader of the House announced an informal joint meeting of the Members of the two Houses, to be held in the Library of Congress.

On May 23, 1950,[5] Majority Leader John W. McCormack, of Massachusetts, announced that on Wednesday next, May 31, 1950, the Members of the House would meet informally at the auditorium of the Library of Congress to hear Secretary of State Dean Acheson in connection with the meetings of the foreign ministers of the Atlantic Pact countries. The Speaker was authorized to declare a recess subject to the call of the Chair on Wednesday, May 31.

§ 4.6 A joint meeting has been held in the Senate Chamber pursuant to an informal Senate invitation to the House, the unexpectedness of a guest's arrival precluding formal arrangements.

On Dec. 26, 1941,[6] the Speaker pro tempore, William P. Cole, Jr.,

5. 96 Cong. Rec. 7561, 81st Cong. 2d Sess.
6. 87 Cong. Rec. 10119, 77th Cong. 1st Sess.

of Maryland, made the following announcement:

> . . . On Wednesday last the majority leader of the Senate informed the Chair that he had, in the name of the Senate, extended an invitation to the Right Honorable Mr. Winston Churchill, Prime Minister of Great Britain, to attend the session of the Senate today at 12:30 o'clock p.m. and address them. Senator Barkley,[7] on behalf of the Senate, asked me to extend to the Members of the House an invitation to be present in the Senate Chamber today at that time to hear the Prime Minister. Owing to the shortness of the time, it was found impossible to make any formal arrangements. The Chair has informally accepted for the House the invitation of Senator Barkley, and those Members of the House who wish to hear the Prime Minister will form in line in the middle aisle, after the present occupant of the chair and the majority and minority leaders, and proceed to the Senate Chamber.

The House then recessed to attend the joint meeting in the Senate Chamber.

§ 4.7 Pursuant to resolution, the House stands in session while attending the inaugural ceremonies on the east front of the Capitol.

On Jan. 16, 1961,[8] the House agreed to the following resolution, offered by Mr. John W. McCormack, of Massachusetts:

> *Resolved,* That when the House adjourns on Wednesday, January 18, 1961, it stand adjourned until 11 a.m. Friday, January 20, 1961; that upon convening at that hour the House proceed to the east front of the Capitol for the purpose of attending the inaugural ceremonies of the President and Vice President of the United States; and that upon the conclusion of the ceremonies the House stand adjourned until Monday, January 23, 1961.

§ 5. Clerk as Presiding Officer; Authority

On the opening day of the first session of a new Congress, the elected Clerk of the preceding Congress calls the House to order and presides until the election of a Speaker.[9] The main duties of the Clerk at the organization of the House are ascertaining a quorum through a call of the Clerk's roll, and presiding over the election of a Speaker.[10] In current practice, the organizational steps over which the Clerk presides consume only a small portion of opening day. The practice has not always been so, as Clerks have presided at some Congresses for a period of days and even weeks.[11]

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7. Sen. Alben W. Barkley (Ky.).

8. 107 CONG. REC. 730, 87th Cong. 1st Sess.

9. 1 Hinds' Precedents §§ 64–65.

10. For a description of the organizational steps over which the Clerk presides, see § 5.1, infra. See also 1 Hinds' Precedents § 81. For detail on the preparation of the Clerk's roll, see Ch. 2, infra.

11. 1 Hinds' Precedents §§ 65, 67, 70, 204. In those instances, difficulties

The authority of the Clerk to preside at the assembly of a new Congress is derived from custom as well as statutory sources.[12] Unlike the Speaker, whose term ceases with the assembly of a new Congress, the Clerk continues in office by tradition until the election of new officers.[13] In early Congresses, the House provided by a special rule that the Clerk should continue in office until another should be chosen,[14] but later constructions determined that one House could not by rule bind its successor.[15] In requiring the Clerk of the preceding House to prepare the roll of Representatives-elect for the new Congress, Title 2 of the United States Code provides for the functioning of the Clerk beyond the term of office for which elected; similarly, the code provides for the Sergeant at Arms, and in his absence the Doorkeeper of the preceding House, to perform the Clerk's functions in the case of vacancy in his office.[16] The Code also enumerates duties of the Sergeant at Arms, under the direction of the Clerk of the preceding Congress, at the assembly of a new House.[17]

At the beginning of early Congresses, the Clerk of the preceding House refused to decide many questions of order, referring them instead to the House.[18] Beginning in 1860, however, Rule III of the House rules[19] took on in substance its present form, authorizing the Clerk to decide questions of order subject to appeal; although not binding while the Clerk is presiding, the rule exerts persuasive effect on the construction of the Clerk's authority to decide points of order.[20] As pre-

in the call of the roll and in the election of the Speaker kept the Clerk in the chair for long periods of time.

12. See also Rule III clause 1, *House Rules and Manual* § 637 (1973).

13. 1 Hinds' Precedents §§ 187, 188, 235, 244.

14. 1 Hinds' Precedents §§ 187, 235; 5 Hinds' Precedents § 6743.

15. 5 Hinds' Precedents § 6747.

16. 2 USC § 26. See also § 5.2, infra.

17. See 2 USC § 79. Like Rule III of the *House Rules and Manual,* § 637 (1973), Rule IV clause 1, § 648, pertaining to the Sergeant at Arms' duties pending the election of a Speaker, and Rule V clause 1 § 651, relating to the Doorkeepers' duties pending the election, are not technically in effect at the time those duties are performed.

18. See 1 Hinds' Precedents §§ 68–72.

19. Rule III clause 1, *House Rules and Manual* § 637 (1973).

20. For the history and effect of the rule, see 1 Hinds' Precedents § 64. When coupled with the former provision that rules of one House applied to the organization of its successor (5 Hinds' Precedents §§ 6743–46), Rule III gave the Clerk explicit authority

siding officer, the Clerk has consistently refused to entertain propositions not consistent with the organization of the House;[1] he has refused, for example, to entertain protests,[2] and has declined to hear motions referring a subject to committee[3] or relating to contested election cases.[4]

The House may, in lieu of having the Clerk preside, choose one of the Members-elect to preside as Chairman until the election of a Speaker.[5] This method has been taken by the House when organizational business was impeded by the refusal of the Clerk to entertain certain questions or motions.[6]

The Clerk may preside at the opening of a new session of an existing Congress, or even at the beginning of a daily meeting during a session, when the Speaker has died in office,[7] since the authority of the Speaker pro tempore

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to decide points of order (1 Hinds' Precedents §§76–77). In 1890, however, the theory that one House could by rule bind its successor was overthrown (5 Hinds' Precedents §6747).

1. See, in general, 1 Hinds' Precedents §§68–80.

As to the capacity of the House to transact general legislative business while the Clerk is presiding and before the election of a Speaker, the House has determined such procedure to be foreclosed by the Act of 1789, Ch. 1, §2, 1 Stat. 23, as amended, 2 USC §25 (1948), requiring the administration of the oath to the Speaker, Members, and the reelected Clerk before the House enters into other business. See 1 Hinds' Precedents §§6647–49 (rulings by the House that the Clerk could receive a message from the President but could not read it, as reading the message constituted business). For other rulings on the requirement that legislative business await the election of officers and the swearing in of Members and of the Clerk, see 1 Hinds' Precedents §§130, 241, 243; *contra* (allowing business before the election of the Clerk), 1 Hinds' Precedents §§242, 244, 245.

2. 1 Hinds' Precedents §80.

3. 1 Hinds' Precedents §78.

4. See 1 Hinds' Precedents §67. According to Alexander, *History of Procedure of the House of Representatives* 14 (1916), the Clerk of the House attempted in one instance (cited at 1 Hinds' Precedents §67) to use his powers and duties at the opening of the new Congress to determine which political party would control the House of Representatives. In 1839, Clerk Hugh A. Garland "discovered that by omitting the names of contestants from New Jersey the roll would stand 118 in favor of his own party, a sufficient number to elect a Speaker. Accordingly, when New Jersey was reached in the roll call, Garland cunningly explained that as he had no authority to settle contests he would complete the call and then submit the New Jersey matter to the House for its decision."

5. 1 Hinds' Precedents §§66–67.

6. See 1 Hinds' Precedents §67.

7. See 1 Hinds' Precedents §234.

terminates upon the death of the Speaker.[8] If the Clerk presides in that situation, he first ascertains the presence of a quorum, and then proceeds immediately to the election of a Speaker.[9]

Clerk as Presiding Officer; Organizational Procedure

§ 5.1 Following opening prayer and before the election of the Speaker at the opening of a new Congress, the Clerk of the preceding Congress takes the following organizational steps: announces the receipt of credentials; causes the roll to be called alphabetically by states to establish a quorum; announces the establishment of a quorum; announces vacancies in the House occurring since national elections.

On Jan. 10, 1967,[10] the Clerk of the 89th Congress, Ralph R. Roberts, of Indiana, announced as follows after the House had been called to order and had heard prayer:

> Representatives-elect for the 90th Congress . . . this is the day fixed for the meeting of the 90th Congress.
>
> As the law directs, the Clerk of the House has prepared the official roll of the Representatives-elect.
>
> Credentials covering the 435 seats in the 90th Congress have been received and are now on file with the Clerk of the 89th Congress.
>
> The names of those persons whose credentials show they were regularly elected in accordance with the laws of the several States and of the United States will be called; and as the roll is called, following the alphabetical order of the States, beginning with the State of Alabama, Representatives-elect will answer to their names to determine whether or not a quorum is present.
>
> The reading clerk will call the roll.
>
> The Clerk called the roll by States and the following Representatives-elect answered to their names: . . .
>
> THE CLERK: The roll call discloses that 434 Representatives-elect have answered to their names.
>
> A quorum is present.
>
> The Clerk will state that credentials are on file showing the election of the Honorable Santiago Polanco-Abreu as Resident Commissioner from the Commonwealth of Puerto Rico.
>
> The Clerk also wishes to announce there is a vacancy in the Second District of Rhode Island occasioned by the recent death of the Honorable John E. Fogarty.

Presiding Officer in Absence of Clerk

§ 5.2 In the absence of both the Clerk of the House and the Sergeant at Arms, the Doorkeeper of the preceding Con-

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8. See §§ 6.6, 6.7, infra.

9. For the procedure of the election of the Speaker, both at a new Congress and at a new session of the same Congress, see § 6, infra.

10. 113 CONG. REC. 11, 12, 90th Cong. 1st Sess.

gress calls the House to order on the opening day of a new Congress.

On Jan. 3, 1947,[11] the assembly date of the first session of the 80th Congress, following the death of the Clerk of the House and in the absence of the Sergeant at Arms, the Doorkeeper of the House of Representatives of the 79th Congress, Ralph R. Roberts, of Indiana, called the House to order and directed the call of the roll.[12]

§ 6. Election of the Speaker

Ordinarily, the second order of business at the opening of a new Congress, after the ascertainment of a quorum through the calling of the Clerk's roll, is the election of the Speaker.[13] Although a motion, of privileged character, was formerly made to proceed to the election of the Speaker,[14] in contemporary practice the Clerk simply declares to the House that the election of the Speaker is the next order of business.[15] In early Congresses, the motion was used to determine the method by which the Speaker would be elected;[16] since 1839, however, the Speaker has been chosen by viva voce vote on a roll call with tellers, and Members respond with the name of the nominee of their choice when called on the roll.[17] Although the Clerk appoints tellers for the election,[18] the House and

11. 93 CONG. REC. 33, 80th Cong. 1st Sess.

12. 2 USC § 26 appoints the Sergeant at Arms and in his absence the Doorkeeper of the preceding House to assume the Clerk's functions at the opening of Congress, if the Clerk's office should become vacant between Congresses.

13. "The House of Representatives shall chose their Speaker and other Officers. . . ." U.S. Const. art. I, § 2, clause 5. For the procedure of the election in general, see § 6.1, infra.

The priority of the election of the Speaker is dictated by 2 USC § 25, requiring the administration of the oath to him, and by him to Members and to the Clerk, before the House enters into other business.

14. 1 Hinds' Precedents §§ 212–14. The motion is debatable (1 Hinds' Precedents § 213), and is of higher privilege than a motion to correct the Clerk's roll. 1 Hinds' Precedents §§ 19–24.

On one occasion, the Speaker held the motion to adjourn preferential over a resolution declaring the office of Speaker vacant and providing for the election of a Speaker. 8 Cannon's Precedents § 2641.

15. See § 6.1, infra.

16. See 1 Hinds' Precedents §§ 204–11.

17. 1 Hinds' Precedents § 187 (the Speaker was, in early Congresses, elected by ballot).

18. 1 Hinds' Precedents § 217. See § 6.1, infra.

not the Clerk determines what method of voting to use.[1] A majority vote of those Members or Members-elect present, if a quorum, suffices to elect a Speaker.[2]

After announcing that the House will proceed to the election of a Speaker, the Clerk accepts nominations of candidates for the office. There are usually two nominations, one from the chairman of each party caucus or conference.[3] The Clerk announces the result of the vote, and declares the chosen Member to be the duly elected Speaker of the House.[4] A committee, appointed by the Clerk, then escorts the Speaker-elect to the Chair. The Minority Leader presents the Speaker-elect to the membership,[5] and he addresses the House and requests a Member-elect, usually the oldest Member in continuous service, to administer the oath to him.[6] The codified oath administered to the Speaker is the same as that used by him to swear in the Members-elect.[7]

In most Congresses a Speaker has been elected and sworn well before the end of opening day; however, election contests for the office of Speaker have consumed up to nineteen days at the beginning of new Congresses.[8] On one occasion, the House requested all candidates for the Speaker's office

1. 1 Hinds' Precedents § 210.

2. 1 Hinds' Precedents §§ 215–16. Twice the Speaker has been chosen by a plurality vote, but on both occasions the vote was confirmed by a majority vote. 1 Hinds' Precedents § 221. For one instance where the Speaker was elected by resolution, see § 6.3, infra. Members not on the Clerk's roll are not allowed to vote for Speaker (see Ch. 2, infra).

3. See § 6.1, infra.

4. If the House authorizes the election of the Speaker by a plurality vote instead of a majority vote, the declaration naming the elected Speaker must be made by the House, through a resolution, and not by the Clerk or by a Member. 1 Hinds' Precedents § 222.

5. After the election of the Speaker and before he has been conducted to the chair no debate or business is in order. 1 Hinds' Precedents § 219.

6. "[T]he oath of office shall be administered by any Member to the Speaker . . . . " 2 USC § 25.

Although the practice is to have the dean of the House administer the oath to the Speaker (1 Hinds' Precedents §§ 130–33), the custom is not always followed. 6 Cannon's Precedents §§ 6–7.

7. The Constitution requires, in art. VI, clause 3, that all Members (including the Speaker) take the oath, whose form is found at 5 USC § 3331.

8. See 1 Hinds' Precedents §§ 221–23; 5 Hinds' Precedents §§ 5356, 6647, 6649; 6 Cannon's Precedents § 24.

to state their opinions upon important political questions before proceeding to the election.[9] The most recent protracted contest over the Speaker's election, in 1923, could not be resolved until after the procedure for the adoption of rules had been presented,[10] contrary to the usual practice of postponing consideration or adoption of rules until after the election of the Speaker.[11]

The election of a new Speaker may occur at the beginning of a second or third session, or during a session, when the Speaker dies in office. The procedure followed by the House in that situation is substantially the same as that used at the beginning of a new Congress;[12] the Clerk, by tradition and by rule, presides at such elections since the authority of the Speaker pro tempore, if one has been appointed or elected, terminates with the death of the Speaker.[13] One difference in election procedure between that at the opening of a Congress and that during the term is that in the latter situation the quorum to elect is established through the calling of the roll alphabetically by name and not by state,[14] although in former times the call was by state in both instances.[15] One further distinction is that a Speaker elected during a Congress must resign from the committees on which he has served while a Member,[16]

9. 1 Hinds' Precedents § 218.

10. See 6 Cannon's Precedents § 24.

11. Although specific rules as to debate and decorum have been adopted before the election of the Speaker (1 Hinds' Precedents §§ 94–102), the House has construed the Act of June 1, 1789, Ch. 1, § 2, 1 Stat. 23, as amended, 2 USC § 25 (1948), to require the election of the Speaker and the administration of the oath to him and to Members-elect to take precedence over other organizational business. 1 Hinds' Precedents §§ 130, 140.

12. See, in general, 1 Hinds' Precedents §§ 224–26, 231–34; see also §§ 6.6–6.7, infra.

Although a Member who is chosen Speaker after organization of the House has already taken the oath of office as a Member, it must be administered to him again upon election as Speaker. 1 Hinds' Precedents § 225.

13. Rule III clause 1, *House Rules and Manual* § 637 (1973), specifically provides for the Clerk to preside pending the Speaker's election. See also 1 Hinds' Precedents §§ 232, 234, and § 6.6, infra.

14. See § 6.8, infra. For an occasion where a quorum was not established before the election of the Speaker, see § 6.3, infra (the Speaker was elected by resolution).

15. See 1 Hinds' Precedents §§ 232, 234.

16. 1 Hinds' Precedents § 230. See § 6.5, infra. For the Speaker's competence

whereas at the beginning of a new Congress the election of the Speaker takes place well before the making of committee assignments.

Procedure for Election of Speaker

§ 6.1 The election of the Speaker at the beginning of a new Congress, presided over by the Clerk of the previous Congress, proceeds as follows: declaration by the Clerk of the election of the Speaker as the next order of business; recognition by the Clerk of the Chairman of the Democratic Caucus and the Chairman of the Republican Conference for nominations for Speaker; appointment of tellers for the election of the Speaker; calling of the roll; announcement of the result of the vote; declaration by the Clerk naming the new Speaker of the House; appointment by the Clerk of a committee to escort the Speaker-elect to the chair; Minority Leader presents the Speaker-elect to the membership; address of the Speaker-elect to the House from the chair; request by the Speaker-elect of a Member-elect to administer the oath of office to the Speaker; administration of the oath to the Speaker.

On Jan. 10, 1967,[17] after the establishment of a quorum on the opening day of the 90th Congress, the House proceeded as follows, with Ralph R. Roberts, of Indiana, presiding as Clerk:

> THE CLERK: The next order of business is the election of a Speaker of the House of Representatives for the 90th Congress.
>
> Nominations are now in order.
>
> MR. ROSTENKOWSKI:[1] Mr. Clerk, as chairman of the Democratic caucus, I am directed by the unanimous vote of that caucus to present for election to the Office of the Speaker . . . the name of the Honorable John W. McCormack [Mass.]. . . .
>
> MR. LAIRD:[2] Mr. Clerk, as chairman of the House Republican conference and by authority, by direction, and by unanimous vote of the Republican conference, I nominate for Speaker . . . the Honorable Gerald R. Ford [Mich.] . . . .
>
> THE CLERK: The Honorable John W. McCormack . . . and the Honorable Gerald R. Ford . . . have been placed in nomination.
>
> . . . There being no further nominations, the Clerk will appoint tellers.

to hold committee assignments, see Ch. 6, infra.

17. 113 CONG. REC. 12–14, 90th Cong. 1st Sess.

1. Mr. Daniel D. Rostenkowski (Ill.).

2. Mr. Melvin R. Laird (Wisc.).

The Clerk appoints. . . .

Tellers will come forward. . . .

The roll will now be called, and those responding to their name will indicate by surname the nominee of their choice.

The following is the result of the vote. . . .

Therefore, the Honorable John W. McCormack, of Massachusetts, is the duly elected Speaker of the House of Representatives for the 90th Congress, having received a majority of the votes cast.

The Clerk appoints the following committee to escort the Speaker-elect to the chair. . . .

The Doorkeeper announced the Speaker-elect of the House of Representatives of the 90th Congress, who was escorted to the chair by the committee of escort. . . .

[The Minority Leader presents the Speaker-elect to the Membership.]

MR. MCCORMACK: My dear friends. . . .

I am now ready to take the oath of office and will ask the dean of the House of Representatives, the Honorable Emanuel Celler, of New York, to administer the oath.

Mr. Celler then administered the oath of office to Mr. McCormack. . . .

§ 6.2 The Minority Leader of the House addressed the House from the Speaker's rostrum and presented the Speaker-elect.

On Jan. 10, 1962,[3] Minority Leader Charles Halleck, of Indiana, presented to the House, after the election but before the oath of office, Speaker-elect John W. McCormack, of Massachusetts.

Election of Speaker by Resolution

§ 6.3 On occasion, the Speaker has been elected by resolution.

On June 4, 1936,[4] following the death, during the session of Congress, of Speaker Joseph W. Byrns, of Tennessee, the House elected a Speaker by the following resolution:

Resolved, That Hon. William B. Bankhead, a Representative from the State of Alabama, be, and he is hereby elected Speaker of the House of Representatives.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. William B. Bankhead as Speaker of the House of Representatives.

On Sept. 16, 1940,[5] following the death, during the session, of Speaker Bankhead, the House elected a Speaker by the following resolution:

HOUSE RESOLUTION 602

Resolved, That Hon. Sam Rayburn, a Representative from the State of

3. 108 CONG. REC. 6, 87th Cong. 2d Sess.

4. 80 CONG. REC. 9016, 74th Cong. 2d Sess.

5. 86 CONG. REC. 12231, 76th Cong. 3d Sess.

Texas, be, and he is hereby, elected Speaker of the House of Representatives.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. Sam Rayburn as Speaker of the House of Representatives.

Administration of Oath to Speaker; Resignation From Committees

§ 6.4 The oath of office is administered to the Speaker-elect, at his request, by the dean of the House.

On Jan. 10, 1962,[6] after Speaker-elect John W. McCormack, of Massachusetts, had been escorted to the chair, he was administered the oath of office, at his request, by the dean of the House, Mr. Carl Vinson, of Georgia.

§ 6.5 If elected after the organization of the House, the Speaker resigns from the committees of the House on which he had served while a Member.

On Jan. 10, 1962,[7] the first day of the second session, newly-elected Speaker John W. McCormack, of Massachusetts, resigned, without objection, from the Committees on Government Operations and Science and Astronautics, and from the Franklin Delano Roosevelt Memorial Commission.

Election of Speaker During a Session or at Opening of Second Session

§ 6.6 Following the death of the Speaker, between sessions of a Congress, the authority of an elected Speaker pro tempore terminates, and the Clerk presides at the reconvening until the election of a new Speaker.

On Jan. 10, 1962,[8] the Clerk of the House, Ralph R. Roberts, of Indiana, called the second session of the 87th Congress to order for the purpose of electing a new Speaker. The Honorable John W. McCormack, of Massachusetts, elected Speaker pro tempore in the first session during the last absence of Speaker Rayburn, was elected Speaker of the second session.

§ 6.7 When a Speaker dies during a session of Congress the Clerk calls the House to order, makes announcement

6. 108 Cong. Rec. 6, 87th Cong. 2d Sess.
7. 108 Cong. Rec. 8, 87th Cong. 2d Sess.
8. 108 Cong. Rec. 5, 87th Cong. 2d Sess.

thereof, and presides over the election of a new Speaker.

On June 4, 1936,[9] the Clerk of the House, South Trimble, called the House to order during the second session and announced the sudden death, during the early morning hours, of the Speaker, the Honorable Joseph W. Byrns, of Tennessee. The Clerk then presided over the election of a new Speaker.[10]

§ 6.8 When a vacancy arises in the Speaker's office during the term of a Congress, the quorum to elect a new Speaker is established by an alphabetical roll call.

On Jan. 10, 1962,[11] following the death, in office, of Speaker Sam Rayburn, of Texas, a quorum to elect a Speaker was established by Clerk Ralph R. Roberts, of Indiana, who directed the call of the roll alphabetically by Members' names.

§ 7. Business Under Speaker as Presiding Officer

After the Speaker has been elected and sworn at the beginning of a new Congress, he presides over the completion of all organizational business.[12] The three most important stages that remain after the election of the Speaker, and which are required by the Constitution, are the administration of the oath to Members-elect,[13] the election of officers,[14] and the adoption of the rules of the House.[15] Another essential step which the Speaker takes, although not required by the Constitution, is the administration of the oath of office to the Clerk and to the other officers of the House.[16] There are various

9. 80 CONG. REC. 9016, 74th Cong. 2d Sess.

10. Before the House proceeded to the election, the roll was not called to establish a quorum, as the House chose to elect the Speaker by resolution. See § 6.3, supra. See also 86 CONG. REC. 12231, 76th Cong. 3d Sess., where the Clerk presided following the death of Speaker Bankhead during the session.

11. 108 CONG. REC. 5, 87th Cong. 2d Sess.

12. See § 7.1, infra.

13. U.S. Const. art. VI, clause 3. For detailed analysis, see Ch. 2, infra.

14. U.S. Const. art. I, § 2, clause 5. See Ch. 6, infra.

15. U.S. Const. art. I, § 5, clause 2. See § 10, infra.

16. 2 USC § 25 requires the administration to the Clerk of the oath to support the Constitution of the United States. Rule II, *House Rules and Manual* § 635 (1973) provides for

other necessary orders of business which take place before organization is finished, such as notification to the Senate and to the President of the assembly of the House,[17] provision for a joint session to hear the President,[18] and adoption of standing orders.[19]

Swearing in the Members, electing the officers, and adopting the rules are only mentioned here, as these topics are dealt with elsewhere in this work. It should be briefly stated, however, that the Speaker's authority in presiding over those procedural steps is carefully restricted by precedent: he possesses no arbitrary power to administer the oath, and must ask a Member-elect to step aside if his right to take the oath is challenged;[20] a majority vote is required for the election of officers,[1] who are usually chosen by resolution and not by the viva voce vote suggested by Rule II of the *House Rules and Manual;*[2] in proceeding to the adoption of rules, the House is governed by general parliamentary law, with weight given to the precedents and usages of past Congresses.[3] There is, in addition, a traditional sequence of organizational busi-

Clerk, Sergeant at Arms, Doorkeeper, Post Master, and Chaplain to take the oath to support the Constitution; although not binding at organization, the law and rule exert persuasive effect upon the administration of that oath to the officers. The rule also provides for an oath of secrecy to be taken by the officers of the House, but this requirement has faded into obsolescence. 1 Hinds' Precedents § 187.

17. See 1 Hinds' Precedents § 198 and § 7.1, infra.

18. U.S. Const. art. II, § 3, provides for the President to give to the Congress from time to time information on the state of the Union and to recommend measures. Up to 1801 the President made a speech to Congress upon its assembly, but between 1801 and 1913 messages were sent in writing, 5 Hinds' Precedents § 6629. The practice of an oral state of the Union message at assembly has been followed since 1913 to the present, with several exceptions. 8 Cannon's Precedents § 3333. No Presidential message was delivered at the opening of the 93d Congress, but the President transmitted his intention to send messages from time to time to the Congress. See, in general, Ch. 35, infra.

19. The only standing order commonly used is that to fix the hour of daily meeting; see § 3, supra.

20. See Ch. 2, infra.

1. See Ch. 6, infra.

2. *House Rules and Manual* § 635 (1973). If the officers are elected before the adoption of rules, as is the usual practice, Rule II, requiring a viva voce vote, is not followed (see § 7.1, infra). If elected after adoption of rules, the officers may be chosen by resolution if no objection is made. 1 Hinds' Precedents §§ 191–96.

3. See 5 Hinds' Precedents §§ 6758–60. See also, in general, § 10, infra.

ness which the House follows, although minor variations have been permitted in past Congresses.[4]

Besides initiating organizational steps enumerated above, the Speaker has other related duties to perform.[5] He relays to the House information from the Speaker of the preceding Congress on official actions taken during the adjournment *sine die,* such as appointments to commissions, certification to the U.S. Attorney of contempt cases arising in committees of the preceding Congress, resignations effective during adjournment, and communications from foreign governments received during adjournment.[6] In addition, recesses have been declared by the Speaker during organization, without a motion being put.[7]

At the opening day of a new session of the same Congress, the Speaker similarly presides over organization, which consists primarily of ceremonial and informational activities.[8] As Members have already been sworn, rules have already been adopted, and officers have been elected, the Speaker merely lays before the

4. The sequence of organizational steps, which appears at § 7.1, infra, is derived both from custom (see 1 Hinds' Precedents § 81) and from statute. "At the first session of Congress after every general election of Representatives, the oath of office shall be administered by any Member of the House of Representatives to the Speaker; and by the Speaker to all the Members and Delegates present, and to the Clerk, previous to entering on any other business. . . ." 2 USC § 25. For rulings upholding the priority of the swearing in of Members and the election of the Clerk before adoption of the rules or other business, based upon the Act of June 1, 1789, Ch. 1, § 2, 1 Stat. 23 (the former version of 2 USC § 25, whose 1948 amendments left untouched the language above), see 1 Hinds' Precedents §§ 130, 140, 180, 237, 241, 243; 5 Hinds' Precedents §§ 6647–49. For occasions where variations were upheld, see: 1 Hinds' Precedents §§ 242, 244 (business transacted before election of the Clerk); 1 Hinds' Precedents §§ 93, 245 (rules adopted before election of the Clerk); 1 Hinds' Precedents §§ 198–203, 240 (in the practice of early Congresses, the Senate and the President were informed of the organization of the House and election of the Speaker before the election of the Clerk); 6 Cannon's Precedents § 24 (procedure for adoption of rules presented before the election of the Speaker).

5. One of the informal functions of the Speaker has been control of press coverage on the opening day of a session. See, *e.g.*, 92 CONG. REC. 20, 79th Cong. 2d Sess., Jan. 15, 1946.

6. See §§ 7.7–7.10, infra.

7. See §§ 7.2, 7.3, infra.

8. For the procedure, in general, see §§ 7.5, 7.6, infra.

House letters of resignations effective during adjournment and then ascertains the presence of a quorum.[9] The Senate and the President are notified of the assembly of the House, and a joint session is fixed for the receipt of the Presidential message. Standing orders of the first session must be renewed.[10]

If the Speaker is to be absent on the day set for the convening of a consecutive session of the same Congress, the House may be called to order by a Speaker pro tempore if the Speaker has designated one for that specific purpose.[11]

Organizational Steps With Speaker Presiding

§ 7.1 Following the election of the Speaker at the opening of a new Congress, he presides over the following organizational steps in sequence: administration of the oath to Members-elect; election of officers and administration of oath to them; passage of resolution to notify the Senate of a quorum in the House; passage of resolution authorizing the Speaker to appoint a committee to notify the President of Congress' assembly; report of that committee, informing the House of the time of the Presidential message; passage of concurrent resolution for a joint session to hear the President; adoption of the rules of the House; passage of resolution fixing the daily hour of meeting.

On Jan. 10, 1967,[12] after the House had elected John W. McCormack, of Massachusetts, Speaker, he swore in the Members-elect all at one time, directing those whose right to be sworn was challenged to step aside. After debate on the swearing in of a challenged Member, the House elected by resolution the Clerk, Sergeant at Arms, Doorkeeper, Post Master, and Chaplain, who were all administered the oath of office by the Speaker. There were then passed three resolutions, one to notify the Senate of the organization of the House, one to appoint a committee to notify the President of the assembly of Con-

9. See § 7.5, infra.

10. Standing orders expire with the session. Jefferson's Manual, *House Rules and Manual* § 386 (1973).

11. See § 7.4. If a Speaker pro tempore has not been designated, the Clerk calls the House to order in the Speaker's absence. 1 Hinds' Precedents § 227.

12. 113 CONG. REC. 14–34, 90th Cong. 1st Sess.

gress, and one to notify the President of the election of the Speaker and the Clerk of the House. A resolution to adopt the rules of the preceding Congress was offered, and the House passed the resolution, with an amendment. After resignations were laid before the House, a resolution was passed fixing the daily hour of meeting, and the report of the committee to notify the President of the assembly of Congress was received. The concurrent resolution providing for a joint session to hear the state of the Union message from the President was offered and passed by unanimous consent.

Authority of Speaker to Declare Recess During Organization

§ 7.2 The House may authorize the Speaker to declare recesses at any time, subject to the call of the Chair, during organization.

On Jan. 10, 1967,[13] the opening day of a new Congress, the House granted unanimous consent that it be in order for Speaker John W. McCormack, of Massachusetts, to declare a recess at any time during the day.

§ 7.3 On the opening day of a session, the Speaker declared the House in recess, on his own initiative and without objection.

On Jan. 7, 1964,[14] Speaker John W. McCormack, of Massachusetts, declared the House to stand in recess, without the motion being put, in order to await the report of the committee appointed to ask the President if he had any communication to make to the Congress.

Presiding Officer in Absence of Speaker at Convening

§ 7.4 The Speaker being absent on the day set for the convening of the second session, the House is called to order by a Speaker pro tempore if he has been previously designated by the Speaker for that purpose.

On Jan. 10, 1966,[15] the convening date of the second session of the 89th Congress, Speaker pro tempore Carl Albert, of Oklahoma, called the House to order and laid the following communication before the House:

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13. 113 CONG. REC. 34, 90th Cong. 1st Sess.

14. 110 CONG. REC. 5, 88th Cong. 2d Sess.

15. 112 CONG. REC. 5, 89th Cong. 2d Sess. For the procedure where the Speaker has died between sessions, see § 6, supra.

The SPEAKER's Rooms,
U.S. House of Representatives,
Washington, D.C., January 10, 1966:

I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.

JOHN W. MCCORMACK,
Speaker of the House of Representatives.

Procedure at Opening of Consecutive Session

§ 7.5 After calling the House to order and following the opening prayer at the beginning of a new session of an existing Congress, the Speaker lays before the House letters of resignations which became effective during the adjournment and then causes the roll to be called alphabetically to establish a quorum.

On Jan. 10, 1966,[16] following the call to order and prayer at the beginning of the second session, Speaker pro tempore Carl Albert, of Oklahoma, laid before the House the resignation of a Member of the House effective Dec. 30, 1965, and then directed the Clerk to call the roll to establish a quorum. The roll was called in alphabetical order.

§ 7.6 After a quorum is established at the opening of a second session, the House takes the following organizational steps: provision for recess on the day of the joint session to receive the President's state of the Union message; authorization to the Speaker to appoint a committee to notify the President of the assembly of Congress; notification to the Senate of the assembly of the House; receipt of the report of the committee to notify the President; passage of resolution to fix the daily hour of meeting; passage of concurrent resolution to set the joint session for the President's message.

On Jan. 6, 1948,[17] Speaker Joseph W. Martin, Jr., of Massachusetts, called the House to order. By unanimous consent, the Speaker was then authorized to declare a recess at any time subject to the call of the Chair on Jan. 7, 1948, and was empowered by resolution to appoint three members of the committee to notify the President of the United States of the assembly of Congress. A resolution was then offered and passed to direct the Clerk of the House to inform the Senate that a quorum was established in the House and that

16. 112 CONG. REC. 5, 6, 89th Cong. 2d Sess.

17. 94 CONG. REC. 4, 5, 80th Cong. 2d Sess.

the House was ready to proceed with business. The committee to notify the President reported that the President would deliver his message to the Congress on Jan. 7, 1948. The House passed a resolution fixing the daily hour of meeting of the House, and a concurrent resolution setting Jan. 7 as the date for the joint session to hear the state of the Union message from the President.

Announcement of Official Actions During Adjournment

§ 7.7 When the Speaker of the preceding Congress, acting under authority conferred by the House, makes appointments during adjournment *sine die*, he informs the House thereof at the convening of a new Congress.

On Jan. 4, 1965,[18] Speaker John W. McCormack, of Massachusetts, informed the House that he had appointed four Members of the House of Representatives to the Lewis and Clark Trail Commission during adjournment *sine die.*

§ 7.8 Where the Speaker, subsequent to *sine die* adjournment, certifies to the U.S. Attorney a contempt case arising in a committee, he notifies the House at the opening day of the new Congress through its new Speaker.

On Jan. 5, 1955,[19] Speaker Sam Rayburn, of Texas, laid the following communication before the House:

JANUARY 5, 1955.

THE SPEAKER,
House of Representatives,
United States, Washington, D.C.

DEAR MR. SPEAKER: I desire to inform the House of Representatives that subsequent to the *sine die* adjournment of the 83d Congress the Committee on Un-American Activities reported to and filed with me as Speaker a statement of facts concerning the refusal of Lee Lorch, Robert M. Metcalf, and Norton Anthony Russell to answer questions before the said committee of the House, and I, pursuant to the mandatory provisions of Public Resolution 123, 75th Congress, certified to the United States attorney, southern district of Ohio, the statement of facts concerning the said Lee Lorch and Robert M. Metcalf on December 7, 1954, and certified to the United States attorney, District of Columbia, the statement of facts concerning the said Norton Anthony Russell on December 7, 1954.

Respectfully,

18. 111 CONG. REC. 25, 89th Cong. 1st Sess.

19. 101 CONG. REC. 11 84th Cong. 1st Sess.

JOSEPH W. MARTIN, JR.

Announcements of Resignations and Communications of Foreign Governments

§ 7.9 At the organization of a new Congress, the Speaker laid before the House responses of foreign governments to resolutions extending greetings to them.

On Jan. 5, 1955,[20] Speaker Sam Rayburn, of Texas, laid before the House a communication from Thruston B. Morton, Assistant Secretary of State, informing the House that the legislative assembly of the Gold Coast had passed a resolution on Oct. 27, 1954, thanking the Congress of the United States for the greetings contained in a joint resolution of the 83d Congress, and extending an invitation to a congressional delegation to represent the United States at the ceremonies marking the attainment of independence for the Gold Coast.

§ 7.10 Letters notifying the Speaker of resignations effective during adjournment *sine die* are laid before the House upon the convening of a new Congress.

On Jan. 4, 1965,[1] Speaker John W. McCormack, of Massachusetts, laid before the House a letter from Mr. Ross Bass, of Tennessee, resigning his seat in the House of Representatives, and a letter from Frank G. Clement, the Governor of Tennessee, informing the Speaker of the receipt of the resignation of Mr. Bass.

B. PROCEDURE

§ 8. Procedure Before Adoption of Rules

Before the House has reached the stage of organization where the standing rules are adopted, no specific rules of procedure are technically binding upon the House,[2] except those required by the Constitution.[3] Where organi-

20. 101 CONG. REC. 11, 12, 84th Cong. 1st Sess.

1. 111 CONG. REC. 25, 89th Cong. 1st Sess.

2. Although at one time the House provided for adopted rules to continue in succeeding Congresses (5 Hinds' Precedents § 6743), it was finally determined in 1889 and 1890 that one House could not by rule bind its successor (5 Hinds' Precedents § 6747).

3. The Constitution requires in art. I, § 5, clause 1 that a quorum be

zation proceeds smoothly, the lack of rules does not hamper the House in its completion of opening business.[4] Where, however, election contests arise, or debate and challenges prevent the completion of the call of the Clerk's roll, the House may find it necessary to adopt, before the Speaker's election, specific rules as to debate and decorum, in order to facilitate the organization of the House.[5] The House may either draft a specific rule authorizing the officers of the preceding Congress to preserve order and decorum,[6] or temporarily adopt from the rules of the preceding House only that portion relating to order and decorum [7] Similarly, the House may provide by specific rule, before the election of the Speaker, for limitation on debate,[8] and for opening sessions with prayer.[9]

While the Clerk is presiding he does recognize Members,[10] but only those whose names are on the roll,[10] and will entertain the motion to adjourn,[12] the demand for a yea and nay vote,[13] the motion to correct the roll,[14] the motion to proceed to the election of a Speaker,[15] and the motion to elect a chairman in place of the Clerk.[16]

As to other proposed motions, the general rule is that the Clerk may entertain only those propo-

present to do business but authorizes a smaller number to adjourn from day to day and to compel the attendance of absent Members. Art. I, § 5, clause 3 requires a Journal to be kept and authorizes one-fifth of the Members present to order the yeas and nays.

4. See, *e.g.*, §§ 5.1, 6.1, and 7.1, supra.

5. See, generally, 1 Hinds' Precedents §§ 93–102.

6. See 1 Hinds' Precedents § 101.

7. See 1 Hinds' Precedents §§ 96–98, 102.

8. See 1 Hinds' Precedents §§ 94–95.

9. See 1 Hinds' Precedents §§ 99–100.

10. 1 Hinds' Precedents § 74.

11. 1 Hinds' Precedents § 86. The Clerk may refuse to recognize a Member-elect who seeks to interrupt the call of the roll, particularly if the name of the Member-elect is not on the roll. 1 Hinds' Precedents § 84.

12. See 1 Hinds' Precedents §§ 67, 89, 92. The House may adjourn for more than one day prior to the election of a Speaker. 1 Hinds' Precedents § 89.

13. 1 Hinds' Precedents § 91.

14. 1 Hinds' Precedents §§ 19–21, 25. In some cases, it has been held that the Clerk may not entertain the motion to correct the roll, on the ground that the preparing of the Clerk's roll is governed by statute (2 USC § 26) and is not discretionary. See 1 Hinds' Precedents §§ 22–24.

15. See 1 Hinds' Precedents §§ 212–14.

16. See 1 Hinds' Precedents § 66. When the Clerk refused to put any motion except that to adjourn, a Member-elect offered a resolution to elect a chairman from the floor. 1 Hinds' Precedents § 67.

sitions consistent with the organization of the House.[17] One Clerk refused to entertain any motion but that to adjourn, and even declined to put a motion to approve the last day's Journal.[18] Other Clerks have presided at convening over the passage of resolutions, pertinent to organization, where the previous question and the motion to lay on the table were invoked.[19]

Debates over the Clerk's authority as presiding officer[20] have, however, established a number of procedural guidelines; there is no longer any question as to the Clerk's power to preside at the beginning of a Congress,[1] nor is there doubt that he lacks authority to resolve election contests before the election of a Speaker.[2]

In recent years, Members-elect have refrained from challenging the Clerk's roll or impeding the swift election of a Speaker,[3] and there has been little if any contemporary dispute as to the procedure to be followed before the election of a Speaker.

After the election of the Speaker and before adoption of the standing rules, he entertains those motions which have been recognized by precedent to apply under general parliamentary law (§ 9 discusses those motions in detail). As no rule establishing an order of business has at that point been adopted, it is in order for any Member who is recognized by the Chair to offer a proposition relating to organization without asking the consent of the House.[4] However, unanimous-consent requests and extensions of remarks are permitted at organization only in the Speaker's discretion, and when they are pertinent to organization. For example, remarks in honor of late Members of Congress are regularly admitted.[5] (The House often adjourns out of

17. 1 Hinds' Precedents § 80. See. in general, § 5, supra.

18. 1 Hinds' Precedents §§ 67, 92. The refusal of the Clerk to entertain the motion to approve the last day's Journal prevented the reading of the Journal for several days. 1 Hinds' Precedents § 92.

19. See 1 Hinds' Precedents §§ 68–70, 75 20.

20. See, in general, 1 Hinds' Precedents §§ 64–80.

1. For the derivation of the Clerk's authority to preside, see § 5, supra.

2. 2 USC § 26 and 2 USC §§ 381–96 strictly govern the preparation of the Clerk's roll and the procedure for election contests. See 6 Cannon's Precedents § 2, for an instance where the Clerk stated, as a basis for his actions, the terms of 2 USC § 26.

3. The last major contest over the election of a Speaker occurred in 1923. See 6 Cannon's Precedents § 24.

4. 4 Hinds' Precedents § 3060.

5. See §§ 8.1, 8.2, infra.

respect to deceased Members on opening day, after completing organizational business.)[6] Messages are received during organization at the Speaker's discretion; an important Senate message may be received and read even between the ordering of the previous question on a proposition and the actual calling of a yea and nay vote.[7]

Unanimous-Consent Requests During Organization

§ 8.1 The Speaker announced, prior to the adoption of the rules, that he would recognize a Member to announce the death of the President pro tempore of the Senate, but that no other unanimous-consent request would be permitted except to correct the Record.

On Jan. 22, 1971,[8] Speaker Carl Albert, of Oklahoma, made the following announcement:

> The Chair would like to make an announcement at this time. The Chair is going to recognize the gentleman from Georgia (Mr. Landrum) at this time. This is for the purpose of announcing the death of a great Member of Congress.[9]
>
> The Chair will take requests to correct the Record, but until we have adopted the rules of the House, the Chair will appreciate the indulgence of Members on other personal requests.
>
> The Chair now recognizes the gentleman from Georgia.

§ 8.2 The Speaker may grant permission to all Members to extend remarks in the Record on opening day, where the House adjourns out of respect to a deceased Member.

On Jan. 10, 1966,[10] Mr. Hale Boggs, of Louisiana, made the following request:

> Mr. Speaker,[11] I ask unanimous consent that on today, and without making the procedure a precedent, all Members may have permission to extend their remarks in the Record and to include pertinent material therewith.

There were no objections. After further business, the House adjourned as a mark of respect to the late Honorable Herbert C. Bonner.

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6. See § 8.2, infra.

7. See § 8.3, infra. While the Clerk is presiding, however, messages even from the President are received but not read pending the election of a Speaker. See 5 Hinds' Precedents §§ 6747–49.

8. 117 Cong. Rec. 131, 92d Cong. 1st Sess.

9. Senator Richard B. Russell, Jr. (Ga.).

10. 112 Cong. Rec. 7, 36, 89th Cong. 2d Sess.

11. Speaker pro tempore Carl Albert (Okla.).

Interruption at Organization by Messages

§ 8.3 Before the adoption of rules, the Chair received a message from the Senate between the time the yeas and nays were ordered on the previous question and the time the roll was called.

On Jan. 3, 1969,[12] after the ordering of the yeas and nays on a motion for the previous question, Speaker John W. McCormack, of Massachusetts, received a message from the Senate as to a concurrent resolution to fix the date of the electoral count. Following receipt of that message the roll was called on the pending yea and nay vote.

§ 9. Motions

As previously indicated, the House has before it, following the election of the Speaker, several substantive matters to resolve without the aid of standing rules.[13] The swearing in of Members, the election of officers, and even the adoption of rules themselves necessitate the putting of motions from the floor. Before rules are in effect, motions are governed in their admissibility and effect by precedent and by the general parliamentary law as applied in the House of Representatives.[14] That general authority does not, however, preclude reliance by the Speaker on the rules of past Congresses as a basis for admitting certain motions. For example, the motion to recommit after the ordering of the previous question has been ruled applicable in the House prior to the adoption of rules because it was within the "spirit" of the rules of the past Congress.[15] Therefore, in many instances the use of motions before the adoption of rules resembles more closely their use under the House rules than under Jefferson's Manual.[1]

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12. 115 CONG. REC. 22, 91st Cong. 1st Sess.

13. There are often introduced, before the adoption of standing rules, resolutions relating to the adoption of the rules or to the swearing in of Members or to other organizational business. Action on such resolutions (as well as on any legislation that may be considered), including debate, withdrawal, amendment, and consideration, raises a variety of procedural questions covered elsewhere (see § 12, infra).

14. See, in general, 5 Hinds' Precedents §§ 6757–63; 8 Cannon's Precedents §§ 3383–86.

15. See § 9.5, infra.

1. For motion practice generally, see Ch. 23, infra. Ch. 5, infra, discusses the applicability of Jefferson's Man-

There are motions, of regular use in the House, whose admissibility prior to the adoption of rules is unquestioned, since they are authorized by the Constitution:[2] the demand for the yeas and nays[3] and the motion for a call of the House. The motion to adjourn is likewise admissible before the adoption of rules, either before or after the election of the Speaker; the motion is of standard usage under general parliamentary law[4] and is authorized by the Constitution as well.[5] The House may adjourn for more than one day before the election of the Speaker,[6] but since a concurrent resolution is necessary to adjourn for more than three days,[7] the House cannot move to adjourn for more than three days before the Speaker is elected and each House is notified of a quorum in the other.[8] The motion to adjourn is accorded preferential treatment before the adoption of the rules as well as after.[9]

ual to the procedure of the House of Representatives.

2. Art. I, § 5, clause 3 authorizes one-fifth of those Members present to call for the yeas and nays, and under art. I, § 5, clause 1, less than a majority of Members may compel the attendance of absent Members when a quorum is lacking. The question has arisen whether the body of Representatives assembled has all the powers of the "House," as contemplated by the constitutional provisions, before organization is completed. As discussed at 1 Hinds' Precedents § 82, however, that body may elect officers and adopt rules under the Constitution and is therefore authorized to follow, before organization is completed, at least those constitutional provisions relating to procedure and to organization.

3. See 1 Hinds' Precedents § 91; 5 Hinds' Precedents §§ 6012–13. For an instance where the Speaker has entertained a second demand for the yeas and nays after being once refused on the same question, before rules adoption, see § 9.1, infra.

4. See Jefferson's Manual, *House Rules and Manual* § 584 (1973).

5. Art. I, § 5, clause 1 authorizes less than a majority of the House to adjourn from day to day.

6. 1 Hinds' Precedents § 89

7. U.S. Const. art. I, § 5, clause 4. Generally, see Ch. 40, infra.

8. Since a message from one House that a quorum has appeared is not delivered in the other until a quorum has appeared there also (1 Hinds' Precedents § 126), and the message of a quorum is not sent until after the election of a Speaker (§ 7.1, supra), official consent for adjournment for more than three days could presumably not be obtained until that point in time.

9. See Jefferson's Manual, *House Rules and Manual* § 439 (1973), for the parliamentary rule. On occasion, the Clerk presiding at the opening has entertained no other motion than the motion to adjourn (1 Hinds' Precedents § 67). On one instance, after

When a motion is made from the floor, it must be read to the House and then put to the question under general parliamentary law as well as under the standing rules of the House.[10] (After the Speaker is elected, he puts motions to the House; while the Clerk is presiding, however, he may decline to put a question to the House, whereupon a Member-elect may put it from the floor.)[11] The Speaker must recognize Members proposing motions which are privileged at the stage of organization.[12]

When a Member offers a resolution prior to the adoption of standing rules, he is entitled to one hour of debate on the resolution;[13] under general parliamentary law he may yield time for debate to others and still retain the right to resume debate or to move the previous question.[14] The previous question is a standard motion under parliamentary law,[15] and may be moved before the adoption of the rules.[16] However, the 40 minutes of debate allowed by Rule XXVII of the rules, on a question on which there has been no debate, does not apply before the rules are effective.[17] The House may recommit, refer, lay on the table, or refuse to pass on the pending resolution in any shape, under general parliamentary prin-

organization had been completed, the Speaker held the motion to adjourn of higher precedence than the privileged motion to proceed to the election of a new Speaker (8 Cannon's Precedents § 2641). The motion cannot, however, defer the right of a Member-elect to take the oath (1 Hinds' Precedents § 622).

10. See Jefferson's Manual, *House Rules and Manual* § 392 (1973). Under House practice, however, a motion does not require a second as stated in Jefferson's Manual.

11. See 1 Hinds' Precedents § 67.

12. 8 Cannon's Precedents § 3383. Motions relating to the organization of the House are privileged; an example is the motion to proceed to the election of officers (1 Hinds' Precedents § 290).

13. 1 Hinds' Precedents § 6759; see also § 12.3, infra.

14. 8 Cannon's Precedents § 3383.

15. See Jefferson's Manual, *House Rules and Manual* § 461 (1973). As used in the House, however, the previous question no longer has the purpose stated by Jefferson (*House Rules and Manual* § 450 [1973]), to avoid lengthy debate on embarrassing questions or to suppress motions.

16. 5 Hinds' Precedents § 6758; 8 Cannon's Precedents §§ 3383. 3386; § 9.3 infra.

17. If ordered without previous debate, the previous question allows 40 minutes' debate under Rule XXVII clause 3, *House Rules and Manual* § 907 (1973). Prior to rules adoption, the 40 minutes is not in order (8 Cannon's Precedents § 3385). See also § 9.4, infra.

ciples.[18] In allowing the motion to recommit after the previous question has been moved, Speakers have based their rulings not only on the general parliamentary law, but also on the usage of the House of Representatives, including the standing rules of past Congresses;[19] such reliance was necessary to admit the motion to recommit, as Jefferson's Manual does not authorize it after the moving of the previous question.[20] If a resolution is recommitted before the adoption of rules, it will be recommitted to a select or special committee appointed by the Speaker.[1]

The House may utilize the motion to postpone consideration of a resolution before adoption of rules,[2] and it may amend by germane amendment a resolution on which the previous question is rejected.[3]

On an occasion where the House was voting on the previous question, the Speaker declined to record the vote of a Member who failed to qualify as being in the Hall and listening when his name was called, before the adoption of rules.[4]

Demand for Yeas and Nays

§ 9.1 The yeas and nays may not be demanded after they have been once refused on the same question; but before the adoption of the rules a second demand has been entertained where the Speaker was in doubt of the result of a viva voce vote on the question.

On Jan. 3, 1969,[5] after the yeas and nays were refused on the previous question, a parliamentary inquiry was stated:

> MR. GERALD R. FORD [of Michigan]: Is this yea-and-nay vote on the previous question?
>
> THE SPEAKER [John W. McCormack, of Massachusetts]: It is.
>
> MR. FORD: I thank the Chair.
>
> THE SPEAKER: The question is on ordering the previous question.

The question was taken; and the Speaker announced that the yeas appeared to have it.

> MR. GROSS:[6] Mr. Speaker, on that I demand the yeas and nays.

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18. See 5 Hinds' Precedents § 6758.

19. See 1 Hinds' Precedents §§ 3383–84; 5 Hinds' Precedents § 5604; § 9.5, infra.

20. See Jefferson's Manual, *House Rules and Manual* § 461 (1973).

1. See 5 Hinds' Precedents § 5604; 8 Cannon's Precedents § 3383. Committees are not constituted before the adoption of rules.

2. See § 9.7, infra.

3. See §§ 9.3, 12.6, 12.7, infra.

4. 8 Cannon's Precedents § 3386.

5. 115 CONG. REC. 29, 30, 91st Cong. 1st Sess.

6. Mr. Harold R. Gross (Iowa).

The yeas and nays were ordered.

§ 9.2 Prior to the adoption of rules, one-fifth of the Members present may order a yea and nay vote pursuant to the Constitution.

On Jan. 4, 1965,[7] prior to the adoption of standing rules, Speaker John W. McCormack, of Massachusetts, stated in response to a parliamentary inquiry that under the Constitution, it would require one-fifth of the Members present to rise to order a yea and nay vote.

Motions for the Previous Question

§ 9.3 Prior to the adoption of rules, the previous question is applicable in the House; after the previous question has been moved, the resolution before the House is not subject to amendment unless the previous question is rejected.

On Jan. 4, 1965,[8] prior to rules adoption, Speaker John W. McCormack, of Massachusetts, stated in response to a parliamentary inquiry that if the previous question was voted down, it would then be in order to offer a proper amendment.

§ 9.4 Prior to the adoption of rules, when the motion for the previous question is moved without debate, the 40 minutes' debate prescribed by House rules during the previous Congress does not apply.

On Jan. 7, 1959,[9] after the previous question was moved on a House resolution, Mr. Thomas P. O'Neill, Jr., of Massachusetts, arose to state a parliamentary inquiry:

> MR. O'NEILL: Mr. Speaker, when the previous order has been moved and there is [sic] no debate, under the rules of the House are we not entitled to 40 minutes debate?
>
> THE SPEAKER:[10] Under the precedents, the 40-minute rule does not apply before the adoption of the rules.

Motion to Recommit

§ 9.5 A ruling to admit the motion to recommit after the ordering of the previous question, before the adoption of rules, was based upon a construction of the standing rules of prior Congresses.

7. 111 CONG. REC. 19, 89th Cong. 1st Sess.
8. 111 CONG. REC. 19, 89th Cong. 1st Sess.
9. 105 CONG. REC. 14, 86th Cong. 1st Sess.
10. Sam Rayburn (Tex.).

On Dec. 7, 1931,[11] Mr. Carl E. Mapes, of Michigan, stated a parliamentary inquiry:

> I understood the gentleman from North Carolina to say that he would not yield the floor for the purpose of allowing an amendment to his motion. I would like to ask the Speaker if it is not a fact, even though he does not yield the floor for that purpose and the previous question should be ordered on the resolution, that some Member on this side would have the right to move to recommit or move to amend the resolution?
>
> THE SPEAKER:[12] Within the spirit of the rules of the 71st Congress on the motion to recommit, the Chair thinks that they should have that right.
>
> MR. MAPES: I think the ruling of the Chair is correct. If the Chair will recollect, Speaker Clark, at the beginning of the 63d Congress, ruled to the same effect.
>
> THE SPEAKER: The Chair is familiar with that ruling.[13]

Motion to Amend

§ 9.6 A resolution authorizing the Speaker to administer the oath to a Representative-elect was open to amendment when the House refused to order the previous question thereon, prior to the adoption of rules.

On Jan. 3, 1969,[14] after the House refused to order the previous question on a resolution to authorize the Speaker to administer the oath of office to Member-elect Adam C. Powell, of New York, an amendment was offered providing that the Speaker administer the oath but including several conditions of punishment for acts committed in a prior Congress.

Motion to Postpone

§ 9.7 A motion to postpone consideration of a resolution to a day certain is in order prior to adoption of the rules.

On Jan. 21, 1971,[15] it was moved that an amendment to the rules of the House be considered as read and printed in the Record and that further consideration be put over until the next day. The House agreed to the motion.

Call of the House

§ 9.8 Prior to the adoption of the rules, a motion for a call of the House is in order

11. 75 CONG. REC. 12, 72d Cong. 1st Sess.
12. John N. Garner (Tex.).
13. Speaker Clark's ruling was made on Apr. 7, 1913, 50 CONG. REC. 77, 63d Cong. 1st Sess., and is cited at 8 Cannon's Precedents § 3384.
14. 115 CONG. REC. 22, 23, 91st Cong. 1st Sess.
15. 117 CONG. REC. 15, 92d Cong. 1st Sess.

when the absence of a quorum is announced; following the establishment of a quorum, further proceedings under the call may be dispensed with by unanimous consent.

On Jan. 21, 1971,[16] before the adoption of rules, a call of the House was ordered in the absence of a quorum. After a quorum of 395 Members had answered to their names, further proceedings under the call were dispensed with by unanimous consent.

§ 10. Adoption of Rules; Applicability

Under the Constitution of the United States, "Each House may determine the Rules of its Proceedings . . . ."[17] The Supreme Court has interpreted this clause to mean that the House possesses nearly absolute power to adopt its own procedural rules. In *United States* v *Ballin*,[18] judicial inquiry into the validity of a House rule was limited to the question of whether the House possessed the power to adopt the rule. The Court determined the only limitations on that power to be that the rule must not violate constitutional rights, and the method of proceeding must be reasonably related to the desired result. The wisdom or folly of the rule was held not to be subject to judicial scrutiny.

The House, through the rulings of the Speaker, has interpreted its constitutional power to determine its own procedural rules very broadly. Since the late 1800s,[19] the rulings of the Speaker on the subject have consistently embodied the principle that such power must be exercised by each Congress. The procedural rules of the preceding Congress are no longer in effect at the opening session of the new Congress,[20] and the House proceeds under general parliamentary law until the rules are adopted.[1] Similarly, Congress may not, by rule or statute, provide that the House is to be governed by certain procedural rules during a future Congress.[2] Such

16. 117 CONG. REC. 14, 92d Cong. 1st Sess.

17. U.S. Const. art. I, § 5, clause 2.

18. 144 U.S. 5 (1892).

19. See 5 Hinds' Precedents §§ 6743–6755.

20. 8 Cannon's Precedents § 3383; 5 Hinds' Precedents § 6002.

1. See § 1, supra, and §§ 10.1, 10.2, infra; see also 8 Cannon's Precedents §§ 3383–3386; 5 Hinds' Precedents §§ 6758–6763.

2. See § 1, supra, and § 10.1, infra; see also 1 Hinds' Precedents §§ 187, 210. At one time, the theory that a House

provisions must be incorporated into the standing rules by the current House if they are to be in effect.[3]

The House traditionally exercises its constitutional power to adopt the rules at the opening session of each Congress.[4] The resolution adopting the rules, which is usually offered by the former Chairman of the Committee on Rules,[5] at the direction of the majority party caucus, generally provides that the rules of the preceding House, with amendments, if any, shall be the rules of the current House.[6] Thus despite the fact that the rules are adopted *de novo* at the beginning of each Congress, in actual practice, a system of permanent standing rules has been developed.

The resolution adopting the rules is one of several resolutions considered under general parliamentary law each Congress, before standing rules are adopted. This body of general parliamentary law, which is further defined by each new ruling on the subject by the Speaker, has traditionally been construed to embrace those rules of procedure which embody practices of long established custom.[7]

Thus the Speaker follows as closely as practicable the customs and practices of the House under former rules,[8] and gives weight to the precedents of the House in interpreting general parliamentary law.[9] It is important to note, however, that general parliamentary law may differ substantially from the rules adopted by the House in the preceding Congress, in which case the rules may be deemed inapplicable.[10]

might make its rules binding on the succeeding House was much discussed, and even followed in practice. See 5 Hinds' Precedents §§ 6743–6755.

3. See 8 Cannon's Precedents § 3383; 5 Hinds' Precedents § 6002.

4. See § 10.3, infra. For the sequence of the adoption of rules in relation to other organizational business, see § 7, supra.

5. See § 10.4, infra.

6. See § 10.5, infra. The resolution incorporates applicable provisions of the Legislative Reorganization Acts of 1946 and 1970.

7. 6 Cannon's Precedents § 191.

8. 8 Cannon's Precedents § 3386.

9. 8 Cannon's Precedents § 3384. For a general discussion of the parliamentary law applied in the House, see § 1, supra. For general procedure before rules adoption, see § 8, supra, and for motions practice before rules adoption, see § 9, supra.

10. For example, on Jan. 7, 1959, Speaker Sam Rayburn (Tex.), when the previous question was moved without debate, ruled that the House rule, as adopted by the previous Congress, which prescribed 40 minutes of debate in such situations,

On a number of occasions the Speaker has been called upon to interpret general parliamentary law in connection with the adoption of the rules.[11] It has been ruled, for example, that amendments to the resolution may be offered only when the Member in control of it yields for that purpose or when the previous question is rejected,[12] and that clerical errors may be corrected in the engrossment of the resolution after adoption.[13]

Right of Each House To Determine Its Procedural Rules

§ 10.1 Congress may not, by rule or statute, prescribe rules of procedure for a future House.

On Jan. 22, 1971,[14] during the debate on the resolution adopting the rules, the following point of order was raised:

> MR. HALL:[15] Mr. Speaker, I do desire to make a point of order against consideration of Resolution 5 [the resolution adopting the rules], inasmuch as it is against the law of the land.
>
> THE SPEAKER:[16] The gentleman will state his point of order.
>
> MR. HALL: Mr. Speaker, the Legislative Reorganization Act of 1970 is in fact now the law of the land, Public Law No. 91–510, and section 601 (6) thereof states that the effective date of the act is January 1, 1971. . . .
>
> Now, Mr. Speaker, the gentleman from Missouri full well realizes the precedents of the House, the fact that we operate until such time as rules are adopted, under "general parliamentary procedure," and that this is subject to wide interpretation.
>
> On the other hand, Mr. Speaker, my point of order is lodged on the fact that the law of the land, first, says that any committee report or legislation, resolution, must be available to Members for 3 calendar days prior to consideration—section 108(b)(4); and, second that any minority has 3 calendar days to file views with the clerk of any subcommittee—section 107(b). . . .
>
> . . . I pray that, based on the precedents, based on Jefferson's Rules of Procedure, which a former Speaker has ruled are indeed the greater bulk of existing parliamentary procedure, that we do not go forward with consideration of this resolution at this time until we have had due process, the Members have had the resolution in their hands for a minimum of 3 days, that minority reports have had an opportunity for preparation and distribution, and so that true compliance of the law of the land be accomplished.
>
> THE SPEAKER: The Chair is ready to rule. . . .

was not applicable. 105 CONG. REC. 14, 86th Cong. 1st Sess.

11. See §§ 10.1, and 10.2, infra. For general parliamentary law relating to action on resolutions, see § 12, infra.

12. See § 10.9, infra.

13. See § 10.12, infra.

14. 117 CONG. REC. 132, 92d Cong. 1st Sess.

15. Mr. Durward G. Hall (Mo.).

16. Carl Albert (Okla.).

The Constitution is, of course, superior to any public statute and the Constitution in article I, section 5, gives each House the authority to determine the rules of its proceedings, and it has been repeatedly held that the power of each new House to make its own rules may not be impaired or controlled by the rules or actions of a preceding House.

These principles are, in fact, recognized and enunciated in Public Law 91–510, the Legislative Reorganization Act. Section 101 of the act states in part that the rules changes recommended therein are enacted "as an exercise of the rule-making power of the House subject to and with full recognition of the power of the House to enact or change any rule of the House at any time in its exercise of its constitutional right to determine the rules of its proceedings."

The Chair overrules the point of order.

§ 10.2 The House proceeds under general parliamentary law before rules are adopted at the beginning of each Congress.

On Jan. 3, 1953, after the previous question was moved on the resolution adopting the rules for the 83d Congress, the following parliamentary inquiry was raised:

MR. EBERHARTER:[17] Mr. Speaker, are we proceeding now under the rules we are going to adopt later, and which have not yet been adopted? Under what rules is the House proceeding, or is it proceeding under any rules?

THE SPEAKER:[18] The House is proceeding under the general parliamentary rules we have had for many years.

MR. EBERHARTER: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. EBERHARTER: Mr. Speaker, if the rules are not adopted today and the question goes over until next week, would we still proceed under some other rules that have not yet been adopted by the Eighty-third Congress?

THE SPEAKER: If the rules were not adopted today, we would proceed as we are this very moment, under general parliamentary law.[19]

Introduction of Resolution Adopting the Rules

§ 10.3 Traditionally the resolution adopting the rules is offered at the opening session of the new Congress after the adoption of the resolution authorizing the Clerk to inform the President of the election of the Speaker and the Clerk of the House of Representatives.

17. Mr. Herman P. Eberharter (Pa.).

18. Joseph W. Martin, Jr. (Mass.).

19. 99 CONG. REC. 24, 83d Cong. 1st Sess., Jan. 3, 1953. For a more recent statement, by Speaker Carl Albert (Okla.), that the House proceeds under general parliamentary law prior to the adoption of the rules, see 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971.

At the opening session of the 91st Congress,[1] following the adoption of a resolution authorizing the appointment of a committee to notify the President of the assembly of Congress (H. Res. 5), the House adopted a resolution instructing the Clerk to inform the President that the House had elected John W. McCormack, Speaker, and W. Pat Jennings, Clerk (H. Res. 6). Mr. William M. Colmer, of Mississippi, then introduced the resolution providing for the adoption of the rules for the 91st Congress (H. Res. 7), which was agreed to without debate.[2]

On occasion, the resolution adopting the rules has been immediately preceded by a unanimous-consent request,[3] or by another resolution.[4] And in the 73d Congress,[5] the House passed a bill of major importance before the adoption of the rules.

§ 10.4 Generally, the resolution adopting the rules is offered by the former Chairman of the Committee on Rules at the direction of the majority caucus.

In the 92d Congress, Mr. William M. Colmer, of Mississippi, introduced the resolution adopting the rules,[6] and later during the debate thereon remarked that he was presenting the resolution by direction of the Democratic Caucus, but was opposed to one of the provisions contained therein.[7]

Parliamentarian's Note: When the former Chairman of the Com-

1. 115 Cong. Rec. 35, 91st Cong. 1st Sess., Jan. 3, 1969. For other recent examples of this order of proceedings see 117 Cong. Rec. 13, 92d Cong. 1st Sess., Jan. 21, 1971; 113 Cong. Rec. 28, 90th Cong. 1st Sess., Jan. 10, 1967.
2. While this order of proceeding is generally followed, several deviations are noted in Hinds' Precedents. In one instance the rules were adopted immediately after the election of the Speaker (1 Hinds' Precedents § 93), and in another the rules were adopted before the election of the Clerk (1 Hinds' Precedents § 245).
3. See 84 Cong. Rec. 13, 76th Cong. 1st Sess., Jan. 3, 1939; 79 Cong. Rec. 13, 74th Cong. 1st Sess., Jan. 3, 1935 (unanimous consent requested for permission for the House to recess).
4. See 111 Cong. Rec. 20, 21, 89th Cong. 1st Sess., Jan. 4, 1965 (resolution on clerk-hire).
5. 77 Cong. Rec. 83, 73d Cong. 1st Sess., Mar. 9, 1933 (see § 12.8, infra).
6. 117 Cong. Rec. 13, 92d Cong. 1st Sess., Jan. 21, 1971. For other recent examples, see 115 Cong. Rec. 35, 91st Cong. 1st Sess., Jan. 3, 1969; 107 Cong. Rec. 25, 87th Cong. 1st Sess., Jan. 3, 1961; 105 Cong. Rec. 15, 86th Cong. 1st Sess., Jan. 7, 1959.
7. 117 Cong. Rec. 132, 92d Cong. 1st Sess., Jan. 22, 1971.

mittee on Rules is opposed to key provisions of the resolution adopting the rules, the resolution may be offered by the Majority Leader.

In the 88th,[8] 89th,[9] and 90th Congresses,[10] the resolution was introduced by Majority Leader Carl Albert, of Oklahoma, at the direction of the Democratic Caucus.[11] The debate over the adoption of the rules for the 88th Congress was focused on the merits of a provision which would increase the size of the Committee on Rules from 12 to 15 members.[12] Howard W. Smith, of Virginia, the former Chairman of the Committee on Rules, indicated his opposition to that provision as follows:

> If this resolution passes, you all know what it means, and it will happen again, and that is to say whenever the President wants a bill passed or the Speaker wants a bill submitted to the floor, he gets it. Now, I think that there ought to be some discretion about this matter so that the Committee on Rules could do now like they have done in the past, at least give the matter some looking over, give it some consideration and a little time, so that the country might know what some of these measures are about. I hope none of my southern friends are going to be complaining around here when certain measures come up that are going to come up, and come up quite promptly, if the Committee on Rules is packed again. And, I hope that when they go to vote on this resolution that they will remember that there are some things involved in this that will greatly and adversely affect their States; not just how many people should be on the Committee on Rules or who shall govern the Committee on Rules.[13]

In the 89th and 90th Congresses, the resolution adopting the rules incorporated the 21-day rule, providing for the discharge of the Committee on Rules from the consideration of a special order by a majority vote of the House. On both occasions, the former Chairman of the Committee on Rules demonstrated his opposition to the resolution by voting against the motion on the previous question.[14]

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8. 109 CONG. REC. 14, 88th Cong. 1st Sess., Jan. 9, 1963.

9. 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965.

10. 113 CONG. REC. 28, 90th Cong. 1st Sess., Jan. 10, 1967.

11. 111 CONG. REC. 23, 89th Cong. 1st Sess., Jan. 4, 1965 (remarks of Mr. Albert).

12. 109 CONG. REC. 14, 88th Cong. 1st Sess., Jan. 9, 1963.

13. 109 CONG. REC. 18, 88th Cong., 1st Sess., Jan. 9, 1963.

14. 111 CONG. REC. 24, 89th Cong., 1st Sess., Jan. 4, 1965 (Howard W. Smith, [Va.], former Chairman of the Committee on Rules); 113 CONG. REC. 31, 90th Cong. 1st Sess., Jan. 10, 1967 (William M. Colmer, [Miss.], former Chairman of the Committee on Rules).

Form of Resolution

§ 10.5 The resolution adopting the rules usually provides that the rules of the preceding House, with or without amendments shall be the rules of the current House.

The following proceedings in the 87th Congress[15] illustrate the practice whereby the House adopts the rules of the preceding Congress:

> MR. HOWARD W. SMITH, of Virginia: Mr. Speaker, I offer a resolution.
>
> The Clerk read as follows:
>
> *Resolved*, That the Rules of the House of Representatives of the 86th Congress, together with all applicable provisions of the Legislative Reorganization Act of 1946, as amended, be, and they are hereby, adopted as the Rules of the House of Representatives of the 87th Congress.

In recent Congresses,[16] the resolution adopting the rules of the previous Congress frequently has provided for amendments to those rules. Such a resolution[17] routinely contains language substantially similar to the resolution adopting the rules of the previous Congress intact, with the following addition:

> [The rules of the preceding Congress are adopted], with the following amendment therein as a part thereof, to wit: . . .

Although a resolution adopting the rules usually takes the above form, the entire set of standing rules may be drafted as part of the resolution. In the 83d Congress[18] the resolution adopting the rules provided in part:

> *Resolved*, That the following be, and they are hereby, adopted as the rules of the Eighty-third Congress. . . .

Withdrawing or Postponing the Resolution to Adopt Rules

§ 10.6 The resolution adopting the rules may be withdrawn at any time before action is taken thereon.

In the 92d Congress[19] the reading of the resolution adopting the rules by the Clerk was interrupted by the following proceedings:

> THE SPEAKER:[20] The Clerk will suspend the reading of the resolution.

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15. 107 CONG. REC. 25, 87th Cong. 1st Sess., Jan. 3, 1961. For similar examples, see 113 CONG. REC. 28, 90th Cong. 1st Sess., Jan. 10, 1967; 105 CONG. REC. 15, 86th Cong. 1st Sess., Jan. 7, 1959; 103 CONG. REC. 47, 85th Cong. 1st Sess., Jan. 3, 1957.

16. See, *e.g.*, 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971; 115 CONG. REC. 35, 91st Cong. 1st Sess., Jan. 3, 1969; 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965.

17. See, *e.g.*, 109 CONG. REC. 14, 88th Cong. 1st Sess., Jan. 9, 1963.

18. 99 CONG. REC. 15–24, 83d Cong. 1st Sess., Jan. 3, 1953.

19. 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971.

20. Carl Albert (Okla.).

The Chair recognizes the gentleman from Mississippi (Mr. William M. Colmer).

MR. COLMER: Mr. Speaker, I am advised that an error was made in the haste here and that the wrong resolution was submitted. Therefore, I ask unanimous consent——

THE SPEAKER: The gentleman from Mississippi can withdraw the resolution.

MR. COLMER: Mr. Speaker, I withdraw the resolution.

MR. GROSS:[1] Mr. Speaker, reserving the right to object——

MR. SPEAKER: The reservation of objection is not in order.

MR. GROSS: Mr. Speaker, did not the gentleman from Mississippi offer a resolution to the House?

THE SPEAKER: Yes, he did; but he has withdrawn it; and he has that right to withdraw it.

§ 10.7 Consideration of the resolution adopting the rules may be postponed, on motion, until the following day.

At the opening session of the 92d Congress,[2] after the resolution adopting the rules was read and a point of order was reserved against it, the following motion was offered:

MR. COLMER:[3] Mr. Speaker, I move that further consideration of the resolution be put over until tomorrow, and that the resolution be printed in the Record.

THE SPEAKER:[4] The question is on the motion offered by the gentleman from Mississippi.

The motion was agreed to.

Non-Divisibility of the Resolution

§ 10.8 The Speaker indicated, in response to a parliamentary inquiry, that a resolution adopting the rules of the preceding Congress with three amendments was not subject to a demand for a division of the question.

A question as to the divisibility of the vote on the resolution arose in the 89th Congress[5] in the form of a parliamentary inquiry:

MR. SMITH:[6]. . .

There is another question I want to ask, and I think maybe the gentleman might yield. There are three distinct changes of existing rules of the House which have been in effect for a long time. . . .

. . . Under the rules perhaps this is a parliamentary inquiry. Is the oppor-

1. Mr. Harold R. Gross (Iowa).
2. 117 CONG. REC. 15, 92d Cong. 1st Sess., Jan. 21, 1971.
3. Mr. William M. Colmer (Miss.).
4. Carl Albert (Okla.).
5. 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965. In Hinds' Precedents, a similar situation is noted in which the Speaker, David B. Henderson (Iowa), ruled that it was not in order to demand a separate vote on each rule. 5 Hinds' Precedents § 6159.
6. Mr. Howard W. Smith (Va.)

tunity for a division of the question going to be had so we can vote for what we want to vote for and vote against what we do not want to vote for instead of having to swallow the whole dose at one time.

THE SPEAKER:[7] The gentleman is making a parliamentary inquiry. In reply, the Chair may say this resolution is not divisible.

Amending the Resolution

§ 10.9 When the Member in control of the resolution adopting the rules refuses to yield for the introduction of amendments, they may be offered only if the previous question on the resolution is first voted down.

At the opening session of the 83d Congress,[8] the Member who had offered the resolution adopting the rules indicated that he would not yield for the introduction of amendments. The following parliamentary inquiry was then raised:

MR. CELLER:[9] Mr. Speaker, do I correctly understand that the parliamentary situation is that if the motion for the previous question is not voted down, no opportunity will be given to offer an amendment by way of liberalizing the rules?

THE SPEAKER:[10] The gentleman states the situation accurately.

The proceedings in connection with the adoption of the rules of the 92d Congress are illustrative of the procedure usually followed when amendments to the resolution are offered. On Jan. 22, 1971,[11] the previous question on the resolution, which incorporated the controversial 21-day rule for discharging the Committee on Rules as part of the standing rules, was rejected. An amendment deleting that provision was then offered, and subsequently agreed to by the House.[12]

§ 10.10 Although generally, an amendment may be offered only after the previous question is voted down on the resolution to adopt rules,[13] there are exceptions to this rule.

In the 79th Congress,[14] an amendment to the resolution adopting the rules was introduced without objection even though the Member in charge of the resolu-

7. John W. McCormack (Mass.)

8. 99 CONG. REC. 24, 83d Cong. 1st Sess., Jan. 3, 1953.

9. Mr. Emanuel Celler (N.Y.).

10. Joseph W. Martin, Jr. (Mass.).

11. 117 CONG. REC. 140. 92d Cong. 1st Sess.

12. 117 CONG. REC. 143, 92d Cong. 1st Sess., Jan. 22, 1971.

13. 113 CONG. REC. 31, 90th Cong. 1st Sess., Jan. 10, 1967; 97 CONG. REC. 17, 92d Cong. 1st Sess., Jan. 3, 1951; 95 CONG. REC. 10, 81st Cong. 1st Sess., Jan. 3, 1949.

14. 91 CONG. REC. 10, 79th Cong. 1st Sess., Jan. 3, 1945.

tion had not yielded for that purpose, nor had he moved the previous question.

Speaker's Participation in Debate on the Resolution

§ 10.11 The Speaker may participate in the debate on the resolution adopting the rules.

In the 89th Congress,[15] the Speaker, John W. McCormack, of Massachusetts, took the floor in support of the resolution adopting the rules, and in the course of his remarks, explained his reasons for so doing:

> MR. MCCORMACK: Mr. Speaker, as this resolution involves changes in the rules, I feel that my views should be known to the Members of the House. I strongly favor the resolution offered by the gentleman from Oklahoma [Mr. Albert]. I think the 21-day rule is a rule that is for the benefit of the individual Member of the House without regard to party affiliation in giving [him] the opportunity of passing upon legislation that has been reported out of a standing committee.

Correction of the Resolution

§ 10.12 The House, by unanimous consent, may direct the Clerk to correct clerical errors in the engrossment of the resolution adopting the rules.

The resolution adopting the rules for the 90th Congress, as passed by the House on Jan. 10, 1967,[16] contained several errors. On Jan. 12, 1967,[17] Majority Leader Carl Albert, of Oklahoma; who had introduced the resolution, asked the House for unanimous consent to direct the Clerk to make the following corrections in the engrossment of the resolution: First, to strike out "Ninetieth Congress" and insert "Eighty-ninth Congress"; and second, to insert the clause "With the following amendment, to wit:", which was necessary to integrate the amendment into the resolution. There was no objection to the request. Mr. Albert then obtained unanimous consent for the resolution as corrected to be printed in the Journal and in the Record.[18]

§ 11. Resumption of Legislative Business

Once the two Houses of Congress have assembled, elected offi-

15. 111 CONG. REC. 23, 89th Cong. 1st Sess., Jan. 4, 1965. See also 109 CONG. REC. 14–22, 88th Cong. 1st Sess., where Speaker McCormack took the floor to debate the resolution adopting the rules and increasing the membership of the Committee on Rules.

16. 113 CONG. REC. 33, 90th Cong. 1st Sess.

17. 113 CONG. REC. 430, 90th Cong. 1st Sess.

18. 113 CONG. REC. 431, 90th Cong. 1st Sess., Jan. 12, 1967.

cers, sworn Members, and adopted rules, the resumption of legislative business is in order.[19] Two important questions arise, however, as to the taking up of business: first, at what point in time does Congress actually begin legislating after organization, and second, to what extent does business carry over from the previous session. As to the time the two new Houses begin transacting business, there is a long established custom of postponing business not pertinent to organization until after the President has delivered his state of the Union message to the Congress.[20] In the Senate, this principle applies both at the beginning of a new session of a new Congress, and at the commencement of a consecutive session of an existing Congress.[1] Although the House does not transact legislative business at the beginning of a new Congress until after the Presidential message, that body does resume business at the beginning of a second or third session before the Presidential message,[2] and even on occasion before a quorum has appeared in the Senate.[3]

Upon convening for a second or third session during the term of a Congress, the House resumes all business that was pending either before the House or before committees at the adjournment *sine die* of the preceding session. That practice of resuming business grows out of Rule XXVI of the House rules,[4] which specifically continues all business before committees as if no adjournment had taken place; actual practice under

19. The Act of 1789, Ch. 1, § 2, 1 Stat. 23, as amended, 2 USC § 25 (1948) requires that the oath be administered to the Speaker, Members and Clerk "previous to entering on any other business. . . ." See also 1 Hinds' Precedents §§ 130, 140, 237, 241, 243; 5 Hinds' Precedents §§ 6647–49; *contra* (allowing business before the election of the Clerk), 1 Hinds' Precedents §§ 242, 244, 245.

The Speaker has suggested that bills should not be acted upon prior to the adoption of rules. 117 CONG. REC. 16, 92d Cong. 1st Sess., Jan. 20, 1971 (Speaker Carl Albert); the announcement is cited at § 12.2, infra. For an occasion where a major bill was considered and passed before rules adoption, see 77 CONG. REC. 83, 73d Cong. 1st Sess., Mar. 9, 1933 (cited at § 12.8, infra).

20. See 1 Hinds' Precedents §§ 81, 122–125; § 7.1, supra; § 12.10, infra. See the remarks, in explanation of the custom, by Mr. Michael J. Mansfield, 114 CONG. REC. 4–5, 90th Cong. 2d Sess., Jan. 15, 1968 (quoted at § 11.4, infra).

1. See § 12.10, infra (first session) and § 11.4, infra (subsequent session).

2. See §§ 11.2 and 11.3, infra.

3. See 1 Hinds' Precedents § 126.

4. *House Rules and Manual* § 901 (1973).

the rule continues all business before the House, not just that before committees.[5]

The vast majority of business remaining at the end of one Congress does not, however, carry over to the beginning of a new Congress, since Congress does not allow the past proceedings of one Congress to bind its successor. Few categories have carried over from one Congress to the next; impeachment proceedings pending on the last day of one Congress have been continued at the beginning of the succeeding one,[6] and a Presidential veto message to the House was on one occasion read and received at the beginning of the next Congress.[7]

The committees of a new Congress do not routinely resume the business that was pending at the end of the prior Congress.[8] However, should the House membership wish to authorize a special committee of investigation to continue its business into a new Congress, the new House may so authorize by resolution.[9] On one occasion, the House accepted as binding a concurrent resolution of the last Congress requiring the appointment of a joint committee; although the joint committee was never actually created, the House was prepared to accord to the resolution the force of a binding joint rule.[10]

In contrast to the House principle that committees and their functions regularly expire with the term of the Congress, Senate committees may carry over to a new Congress, since the Senate is a continuing legislative body as opposed to the House.[11]

Resumption of Committee Investigation in New Congress

§ 11.1 A new Congress may, by resolution, continue a special committee investigation begun by a former Congress.

5. For the history and the scope of the rule, see 5 Hinds' Precedents § 6727. The practice of resuming all old business at the start of a session during the term of a Congress departed from the rule of the English Parliament, as stated in Jefferson's Manual. *House Rules and Manual* § 592 (1973).
6. Jefferson's Manual, *House Rules and Manual* § 620 (1973). On two occasions, the impeachment trial was conducted by the Senate following the impeachment by the House in the prior Congress (see 3 Hinds' Precedents §§ 2320, 2321; 6 Cannon's Precedents §§ 515, 516). Whether the House itself may continue unfinished impeachment proceedings is discussed in Ch. 14, infra.
7. See 5 Hinds' Precedents § 6645.
8. See Rule XXXVI, *House Rules and Manual* § 932 (1973).
9. See § 11.1, infra.
10. 4 Hinds' Precedents § 4445.
11. See 4 Hinds' Precedents § 4544.

On Jan. 3, 1935,[12] the House agreed to the following resolution:

> *Resolved*, That the Special Committee on Un-American Activities, appointed by the Speaker to conduct certain investigations under authority of House Resolution 198 of the Seventy-third Congress, is hereby granted additional time until February 4, 1935, to prepare and file its report and recommendations for legislation with the House. Any unexpended balance of the total amount authorized for the use of said special committee under House Resolution 199 and House Resolution 424 of the Seventy-third Congress is hereby continued available until said date.

Resumption of Old Business-Second Session

§ 11.2 On the opening day of the second session the House conducted business, the call of the Consent Calendar.

On Jan. 19, 1970,[13] Speaker John W. McCormack, of Massachusetts, stated that as it was Consent Calendar day, the Clerk would call the first bill on the Consent Calendar.

§ 11.3 A Senate bill, messaged to the House following *sine die* adjournment, was referred to committee on the opening day of the second session.

On Jan. 10, 1966, the opening day of the second session of the 89th Congress,[14] Senate bill 2471, messaged to the House during the *sine die* adjournment, was taken from the Speaker's table and referred to committee.

Senate Practice

§ 11.4 While the Senate rules do not prohibit business on the opening day of a new session, it is the custom of that body to defer all business until after the President has delivered his state of the Union address.

On Jan. 15, 1968,[15] the opening day of the second session, Vice President Hubert H. Humphrey, Jr. ruled in response to a series of parliamentary inquiries that there was no rule in the Senate rules that required adjournment on opening day without consideration of speeches, resolutions, or petitions, or that prohibited a Senator from making a speech or prohibited the Senate from receiving a petition of grievance from citizens. The Vice President stated, how-

12. 79 Cong. Rec. 24, 74th Cong. 1st Sess.

13. 116 Cong. Rec. 150, 91st Cong. 2d Sess.

14. 112 Cong. Rec. 36, 89th Cong. 2d Sess.

15. 114 Cong. Rec. 4, 5, 90th Cong. 2d Sess.

ever, that there was a long-established historical precedent in the Senate for postponing business until after the state of the Union message to the Congress by the President. The Majority Leader of the Senate, Michael J. Mansfield, of Montana, then arose and stated his intention to shortly move for adjournment, for the following reasons:

> I have had some conversations with various Senators relative to their desire to have a petition read to the Senate today.
>
> I appreciate the courtesy which they showed in telling me of what they intended to do.
>
> I explained to them, or at least I tried to, that, I had been asked by many other Senators whether there was to be any business today, and I had told them all that under custom and procedures, there would be no business, there would be no morning hours, and there would be no introduction of bills because that was the custom, based on practice and precedent. It was a custom which gave to the President of the United States a courtesy, and it was a custom which was predicated on the idea that no business of any sort should be transacted until after the delivery of the President's state of the Union message.
>
> It is my understanding that only on one occasion was this practice abrogated and that was when Congress received notice that the President of the United States would not be in the position to deliver his state of the Union message until 2 weeks after Congress convened.

The Senate then adjourned, without transacting any business, until the following day.

§ 11.5 Contrary to the usual custom in the Senate of deferring all business at the opening of a session until after the President's message on the state of the Union, the Senate agreed to begin business on the second day of the session, before the President's message.

On Jan. 18, 1972,[16] the Senate agreed by unanimous consent to take up unfinished business from the first session on Jan. 19, the following day. The President informed the Senate that he would deliver the state of the Union message to the Congress on Jan. 20, 1972.

§ 12. Action on Bills and Resolutions During Organization

As a general principle, resolutions may be offered and acted upon in both Houses of Congress during the entire period of organization, from the first call to order to the President's message on the state of the Union. In addition, a

16. 118 CONG. REC. 4, 92d Cong. 2d Sess.

major bill may on a rare occasion be considered and passed in both Houses before organization is completed by the adoption of rules,[17] although a bill will not be considered in the House before the administration of the oath to Members-elect.[18] Major bills are not usually considered by the House as a body before rules have been adopted and before the President has delivered his message to Congress.[19] In prevailing practice, numerous "opening day bills" are introduced by House Members at the beginning of a new Congress, although they may not actually be referred to committee until a later time.[20] However, in the Senate the introduction of bills at the opening of a new Congress, or even at the opening of a new session, is not generally permitted until after the Presidential message.[1]

In order to complete organizational business, it is of course necessary to offer various House resolutions before the adoption of rules; many of those resolutions, which are customarily drafted to complete organizational business, are discussed in the preceding sections of this chapter, and will not be discussed here.[2] This section will deal with the general principles that govern the consideration and passage of bills and resolutions offered before the adoption of rules.

Primarily, any resolution affecting the organization of the House is privileged and takes precedence over other matters before the adoption of standing rules.[3] Under general parliamentary law, one hour of debate is in order on a resolution, the time to be con-

17. See § 12.8, infra.

18. 2 USC § 25 requires that the oath be administered to the Speaker, to Members, and to the Clerk before the House enters into general business. If the right of individual Members to be sworn is challenged, however, the House may proceed to business before resolving the challenges (see Ch. 2, infra). On occasion, the House has transacted business, including the adoption of rules, before the election of a Clerk (see 1 Hinds' Precedents §§ 93, 198–203, 240, 242, 244, 245).

19. See § 11, supra, for the time of taking up of legislative business.

20. See, *e.g.*, §§ 12.1, 12.2, infra.

1. See § 12.10, infra (first session); § 11.4, supra (subsequent session).

2. Examples of such standardized resolutions, whose adoption by the House is usually perfunctory, are the resolution to proceed to the election of a Speaker (see § 6, supra), the resolution to elect officers of the House (see § 7, supra), and the resolutions to notify the Senate and the President of the assembly of the House (see § 7, supra).

3. See 6 Cannon's Precedents § 3.

trolled by the proponent thereof;[4] a resolution offered before rules are adopted may be withdrawn at any time before action is taken thereon, without obtaining the consent of the House.[5] A pending resolution is not subject to amendment unless the Member in control yields for that purpose,[6] or unless the previous question is moved and rejected.[7] Any amendment offered to a resolution during organization is subject to the requirement that it must be germane.[8] For example, when an amendment proposing punishment was offered to a resolution authorizing the Speaker to administer the oath of office to a Member-elect, the amendment was ruled not germane, prior to the adoption of standing rules.[9]

When bills and resolutions are offered on the floor before the House is organized, they cannot be offered by committee, as committees have not yet been formally constituted. Most of the organizational resolutions are offered by ranking party leaders.[10] The House does, however, maintain informal committee jurisdiction over some of the opening functions which require resolutions, such as the adoption of rules and the fixing of the hour of daily meeting.[11] (A bill or resolution on the floor during organization may be recommitted to a special committee to be appointed by the Speaker.)[12]

4. See 5 Hinds' Precedents § 6759; § 12.3, infra.

5. See § 12.4, infra.

6. See § 12.5, infra.

7. See § 12.6, infra. For the treatment of the motion to amend and the motion for the previous question, prior to the adoption of rules. see §§ 8, 9, supra.

8. See 5 Hinds' Precedents § 6760; § 12.6, infra (resolution open to germane amendment when previous question rejected).

9. See § 12.7, infra.

10. See, *e.g.*, opening day of the 92d Congress, 117 CONG. REC 13–16, Jan. 21, 1971. Olin E. Teague, Chairman, Democratic Caucus, offered the resolution to elect officers; Wilbur Mills, former Chairman, Committee on Ways and Means of the 92d Congress, offered the resolution to notify the Senate of the organization of the House; Hale Boggs, Majority Leader, offered resolutions to notify the President of the assembly of Congress and to set a joint session for the Presidential message; George Mahon, former Chairman, Committee on Appropriations of the 92d Congress, offered a resolution to notify the President of the election of the Speaker and of the Clerk.

11. The resolution to adopt rules and the resolution to fix the hour of daily meeting were offered at the beginning of the 92d Congress by William Colmer, former Chairman of the Committee on Rules of the 92d Congress. 117 CONG. REC. 14, 15, Jan. 21, 1971.

12. For the motion to recommit and its effect before adoption of rules, see § 9, supra.

As to consideration of bills and resolutions before the adoption of rules, the House proceeds not only under general parliamentary law but also under the precedents and the rules of prior Congresses. When the House considered an emergency bill at the beginning of the 73d Congress, the provision was considered, by unanimous consent, as if under a rule of the previous Congress restricting debate and amendments.[13] But a statute requiring that proposed resolutions and reports be made available to Members within a certain time before their consideration on the floor has no effect prior to the adoption of the rules. Such a statute has been determined an exercise of the rule making power of the preceding Congress and therefore not binding on the House before the adoption of current rules.[14]

As stated above, the Senate postpones action on bills at the beginning of a second or third session until after the Presidential message. The Senate has also refrained from legislative business during those protracted periods when the House was unable to elect a Speaker.[15] Although there is no occasion where the House has resumed business before the organization of the Senate at the beginning of a new Congress, the House has proceeded with general legislative business at the beginning of a second session before a quorum had appeared in the Senate.[16]

Introduction of "Opening Day Bills"

§ 12.1 Where a large number of bills are introduced on the opening day of the Congress, the Speaker may announce that those bills that cannot be referred on that day may be included in the next day's Record and printed with the date of the opening day.

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13. See § 12.8, infra.

14. 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971, cited at § 12.9, infra. The statutory provisions referred to above were part of the Legislative Reorganization Act of 1970, Pub. L. No. 91–510, 84 Stat. 1140 [§§ 108(b)(4) and 107(b)]. The ruling of the Chair (Speaker Carl Albert) was based in part on the language of the statute itself, at § 101, characterizing its own provisions "as an exercise of the rule-making power of the House, subject to and with full recognition of the power of the House to enact or change any rule of the House at any time in its exercise of its constitutional right to determine the rules of its proceedings."

15. See 1 Hinds' Precedents §§ 122–25.

16. See 1 Hinds' Precedents § 126.

On Jan. 3, 1957,[17] Speaker Sam Rayburn, of Texas, made the following announcement:

> As Members are aware, they have the privilege today of introducing bills. Heretofore on the opening day of a new Congress several thousand bills have been introduced. It will be readily apparent to all Members that it may be a physical impossibility for the Speaker to examine each bill for reference today. The Chair will do his best to refer as many bills as possible, but he will ask the indulgence of Members if he is unable to refer all the bills that may be introduced. Those bills which are not referred and do not appear in the Record as of today will be included in the next day's Record and printed with a date as of today.

§ 12.2 The Speaker stated that prior to the adoption of rules, bills could not be introduced and immediately referred to committee, in the absence of procedure to govern them.

On Jan. 21, 1971,[18] Speaker Carl Albert, of Oklahoma, made a statement concerning the introduction and reference of bills during the organization of the House. He alluded to the practice of Members of introducing several thousand bills on the opening day of Congress and to the announcements of past Speakers in relation to the impossibility of referring them all to committee on opening day. He then stated:

> Since the rules of the 93d Congress have not yet been adopted, the right of Members to introduce bills, and the authority of the Speaker to refer them, is technically delayed. The Chair will state that bills dropped in the hopper will be held until the adoption of the rules, at which time they will be referred as expeditiously as possible to the appropriate committee. At that time, the bills which are not referred and do not appear in the Record as of that day will be included in the next day's Record and printed with a date as of the time the rules were adopted.

Action on Resolutions Prior to Adoption of Rules

§ 12.3 A resolution offered in the House prior to the adoption of the standing rules is debatable under the hour rule.

On Jan. 3, 1969,[19] Speaker John W. McCormack, of Massachusetts, ruled, prior to the adoption of rules, that one hour of debate would be in order on a pending resolution, the time to be controlled by the proponent thereof.

§ 12.4 Prior to the adoption of the rules, a resolution may

17. 103 Cong. Rec. 50, 85th Cong. 1st Sess.

18. 117 Cong. Rec. 16, 93d Cong. 1st Sess.

19. 115 Cong. Rec. 15, 91st Cong. 1st Sess.

be withdrawn at any time before action is taken thereon.

On Jan. 21, 1971,[20] after immediate consideration was asked by Mr. William M. Colmer, of Mississippi, on a resolution, he stated that the wrong resolution had been submitted and requested unanimous consent to withdraw the resolution. Speaker Carl Albert, of Oklahoma, ruled, over objection, that Mr. Colmer had the right to withdraw the resolution without obtaining unanimous consent.

§ 12.5 Prior to the adoption of the rules, a pending resolution is not subject to amendment unless the Member in control yields for that purpose, or unless the previous question is rejected.

On Jan. 4, 1965,[1] Mr. James C. Cleveland, of New Hampshire, stated a parliamentary inquiry:

> MR. CLEVELAND: If the resolution is adopted, will it be impossible for me to offer my own resolution pertaining to the same subject matter, either as an amendment or a substitute?
>
> THE SPEAKER:[2] If the resolution is agreed to, it will not be in order for the gentleman to offer a substitute resolution or an amendment, particularly if the previous question is ordered.
>
> MR. CLEVELAND: Is it now in order, Mr. Speaker?
>
> THE SPEAKER: Not unless the gentleman from Oklahoma yields to the gentleman for that purpose.[3]

Germaneness of Amendments Prior to Rules Adoption

§ 12.6 Ruling by the Speaker that prior to the adoption of the rules, a pending resolution on which the motion for the previous question is rejected is open to any germane amendment.

On Jan. 10, 1967,[4] Speaker John W. McCormack, of Massachusetts, held that prior to the adoption of rules any germane amendment would be in order on a resolution for which the previous question was voted down.

§ 12.7 The Speaker held not germane, prior to the adoption of rules, an amendment adding punishment to a resolution providing that the Speaker administer the oath of office to a Member-elect.

On Jan. 3, 1969,[5] following a point of order, Speaker John W.

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20. 117 CONG. REC. 13, 92d Cong. 1st Sess.

1. 111 CONG. REC. 20, 89th Cong. 1st Sess.

2. John W. McCormack (Mass.).

3. The pending resolution was offered by Mr. Carl Albert (Okla.).

4. 113 CONG. REC. 31, 90th Cong. 1st Sess.

5. 115 CONG. REC. 25, 91st Cong. 1st Sess.

McCormack, of Massachusetts, held as follows on the germaneness of an amendment, prior to the adoption of the rules:

> The Chair will state . . . that while we are operating under general parliamentary law . . . volume VIII, section 3384 of Cannon's Precedents states: "While the House is governed by general parliamentary usage prior to the adoption of rules, the Speakers have been inclined to give weight to the precedents of the House in the interpretation of that usage."
>
> The Chair anticipated that the question of germaneness would be raised and has had the precedents of the House thoroughly researched.
>
> The Chair might state there was no comparable case that the Chair can ascertain as a result of research in the annals of the House. However, it appears to the Chair that the punishment of Mr. Powell[6] for acts committed in the 88th or 89th Congresses, or declaring his seat vacant in the 91st Congress, is not germane to the proposition that he be now sworn in.
>
> The Chair sustains the point of order.

Consideration of Measures Before Adoption of Rules

§ 12.8 When the House considers a major bill before the adoption of rules, the legislation is considered under general parliamentary law, embracing not only the forms and precedents recognized over a period of years but also the rules of prior Congresses, including past rules restricting debate and amendments.

On Mar. 9, 1933,[7] the opening day of the 73d Congress, the House considered a bank bill transmitted by President Franklin D. Roosevelt to the Majority Leader. Passage was moved on the bill before printed copies were available for Members, and the bill was considered under a unanimous-consent procedure restricting debate and amendments:

> MR. BYRNS:[8] Mr. Speaker, I ask unanimous consent for the immediate consideration of H.R. 1491, and in its consideration that there shall be 40 minutes of debate, one half of such time to be controlled by the gentleman from Alabama [Mr. Steagall] and the other half by the gentleman from Pennsylvania [Mr. McFadden]; that at the conclusion of the debate the previous question shall be considered as ordered on the bill to final passage.

Before the request had been agreed to, Mr. William B. Bankhead, of Alabama, stated a parliamentary inquiry:

> As far as I am advised, the House has not yet adopted rules of procedure for this Congress. As I understand it,

6. Mr. Adam C. Powell (N.Y.).

7. 77 CONG. REC. 83, 73d Cong. 1st Sess.

8. Mr. Joseph W. Byrns (Tenn.).

unless objection is raised, the ordinary proceedings governing the House during the 72d Congress would prevail in the consideration of this unanimous consent request?

THE SPEAKER:[9] The gentleman is correct. . . .

MR. O'CONNOR:[10] Just to clear up the parliamentary situation, as I understand the request of the gentleman from Tennessee, it involves the consideration of this bill in the House as though the rules of the 72d Congress had been adopted, and, as it were, under suspension of the rules; and the bill will not be subject to amendment. Is this correct?

MR. BYRNS: The bill will not be subject to amendment.

§ 12.9 Prior to the adoption of rules, the House operates under general parliamentary law, and statutory enactments incorporated into rules of prior Congresses as an exercise of the rule-making power do not control proceedings of the next House until it adopts rules incorporating those provisions. Accordingly, prior to the adoption of rules, the requirement of the Legislative Reorganization Act of 1970 that proposed resolutions must be available to Members for three calendar days prior to consideration[11] is not in effect.

On Jan. 22, 1971,[12] Mr. Durwood G. Hall, of Missouri, made a point of order against a proposed resolution on the ground that consideration thereof would be "against the law of the land", in that the requirements of the Legislative Reorganization Act of 1970, §§ 108(b) (4) and 107(b), as to the time of availability of printed reports and resolutions to Members, had not been complied with. Speaker Carl Albert, of Oklahoma, ruled as follows:

> The Chair would point out to the gentleman from Missouri [Mr. Hall] that at the present time, as the gentleman from Missouri [Mr. Richard W. Bolling] has just stated, the House is operating under the general parliamentary law. No rules have yet been adopted. The provisions of the Legislative Reorganization Act, while enacted into law in the 91st Congress, cannot restrict the authority of this present House, in this 92d Congress, to adopt its own rules.
>
> The Constitution is, of course, superior to any public statute and the Constitution in article I, section 5, gives each House the authority to determine the rules of its proceedings, and it has been repeatedly held that the power of each new House to make its own rules may not be impaired or controlled by the rules or actions of a preceding House.

9. Henry T. Rainey (Ill.).

10. Mr. John J. O'Connor (N.Y.).

11. Pub. L. No. 91–510, §§ 108(b)(4) and 107(b), 84 Stat. 1140.

12. 117 CONG. REC. 132, 92d Cong. 1st Sess.

These principles are, in fact, recognized and enunciated in Public Law 91–510, the Legislative Reorganization Act. Section 101 of that act states in part that the rules changes recommended therein are enacted "as an exercise of the rule-making power of the House, subject to and with full recognition of the power of the House to enact or change any rule of the House at any time in its exercise of its constitutional right to determine the rules of its proceedings."

The Chair overrules the point of order.

Senate Practice as to Introduction of Bills During Organization

§ 12.10 At the beginning of a Congress the Senate does not customarily permit the introduction of bills until after the President has delivered his message on the state of the Union.

On Jan. 5, 1955,[13] the opening day of the 84th Congress, Senator Lyndon B. Johnson, of Texas, made an announcement to the Senate:

> As is customary, the Senate will transact no further business in the way of the introduction of bills or other matters until after the President has delivered his message on the state of the Union.[14]

13. 101 CONG. REC. 7, 84th Cong. 1st Sess.

14. For an explanation of the custom and its rationale, see § 11.4, supra.

CHAPTER 2

Enrolling Members; Administering the Oath

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Commentary and editing by Peter D. Robinson, J.D.

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Enrolling Members; Administering the Oath

§ 1. In General

Before a newly convened body of Representatives-elect can begin exercising all its constitutional functions as a legislative assembly, Members-elect must become full legal Members of the House, having satisfied all qualifications and having sworn to uphold the Constitution and to faithfully perform their duties.[1] The process through which Members-elect become Members consists of four steps: first, the presentation of individual credentials; second, the preparation of the Clerk's roll; third, the administration of the oath to duly qualified and elected Members; fourth, the resolution of challenges to the qualifications and elections of individual Members.

This chapter covers the administration of those four steps of proceeding during the organization of a newly convened House of Representatives. The scope of the chapter is limited, however, to the basic procedure governing those orders of business; the reader is referred elsewhere for a discussion of the substantive issues related to credentials, election contests, and elections and election campaigns.[2] This chapter likewise does not concern itself with those general aspects of procedure and orders of business connected with organization.[3]

Some discussion of substantive law is necessarily included in this chapter, such as the rights and duties accruing to those persons elected to Congress but not yet

1. "[T]he legal existence of a legislative body is dependent upon compliance with the constitutional requirements regarding membership." Sutherland, *Statutory Construction* § 404 (3d ed. 1943). That general statement of legislative law must be qualified in its applicability to the House of Representatives, since the House has sole jurisdiction over elections and qualifications of Members-elect (U.S. Const. art. I, § 5, clause 1). If the House seats a Member, the courts will not question the validity of legislative action in which the Member participates, even lacking satisfaction of election and qualification requirements. See *Lyons* v *Woods*, 153 U.S. 649 (1894).

2. See Ch. 8, infra, for the form, validity, and grounds for challenges of credentials. See Ch. 8, infra, for elections and election campaigns, and Ch. 9, infra, for election contests.

3. See Ch. 1, supra, for the orders of business at organization, and for the procedure that is followed.

seated and sworn by the House, since the status of those Members-elect is specifically related to the presentation of credentials, the preparation of the Clerk's roll, and the administration of the oath. Some mention is also made of the substantive state law which the Clerk must review in determining whether to enroll Members-elect.

The preparation, transmission to the House, and custody of the credentials of Members-elect are discussed in this chapter, as are their use in preparing the Clerk's roll. The form of the Clerk's roll and its relationship to the regular roll of the House and to the administration of the oath receives analysis.

The chapter covers the history and form of the oath of office, the procedure of its administration, the types of resolutions relating to the right to be sworn, and the related subject of challenges, including form, procedure, and preliminary House action.

There are several points of substantive procedure which should be kept in mind in any discussion of the enrolling of Members and the administration of the oath. The first is that the enrolling and the swearing in of Members-elect are authorized and regulated by provisions of the U.S. Constitution and the United States Code.[4] Therefore, the House and its officers follow an established procedure when undertaking those orders of business.

Second, the House is governed, as stated above,[5] by general parliamentary law during the period of organization and before the adoption of rules. Since the rules are not adopted until after the administration of the oath, en masse, to the membership-elect,[6] most of the activities covered in this chapter take place while general parliamentary law, and not the body of standing rules, is in effect.

Third, the order in which activities take place during the organization of the House is governed both by tradition and by statute.[7] The oath is administered to Mem-

4. The principal provisions are: U.S. Const. art. VI, clause 3 (requirement of oath administration); U.S. Const. art. I, § 5, clause 1 (House sole judge of elections and qualifications); 2 USC § 25 (procedure of oath administration and record evidence thereof); 2 USC § 26 (preparation of Clerk's roll and regularity of credentials).

5. See, generally, Ch. 1, supra.

6. For the priority of oath administration over the adoption of rules, based on 2 USC § 25, see Ch. 1, 7, supra.

7. For the sequence of organizational business, while the Speaker is presiding at organization, see Ch. 1, § 7, supra.

bers directly after the Speaker has been elected and has been sworn, and before the completion of other organizational business or before the consideration of general legislative business.

The fourth aspect of procedure related to this chapter is the functions of officers. The receipt of credentials by the House, and the preparation and calling of the Clerk's roll, are functions exercised by the Clerk of the preceding House.[8] The administration of the oath to Members and floor action taken on challenges are presided over by a newly-elected Speaker, whose scope of authority during the organizational period should be reviewed for a comprehensive understanding of how those orders of business are completed by the House.[9]

The final area of substantive procedure relating to the enrollment of Members and to the administration of the oath is the delineation of authority between state and federal government. Since the House depends on the individual states for the administration of elections and the preparation of credentials, issues may be suggested in this chapter as to those powers reserved for the states and those granted to the House of Representatives under the U.S. Constitution. The reader is referred to other portions of this work for discussion of such issues.[10]

§ 2. Status of Members- and Delegates-elect

The issue has often arisen, both in Congress and in the courts, whether the scope of privileges and prerogatives enjoyed by Members of Congress fully extends to those persons elected to Congress but not yet sworn.[11]

8. See 2 USC § 26. For the authority and functions of the Clerk of the preceding House at the organization of Congress, see Ch. 1, § 5, supra.

9. For the Speaker's functions and authority after he has been elected at the convening of a new Congress, see Ch. 1, § 7, supra. For his entertainment of motions during the organizational period, see Ch. 1, § 9, supra; for his rulings on action on resolutions, including those relating to oath administration, during organization, see Ch. 1, § 12, supra.

10. See Ch. 8, infra, on elections and election campaigns, and Ch. 9, infra, on election contests, which discuss the respective roles of the state and federal governments.

11. In early times, Thomas Jefferson considered the status of Members-elect and concluded that a Member elected "is to every extent a Member except that he cannot vote until he is sworn" (Jefferson's Manual, *House*

Some of the statutory and constitutional provisions relating to the incidents of House membership, primarily those of qualifications and disqualifications, have produced lengthy House debate on whether they apply only to sworn Members or also to Members-elect before the assembly of Congress or before the administration of the oath.(12) However, most such provisions distinguish between Members-elect and Members either explicitly or by implication.(13) This chapter will not attempt to discuss all, or even most, of the rights, privileges, immunities, and qualifications of membership in the House of Representatives.(14)

Rules and Manual § 300 [1973]), and as recently as 1933 Speaker Henry T. Rainey (Ill.) opined that Members-elect do not enjoy all the rights and privileges of Members until sworn (see § 2.1, infra). For a lengthy and general discussion whether a Member-elect is as much an officer of the government before being sworn as after, see 1 Hinds' Precedents § 185.

Although the Supreme Court has not specifically ruled on the status of Members-elect, various lower courts have considered the question (see, *e.g.*, *U.S.* v *Dietrich*, 126 F 676 [C.C. Neb. 1904]). Several quasi-judicial opinions on the subject may be found in the Opinions of the Attorney General (see 14 Op. Att'y Gen. 133 [1872]; 14 Op. Att'y Gen. 406 [1874]; 16 Op. Att'y Gen. 271 [1879]).

12. The Senate has determined that Senators-elect must be at the time of election residents of the representative state but need not meet the age and citizen requirements until appearing to be sworn. See S. REPT. NO. 904, 74th Cong. 1st Sess. reprinted at 79 CONG. REC. 9651–53 [1935]. For a full discussion, see Ch. 7, infra. As to the holding of incompatible offices, the House has decided a Member-elect may retain such office until appearing to be sworn (for a summary list of related precedents and rulings, see *House Rules and Manual* §§ 95–98 [comment to U.S. Const. art. I, § 6, clause 2] [1973]; for detailed analysis, see Ch. 7, infra).

13. For example, 39 USC § 3210 (franking privilege) and 2 USC § 34 (compensation) specifically refer to Representatives-elect. Although no constitutional provision uses the term "Member-elect" or "Representative-elect", the Constitution impliedly empowers Members-elect to vote for a Speaker (under art. I, § 2, clause 5, the House chooses a Speaker before the House is sworn), and to demand the yeas and nays (art. I, § 5, clause 3), and uses the term "Representatives" when referring to Members not yet sworn (see art. I, § 6, clause 2 and art. VI, clause 3). Some sections of the United States Code similarly use the term "Members" when obviously referring to Member-elect. See 2 USC § 25 (administration to Speaker of oath by "Member"); 2 USC § 27 (changing the place of meeting before Congress convenes, to protect the health of "Members"). See also 2 USC § 21 (administration of oath to "Senators").

14. For Members immunities, qualifications and disqualifications, see Ch. 7,

Only those aspects of membership which enable Representatives-elect to function in an official capacity after their election but before they have been sworn in will be discussed here.

The status of a Member-elect may be described first by the right to participate in proceedings after the convening of Congress but before the taking of the oath, and second by the constitutional and statutory privileges which become effective by force of election.

Three of the powers authorizing participation in proceedings arise from constitutional provisions: being called for the quorum,[15] voting for Speaker,[16] and demanding the yeas and nays.[17] All of those steps may occur in the House before Members are sworn, and before their rights to seats are determined.[18] As to the initial quorum call at the opening of a Congress, the right of a Member-elect to be included on the Clerk's roll and to be called for the quorum is qualified by the statute which directs the preparing of the Clerk's roll. Only if the individual Member's-elect certificate of election, in due form, is on file with the Clerk is his right to be included on the Clerk's roll absolute.[19] And only those Members whose names appear on the Clerk's roll are entitled to vote for a new Speaker at the beginning of a Congress or to otherwise participate in organizational proceedings prior to the administration of the oath.[20]

The House, in its initial stages, could not complete organizational business if unsworn Members were not entitled to debate propositions, to propose motions, to

infra. For personal privileges of House membership, see Ch. 11, infra.

15. U.S. Const. art. I, § 5, clause 1.

16. U.S. Const. art. I, § 2, clause 5

17. U.S. Const. art. I, § 5, clause 3

18. For quorum calls and demands for the yeas and nays during organization see Ch. 1, § 9, supra. For the procedure of electing a Speaker, see Ch. 1, § 6, supra.

19. See *Page* v *U.S.*, 127 U.S. 67 (1888), for the proposition that it is a mandatory step for the Clerk to place on the Clerk's roll the name of a duly certified Member-elect, pursuant to 2 USC § 26. For the degree of discretion exercised by the Clerk in enrolling Members-elect, see § 4, infra.

20. While the Clerk is presiding, he refuses to recognize claimants to seats whose names do not appear on the Clerk's roll. 1 Hinds' Precedents § 86. When the time comes for oath administration, a claimant not on the roll may be admitted to membership (see § 5, infra) and may be permitted to participate in debate on his right to a seat (see 1 Hinds' Precedents 657–672 and Rule XXXII, clause 1, *House Rules and Manual* § 919 [1973]).

offer resolutions, and to raise points of order. Therefore, all Members-elect whose regular credentials are on file with the House may exercise such rights[1] and may also be named to, and serve on, House committees.[2] In addition, a Member-elect may challenge the right of another Member-elect to be sworn,[3] and a Member-elect may be permitted to debate a proposition related to his own right to a seat.[4] (Contestants to the seats of Members-elect may also be granted the privilege of the floor and the right of debate by the House membership.)[5]

Members-elect are entitled to those privileges and immunities which stem from article I, section 6, of the Constitution and from various statutory provisions.[6] Clause 1 of that section authorizes Members to receive compensation for their services; although the provision does not specifically include Members-elect, Congress has provided by statute for the compensation of Representatives and Delegates-elect, with credentials in due form, from the beginning of the term of Congress.[7]

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1. See, generally, Ch. 1, supra, for the rules of proceeding during organization. Although there are no explict rulings on the rights of Member-elect to generally participate in proceedings, those rights are unquestioned, since the body of those persons assembled is a "House" before organization is completed (see 1 Hinds' Precedents § 82). Members-elect have by rule (Rule XXXII clause 1, *House Rules and Manual* § 919 [1973], not technically in effect before the adoption of rules) the privilege of admission to the floor.

2. A Member-elect may be named to a committee before he is sworn (see 4 Hinds' Precedents §§ 4477, 4483, 4484) and the fact that his seat is being contested is not necessarily taken into account in assigning him to committees (8 Cannon's Precedents § 2194). Rank on committees is fixed by the order in which Members were elected and a Member-elect may be restored to original rank after resolution of a contest for his seat (see 8 Cannon's Precedents § 2196). Jefferson's Manual states that "before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn." *House Rules and Manual* § 300 (1973).

3. See § 6.1, infra.

4. See § 2.5, infra.

5. Contestants in election cases have the privilege of the floor under Rule XXXII clause 1, *House Rules and Manual* § 919 (1973). For the right of contestants to participate in proceedings, see Ch. 9, infra.

6. For a detailed analysis of immunities, qualifications, and disqualifications of Members, and for the time at which they become effective, see Ch. 7, infra.

7. 2 USC § 34, providing for compensation from the beginning of the term to the beginning of the session; 2

Additionally, Representatives, Delegates, and Resident Commissioners elected to fill unexpired terms are salaried from the date of their election.[8] A former provision, forestalling compensation for a Member-elect whose seat was to be contested, has been repealed.[9]

The other privileges allowed Members of Congress by clause 1 (and which are discussed in detail elsewhere in this work)[10] are the privilege from arrest, applicable to Members-elect traveling to Washington for the assembly of Congress,[11] and the immunity

USC § 35 operates after the taking of the oath. If a Member-elect takes the oath and his seat after the commencement of a Congress, he nevertheless receives his salary retroactive to the beginning of the term (see 2 Hinds' Precedents § 1206), but disbursement by the Sergeant at Arms on a monthly basis is not made until the Member takes the oath.

The possibility of double compensation may arise, if a Memberelect retains an incompatible office beyond the beginning of the term of Congress and before he appears to be sworn. On a recent occasion, a Senator-elect who retained an incompatible office six days after the convening of Congress waived his congressional salary for that period (see § 2.6, infra). Although an early Attorney General's Opinion (14 Op. Att'y Gen. 406 [1874]) proposed that a Member-elect was entitled to receive pay for both an incompatible office and his congressional seat until appearing to be sworn, a House report cited at 1 Hinds' Precedents § 184 stated (dicta) that the precedents of the House neither allowed or disallowed such double compensation.

8. 2 USC § 37. This provision differs from the section relating to Senators who are elected to fill unexpired terms; they receive compensation only from the date they "qualify." 2 USC § 36. The Senate has determined that a Seriator-elect to fill a vacancy does not "qualify" for compensation until he has taken the oath See Senate resolution of Apr. 29, 1957, 103 CONG. REC. 6060, 85th Cong. 1st Sess.

9. The provision, contained in the Act of Mar. 3, 1873, Ch. 226, § 1, 17 Stat. 488, and repealed by the Act of Mar. 3, 1875, Ch. 130, § 1, 18 Stat 389, empowered the Clerk to omit from the roll, for purposes of compensation, the name of a Member-elect, until the determination of his right to the seat, upon notice that his seat would be contested. Currently, the returned Member-elect is entitled to the compensation, and if a contestant is subsequently chosen to fill the seat, the contestant is entitled to congressional salary only from the time the compensation of his "predecessor" has ceased. *Page* v *U.S.*, 127 U.S. 67 (1888).

10. See Ch. 7, infra, for immunities, and Ch. 11, infra, for the personal privilege of a Member.

11. Privilege from arrest "takes force by place of the election." Jefferson's Manual, *House Rules and Manual* § 300 (1973). See also 1 Hinds' Prece-

against being questioned for any speech or debate in the House, which would seem to apply to Members-elect as well as to qualified Members.(12)

There are, in addition, a number of miscellaneous privileges necessary to the official functioning of Members and Members-elect. Members-elect as well as Members are expected to comply with House traditions as to decorum, and conduct.(13) The franking privilege is specifically extended to Members-elect, although the scope of the privilege is more restricted for Members-elect than for qualified Members.(14) In addition, Members-elect are entitled by statute and by practice to draw rooms in the House office buildings before they are sworn.(15)

The rights and privileges of Delegates-elect and Resident Commissioners-elect are similar to those for Members-elect. By stat-

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dents § 499 (on a related subject), stating that the privilege is "granted by the Constitution to Representatives before a meeting of the House," in accordance with the common law of Parliament. For an early lower court decision holding that the privilege from arrest extended to the return to his home state of a challenged Member-elect, delayed by want of funds, against whom a contest was decided by the House, see *Dunton and Co.* v *Halstead*, 2 Clark (Pa. Law Journal Reports) 236 (D.C. Phil. 1840). In that case, however, the claimant to the privilege had journeyed to Washington with the Governor's official commission to represent Pennsylvania. Since the House requires regular credentials as proof of election (2 USC § 26), presumably only a Member-elect who is entitled to have his name placed on the Clerk's roll would come under the penumbra of the privilege.

12. As the House is technically in session during organization and before swearing-in ceremonies (1 Hinds' Precedents §§ 82, 87, 88), and as enrolled Members-elect engage in debate before taking the oath (*i.e.*, debate before Speaker's election, Ch. 1, supra, and debate on the taking of the oath itself, § 6, infra), it may be assumed that Members-elect enjoy the privilege (see 2 Hinds' Precedents § 1655 and 3 Hinds' Precedents § 2675 for the proposition that the immunity applies to "things done in a session of the House by one of its Members in relation to the business before it").

13. For example, by custom of the House, Members-elect may not approach the desk during the call of the roll for the election of a Speaker. 1 Hinds' Precedents § 623.

14. Members-elect have the right to send under their frank correspondence on official business, under 32 USC § 3210. They do not have the franking privilege for public documents (32 USC § 3211), for the *Congressional Record* (32 USC § 3212), or for agriculture reports (32 USC § 3213).

15. See 40 USC §§ 177–184 and *House Rules and Manual* § 985 (1973).

ute or by House practice, many of the rights, privileges, and powers of Members-elect are extended to those officials.[16] The important distinction is that Delegates and Resident Commissioners, although they are sworn,[17] are not included on the Clerk's roll to establish a quorum[18] and are not entitled to vote either for the Speaker or on other propositions in the House.

Rights and Privileges Generally

§ 2.1 Members-elect are required by law to take an oath of office and until they so subscribe do not enjoy all the rights and prerogatives of a Member of Congress.

On Mar. 13, 1933,[19] Speaker Henry T. Rainey, of Illinois, responded as follows to a parliamentary inquiry by Mr. Bertrand H. Snell, of New York:

> MR. SNELL: In what way does it change the status of a Member-elect to have the oath administered to him?
>
> THE SPEAKER: He then becomes a full-fledged Member of the House of Representatives, without question.
>
> MR. SNELL: Is he not enjoying all the rights and privileges even at the present time?
>
> THE SPEAKER: The Chair thinks he enjoys many of the privileges, but in order to become a Member he must take the oath prescribed by law.
>
> MR. SNELL: It bestows on him actual membership.
>
> THE SPEAKER: He then has actually become Member

Right to Vote

§ 2.2 Members-elect not responding to the roll call on opening day and not appearing to take the oath en masse with the membership of the House are not included on further roll calls or entitled to vote until they have been sworn.

Those Members-elect to the 91st Congress who did not appear on the opening day, Jan. 3, 1969,[20] for the call of the Clerk's roll to establish a quorum and for the swearing in of Members-elect en

16. For example, Pub. L. 91–405, § 294(a), Sept. 22, 1970, extended to the D.C. Delegate, among other provisions, the laws as to taking the oath and receiving compensation. For the rights and privileges of Delegates and Resident Commissioners in general, see Rule XII, *House Rules and Manual* § 740, and comment thereto, 741 (1973).

17. See § 5, infra.

18. See § 4, infra.

19. 77 CONG. REC. 283, 73d Cong. 1st Sess.

20. 115 CONG. REC. 12–15, 91st Cong. 1st Sess.

masse were not placed on the regular roll call of the House for yea and nay votes until they appeared to be individually sworn by the Speaker. On Jan. 6, Mr. Charles A. Mosher, of Ohio, was sworn, on Jan. 7, Mr. Robert Taft, of Ohio, on Jan. 8, Mr. Donald E. Lukens, of Ohio, on Jan. 9, Mr. Ogden R. Reid, of New York, and on Jan. 28, Mr. Richard T. Hanna, of California.

§ 2.3 Members-elect to fill unexpired terms during the term of a Congress are not entitled to be counted for a quorum or to vote for a new Speaker at the opening of a new session.[1]

On Jan. 10, 1962,[2] the opening day of the second session, Mr. Henry B. Gonzalez, of Texas, Mr. Joe Waggonner, Jr., of Louisiana, and Mr. Lucien N. Nedzi, of Michigan, all Representatives-elect to fill vacancies, with credentials on file with the Clerk, were not sworn in until after the election of a new Speaker (Speaker Sam Rayburn, of Texas, had died during the *sine die* adjournment). Their names were not placed on the roll to establish a quorum or to elect a Speaker.

Right to Demand Yeas and Nays

§ 2.4 The yeas and nays may be demanded by one-fifth of the Members before the organization of the House.

On Jan. 4, 1965,[3] Speaker John W. McCormack, of Massachusetts, ruled, in answer to a parliamentary inquiry, that prior to rules adoption and prior to the organization of the House, one-fifth of the Members present could demand the yeas and nays.[4]

Right to Debate of Challengee

§ 2.5 A Member-elect, asked to stand aside when the oath is administered to other Members-elect may, by unanimous consent, be permitted to participate in debate on a resolution relating to his right to be sworn.

1. This practice, which has occurred only in the instant case, differs from the practice at the opening of a new Congress, where all Members-elect with regular credentials are called to establish a quorum and to vote for a Speaker (see § 4, infra).
2. 108 Cong. Rec. 5–7, 87th Cong. 2d Sess.
3. 111 Cong. Rec. 19, 20, 89th Cong. 1st Sess.
4. For a ruling by the Clerk, presiding before the election of a Speaker, that the yeas and nays could be demanded by Members-elect, see 1 Hinds' Precedents § 91.

On Jan. 10, 1967,[5] during debate on a resolution relating to the right to be sworn of Mr. Adam Clayton Powell, Jr., of New York, who had been asked to stand aside when the oath was administered to other Members, unanimous consent was asked by Mr. Carl Albert, of Oklahoma, that Mr. Powell be permitted to participate in the debate. The request was granted and the challenged Member-elect delivered remarks in debate.

Right to Compensation

§ 2.6 A Senator-elect who postponed the choice between his congressional seat and an incompatible office six days beyond the convening of Congress waived his congressional pay for that period.

Mr. Jacob Javits, Senator-elect from New York, did not take the oath of office in the 85th Congress until Jan. 9, 1957, although the Senate had convened on Jan.[6] Mr. Javits appeared late because he did not resign from his position as Attorney General of New York until the day he appeared to take the oath.[7] He waived his congressional salary for the period during which he delayed taking the oath.[8]

§ 3. Presentation of Credentials

The device through which the House satisfies itself that it is composed at its first meeting of duly-elected Representatives is the presentation of credentials.[9] Although the credentials themselves may give rise to substantive questions as to form, validity, and grounds for challenge,[10] the presentation and use of the credentials is largely an administrative matter. Although there are still differences among the states in the preparation of credentials, and in their trans-

5. 113 CONG. REC. 15, 90th Cong. 1st Sess.

6. 103 CONG. REC. 340, 85th Cong. 1st Sess.

7. *Biographical Directory of the American Congress* 1774–1971, S. Doc. No. 92–8, pp. 1183–84, 92d Cong. 1st Sess. (1971).

8. *Senate Manual* § 863 (1971) (statistical section). An early opinion of the Attorney General has proposed that until taking the oath a Representative-elect could receive salary for both his congressional position and his other office. 14 Op. Att'y Gen. 408 (1874), cited at 2 USCA § 25.

9. For a discussion of the function of credentials in legislative organization, in general, see 1 Hinds' Precedents § 631.

10. See Ch. 8, infra, for the substantive aspects of credentials as related to elections and election campaigns.

mittal to the House, the process has become more standardized than in former years. Credentials certified by the Member-elect himself,[11] or certified by military or de facto governors[12] or prepared without regard to state law,[13] have not been received by the House in contemporary practice. In addition, the office of the Clerk requires strict compliance with state law, pursuant to federal statute, before enrolling a Member-elect;[14] disputes have seldom arisen as to the Clerk's action in accepting credentials.[15]

The term "credentials" actually refers to a very specific document, the certificate of election, certified by the state executive and attesting to the due election of the respective Member-elect.[16] Certificates are transmitted, usually by certified mail, to the Clerk of the House,[17] and may arrive anytime up to the date of the convening of Congress; their failure to arrive before that date will result in the individual's name not appearing on the Clerk's roll.[18] The Clerk

11. See 1 Hinds' Precedents § 427 (Senate credentials).

12. See 1 Hinds' Precedents §§ 383, 388.

13. See 1 Hinds' Precedents § 605 (credentials showed on face they were not issued according to law); 1 Hinds' Precedents § 376 (credentials signed by mere claimant to governorship); 1 Hinds' Precedents § 374 (credentials from suspended state government).

14. 2 USC § 26 requires credentials which show the Representatives-elect "were regularly elected in accordance with the laws of their states respectively, or the laws of the United States.

15. The most recent debate over the Clerk's action in enrolling a Member-elect occurred on Mar. 9, 1933 (see § 3.4, infra). See the remarks of Mr. Bertrand H. Snell (N.Y.), on that occasion, opposing the administration of the oath to a Member-elect without credentials, and objecting, post facto, to the Clerk's action in enrolling the Member-elect. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess. Mr. Snell argued that state law, as interpreted by the state supreme court, required the official certificate before the taking of the oath of office. Mr. Snell stated that the Clerks of the House had "always been very particular to see that the certificate which the Clerk accepted before he put the name on the roll was in strict compliance with the law of the state itself" and averred that the Clerk had not exceeded his authority in such a manner for 50 years.

16. See Ch. 8, infra, for the elements and form of the certificate, and the issuance thereof by the proper state official.

17. When a paper was received by the House during the call of the roll, addressed to the Speaker, the Clerk presiding declined to open it, although it was supposed to contain a missing credential. 1 Hinds' Precedents § 47.

18. Generally, although the House may authorize the taking of seats by

has in the past enrolled a Member-elect whose certificate of election was not yet prepared, when the Governor notified the House that a certificate would be forthcoming.[19]

The Clerk is empowered by statute to inquire into the regularity under state law of the credentials when they are delivered.[1] On occasion, the Clerk has enrolled a Member with due credentials on file, although notified of an adverse judicial decision in the state of representation.[2]

Only one original certificate is transmitted to the Clerk's office (although the Member himself may receive a "ceremonial" copy); the original is retained in the custody of the Clerk's office during and after the period of organization.[3] The set of credentials for one Congress is delivered by the Clerk, after a period of four years, to the National Archives, where they are kept as a public record.[4] (The credentials are filed in the same order in which Members are enrolled, alphabetically by state.)

Although the Clerk will not as a general rule enroll Members-elect who appear without certificates of election, the House itself may authorize the administration of oath to Members-elect who appear with "substitute" credentials, where the original certificate is delayed.[5]

Members-elect whose credentials have not yet arrived, the Clerk may not enroll such Members-elect. See § 3.7, infra.

19. See § 3.4, infra. The objection to the Clerk's action by a Member of the House indicated that the Clerk had acted contrary to the prevailing practice. See 73 CONG. REC. 71, 72, 73d Cong. 1st Sess., Mar. 9, 1933.

1. The phrasing of 2 USC § 26, requiring credentials showing regular election under state law, contemplates some discretion in reviewing state law. For the Clerk's functions in that respect, see § 4, infra. In early Congresses, a committee examined the credentials of every Member-elect before authorizing the taking of seats. See 1 Hinds' Precedents §§ 386–387.

2. See § 4.3, infra.

3. Since credentials are transmitted directly from the state executive to the Clerk of the House, it is a misnomer to describe Members-elect as "bearing" or "presenting" their credentials (see, for example, 1 Hinds' Precedents § 30—Member-elect as "bearer"). The Clerk's office will accept, however, credentials which are hand-delivered by the Member-elect because of the immediacy of the convening date of Congress.

4. Since the credentials of the Resident Commissioner from Puerto Rico, unlike the certificates of Members and Delegates, extend for four years (see § 5.4, infra), the entire set of credentials for one Congress is retained by the Clerk's office until the end of the succeeding Congress.

5. For early instances of such action, see 1 Hinds' Precedents §§162–168.

For example, Members-elect have been sworn on the basis of letters and telegrams from the executive department of the state of representation, attesting as to the due election of the Member-elect and stating that regular credentials would be forthcoming.[6] Such state executive declarations may state, as a basis for authorizing the administration of the oath, the result of official election returns and may request that such communications constitute official notice of election.[7] (On many occasions, the House authorizes the administration of the oath where credentials have not yet arrived, pursuant to a statement by another Member-elect that the election in issue is neither contested nor questioned.)[8]

The Clerk may receive during the term of a Congress late credentials and credentials of Members-elect to fill unexpired terms; those certificates are laid before the House and then filed by the Clerk with the other certificates for that Congress.[9] Until the certificate is laid before the House, the respective Representative-elect is not entered on the regular roll of the House.[10]

The credentials of Delegates-elect and Resident Commissioners are similarly transmitted to the Clerk and filed with the other documents for the same Congress. The main distinction is that the credentials of those officials do not entitle them to be included on the Clerk's roll; the other distinction is that the credentials for the Resident Commissioner extend for four years as opposed to two.[11]

Evidence of Certificate; Telegrams

§ 3.1 Not having received their certificates of election, the House authorized the administration of the oath to certain Members-elect pursuant to the receipt of a telegram

On some occasions, the House has enrolled claimants where the state executive refused to issue any credentials. See 1 Hinds' Precedents §§ 553–564.

6. See §§ 3.1–3.4, infra.

7. See, for example, § 3.2, infra.

8. Swearing in Members-elect who do not have credentials but whose elections are unquestioned is authorized by unanimous consent. See § 3.5, infra.

9. See § 3.6, infra.

10. See § 3.7, infra. If Members-elect to fill vacancies appear to take the oath following the intervening death of the Speaker, their credentials are not laid before the House and they are not sworn or enrolled until after a new Speaker's election, in which they are not entitled to participate. See § 5.3, infra.

11. See § 3.8, infra.

from the state Attorney General and Chairman of the state Board of Canvassers.

On Nov. 15, 1937,[12] the Clerk of the House submitted to the House a telegram from the Honorable John J. Bennett, Jr., Attorney General of New York and Chairman of the state Board of Canvassers, indicating the election of three Representatives to fill vacancies. The telegram indicated that certificates of election issued by the state Board of Canvassers would be forwarded shortly. The House authorized Speaker William B. Bankhead, of Alabama, to administer the oath to the three Representatives-elect.

§ 3.2 The oath was administered, by unanimous consent, to a Delegate-elect whose certificate of election had not arrived, pursuant to a communication from the territorial governor attesting to the election results and requesting that the communication constitute official notice of election.

On Aug. 4, 1954,[13] the House authorized the Speaker[14] to administer the oath of office to Mrs. Elizabeth P. Farrington, Delegate-elect of Hawaii, whose certificate of election had not yet arrived. She was administered the oath pursuant to a letter from the Governor of Hawaii stating the election results and requesting that the communication be accepted as notice of her election pending arrival of the official certificate, due to the desirability of having Hawaii represented in the House during the closing days of the session.

§ 3.3 The House authorized, by unanimous consent, the administration of the oath to a Member-elect, whose certificate of election had not arrived, pursuant to a telegram from the Secretary of State stating that the Member-elect was duly elected according to unofficial returns.

On Oct. 30, 1963,[15] the House authorized the administration of the oath to Mr. Mark Andrews, of North Dakota, pursuant to a telegram from Ben Meier, Secretary of State of North Dakota, stating that according to unofficial returns Mr. Andrews had been elected to complete an unexpired term.

§ 3.4 A Member-elect appearing without credentials has

12. 82 CONG. REC. 9, 75th Cong. 2d Sess.

13. 100 CONG. REC. 13282, 83d Cong. 2d Sess.

14. Joseph W. Martin, Jr. (Mass.).

15. 109 CONG. REC. 20612, 88th Cong. 1st Sess.

been enrolled and sworn where the state executive notified the House that although the Member-elect had been duly elected, the preparation of the certificate was delayed by the technicalities of state law.

On Mar. 9, 1933,[16] the Clerk placed on the roll and the House authorized to be sworn in the Member-elect from Maine, Mr. John G. Utterback, who had appeared without a certificate of election. The Governor of Maine had informed the House that Mr. Utterback was duly elected but that a certificate of election would not be forthcoming until the assembly of the executive council, which was required by state law to act with the Governor in the preparation of the certificate.[17]

Oath Administration Absent Credentials

§ 3.5 Where certificates of election have not been received, the House may by unanimous consent authorize the Speaker to administer the oath to Members-elect whose elections are not contested.

On Nov. 15, 1937,[18] the House authorized Speaker William B. Bankhead, of Alabama, by unanimous consent, to administer the oath to three Representatives-elect for whom certificates of election had not yet been received, and whose elections were not contested.

Similarly, on Oct. 3, 1940,[19] the House authorized, by unanimous consent, Speaker Sam Rayburn, of Texas, to administer the oath of office to Member-elect Florence R. Gibbs, of Georgia, notwithstanding the fact that the certificate of election had not yet been received in the Clerk's office.

Also, on June 20, 1941,[20] the oath was administered by unanimous consent to Mr. John H. Foulder, of North Carolina, whose certificate of election had not yet been received.[1]

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16. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

17. See the remarks, in opposing the authorization of the administration of the oath to Mr. Utterback, of Mr. Bertrand H. Snell (N.Y.), who argued that the action of the House set a dangerous precedent and violated both state and federal law. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

18. 82 CONG. REC. 9, 75th Cong. 2d Sess.

19. 86 CONG. REC. 13117, 76th Cong. 3d Sess.

20. 87 CONG. REC. 5398, 77th Cong. 1st Sess.

1. Similar House action has been taken on numerous occasions. See, for example, 109 CONG. REC. 11233 (June

Credentials to Fill Vacancies

§ 3.6 The Clerk of the House informs the House of the receipt of a certificate of election of a Member-elect, elected to fill an unexpired term, whereupon the new Member is sworn in.

On May 21, 1934,[2] Speaker Henry T. Rainey, of Illinois, laid before the House the following communication:

> Honorable HENRY T. RAINEY,
> *Speaker of the House of Representatives, Washington, D.C.*
>
> DEAR SIR: The certificate of election of Honorable J.Y. Sanders, Jr., has been received, to fill the unexpired term of Honorable Bolivar E. Kemp, of the sixth district of the State of Louisiana.
>
> Very respectfully,
> SOUTH TRIMBLE,
> *Clerk of the House of Representatives.*

Mr. Sanders was then presented to the House and administered the oath of office by the Speaker.

§ 3.7 Members-elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a quorum when the second session convenes; their names are included on the roll only after their certificates of election have been laid before the House and after the oath has been administered to them.

On Jan. 10, 1966, the opening day of the second session,[3] after the call of the roll to ascertain the presence of a quorum, the certificates of election of Mr. Clarence J. Brown, Jr., of Ohio, and Mr. Thomas M. Rees, of California, both elected to fill vacancies, were laid before the House. The oath was then administered to them by Speaker pro tempore Carl Albert, of Oklahoma, and their names were then included on subsequent roll calls.

Credentials of Delegates and Resident Commissioners

§ 3.8 At the opening of a Congress, the Clerk informs the House of the receipt of the credentials of Delegates and of the Resident Commissioner from Puerto Rico, whose names are not placed on the Clerk's roll.

On Jan. 3, 1973,[4] immediately after the call of the Clerk's roll to

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20, 1963), 14242 (Aug. 6, 1963), 20612 (Oct. 30, 1963), 88th Cong. 1st Sess.; 111 CONG. REC. 13774 (June 16, 1965), 27171 (Oct. 18, 1965), 89th Cong. 1st Sess.

2. 78 CONG. REC. 9151, 73d Cong. 2d Sess.

3. 112 CONG. REC. 6, 89th Cong. 2d Sess.

4. 119 CONG. REC. 12, 93d Cong. 1st Sess.

establish a quorum, the Clerk announced to the House the receipt of the credentials of: Delegate-elect Walter E. Fauntroy, of the District of Columbia, Delegate-elect Antonio Borja Won Pat, of Guam, Delegate-elect Ron De Lugo, of the Virgin Islands, and Resident Commissioner-elect Jamie Benitez, of Puerto Rico. As the names of Delegates and Resident Commissioners are not called to establish a quorum or to vote for Speaker, their names were not included on the Clerk's roll.

Parliamentarian's Note: The credentials of Delegates expire with the term of the House, but the Resident Commissioner's credentials extend for a four-year term.

§ 3.9 The Clerk informs the House of the receipt of the credentials of the new Resident Commissioner of Puerto Rico to fill a vacancy, whereupon the Commissioner is sworn.

On Jan. 3, 1940,[5] the Clerk of the House, South Trimble, informed the the House of the receipt of a certificate signed by the Governor of Puerto Rico, showing the appointment of Mr. Bolívar Pagán as Resident Commissioner of Puerto Rico, to fill a vacancy.

Mr. Pagán was then administered the oath of office.

5. 86 CONG. REC. 6, 76th Cong. 3d Sess.

§ 3.10 On one occasion the House was informed of the appointment of the Resident Commissioner of the Philippines by the President of the United States.

On Aug. 18, 1944,[6] Speaker Sam Rayburn, of Texas, laid before the House a communication from the President of the United States, the Honorable Franklin D. Roosevelt, transmitting a communication from the President of the Philippines advising the President of the appointment of Colonel Carlos P. Romulo, as Resident Commissioner of the Philippines.

Parliamentarian's Note: The Philippine Government was sitting in Washington due to Japanese occupation of the Islands.

§ 4. The Clerk's Roll

The Clerk's roll is the list of Members-elect, arranged alphabetically by states, which the Clerk prepares in advance of the convening of a new Congress based on the certificates of election received by his office.[7] That

6. 90 CONG. REC. 7102, 78th Cong. 2d Sess.

7. See 2 USC § 26, directing the preparation of the Clerk's roll. As to the form of credentials and their transmission to the Clerk's office, see § 3, supra.

particular roll is called only once, directly after the Congress convenes, in order to establish a quorum of Representatives-elect to proceed to the organization of the House.[8] The roll does have a further purpose, in that it constitutes the first official declaration as to which persons claiming seats in the House are entitled to participate in the proceedings prior to election of the Speaker, and in the election itself.[9]

As indicated above,[10] every Member-elect with regular credentials on file with the Clerk has a right to be included on the Clerk's roll;[11] whether or not a specific set of credentials shows the person named therein to be regularly elected is a matter solely for the decision of the Clerk,[12] who is the only official authorized to prepare the Clerk's roll (unless his office is vacant, in which case the Sergeant at Arms, or in his absence, the Doorkeeper, performs the Clerk's functions).[13]

Whether or not the Clerk may go behind the document of creden-

8. See, generally, Ch. 1, § 5, supra, for the procedure at organization when the Clerk is presiding. The roll to elect the Speaker is called alphabetically on a roll call vote, with each Member casting his vote by declaring the name of the nominee of his choice. (See Ch. 1, § 6, supra.) For the relationship between the Clerk's roll and regular rolls of the House, see § 4.1, infra.

9. As the roll to elect a Speaker is based exclusively upon the Clerk's roll, a claimant to a seat who is not enrolled will not be called on the roll call vote (see § 2, supra, for the right to participate of Members-elect). For the proposition that claimants not enrolled may not participate in organization until the House takes some action on their claims, see 1 Hinds' Precedents §§ 83–86. On the other hand, Members-elect enrolled may participate before the House decides that they were enrolled on insufficient evidence (see 1 Hinds' Precedents § 366).

10. § 3, supra.

11. In *Page* v *U.S.*, 127 U.S. 67(1888), the Supreme Court held, inter alia, that a Representative-elect whose credentials showed he was regularly elected must have been placed on the Clerk's roll under § 31 of the Revised Statutes (now, 2 USC § 26).

12. See the provisions of 2 USC § 26, which do not specify the required form of credentials, or the factors for determining whether they show the Member-elect was "regularly elected." In early times, a committee examined the credentials with the object of ensuring the regularity (see 1 Hinds' Precedents §§ 386, 387). Mere enrollment does not entitle a Member-elect to a seat, however, as the House determines both the prima facie and final entitlement to that right (see § 6, infra); the House may review the action of the Clerk in enrolling Members-elect (see, generally, 1 Hinds' Precedents §§ 589–610).

13. See 2 USC § 26. For a recent occasion where the Doorkeeper assumed the Clerk's functions, see § 4.2, infra.

tials itself to determine whether to enroll a particular Member-elect depends on the specific circumstances of the case. In past Congresses, Members-elect have been enrolled where there was no certificate but there were communicated official statements from state authorities showing election return,[14] or where the credentials were irregular but state law forbade rejection of credentials for mere informalities.[15] On at least one occasion, the Clerk has inquired into the age qualification of a Member-elect who was not yet 25 years old when his credentials were presented, but who reached the age limit after Congress had convened.[16] In contemporary practice, the Clerk will not enroll a Member-elect unless credentials regular in form and in strict compliance with state law have been received.[17]

The Clerk's roll is directed to be read at the opening of a Congress by the Clerk, or by the officer who assumes his functions. The roll is called in the same manner in which it is prepared, alphabetically by state.[18]

Occasionally it is necessary to correct the roll, due to technical errors or due to changes in the membership. The roll has been corrected on the floor of the House by reference to credentials, when the roll contained a typographical error;[19] where there are alleged errors in substance, the Clerk's roll will not be corrected until the

14. See 6 Cannon's Precedents § 597. For a recent instance of such action, see § 4.4, infra.

15. See 6 Cannon's Precedents § 557.

16. See 1 Hinds' Precedents § 418. For a full discussion of the meeting of qualifications before appearing to take the oath, but after the election or even after the convening of Congress, see Ch. 7, infra. A line of precedents in both the Senate and House suggest that a Member-elect lacking the age and citizenship requirements of U.S. Const. art. I, § 2, clause 2, at the time of election may forestall presenting his credentials and taking the oath until he satisfies those qualifications, after the convening of Congress.

17. Strenuous opposition was voiced in the House on the last occasion when the Clerk enrolled a claimant to a seat whose credentials had not yet been received (see § 4.4, infra). The Clerk has enrolled a Member-elect despite an order of the state supreme court restraining the issuance of the certificate of election (see § 4.3, infra). For similar past instances where credentials already delivered to the Clerk took precedence over adverse decisions by the highest court of the representative state, see 1 Hinds' Precedents §§ 56, 57.

18. See § 4.1, infra.

19. See 1 Hinds' Precedents § 25 (name of state Governor, instead of Member-elect, called by error).

time for the administration of the oath to Member.[20] Before the House meets, the Clerk may strike from the roll names of Members-elect whose certificates of election are on file, but who have resigned or who have died before the convening of a Congress.[1] However, such corrections are only made by the Clerk pursuant to official declarations by the executive of the state of representation. For example, in the 93d Congress, the name of a Member-elect whose seat the Governor had declared vacant pursuant to a presumptive death verdict was stricken from the Clerk's roll.[2] But the name of a companion Member-elect, who had disappeared under the same circumstances as the former, was not stricken from the roll, since the state of representation had not declared his seat vacant nor recognized the possibility of presumed death.[3]

The composition of the Clerk's roll is determinative of those persons entitled to be counted for the initial quorum of the House, and those persons entitled to vote for Speaker at the opening of a new Congress.[4] In that respect, the regular roll differs substantially from the roll to establish a quorum or to elect a new Speaker at the beginning of a second session.

When the Speaker died between sessions of the 87th Congress, and several Members-elect appeared to fill vacancies at the beginning of the second session, those Members-elect were not called to establish a quorum or to elect a new Speaker, although their certificates of election were on file with the Clerk. They could not be sworn until after the Speaker was elected, and the regular roll of the House includes only those Mem-

20. The Clerk may not entertain motions to "correct" the roll by substituting the name of a claimant for the name of a Member-elect (see 1 Hinds' Precedents §§ 22–24). Challenges, which attempt to add the name of one person to the roll and to strike the name of another, are not made until the Speaker indicates that the administration of the oath is in order (see § 6, infra).

1. See §§ 4.6, 4.8, infra. For an exception to that procedure, see § 4.7, infra (where a Member-elect died moments before Congress convened, his name was not stricken from the roll until the House was informed of the death). The Clerk's power to strike the names of dead and resigned Members-elect is traditional (see 1 Hinds' Precedents §§ 26–28).

2. See § 4.8, infra.

3. See § 4.9, infra. Subsequently, the House itself declared the seat vacant, pursuant to presumptive death evidence, and the Member's-elect name was then stricken from further roll calls.

4. See § 2, supra.

bers who have qualified for membership by taking the oath.[5] Therefore, although the Clerk's roll furnishes the preliminary basis for the regular roll of the House, the latter reflects changes in membership occurring after Congress convenes, such as adverse determination of election contests, resignations of Members-elect who decline to take the oath in favor of another office, and deaths.[6]

Form and Call of the Roll

§ 4.1 Unlike regular roll calls of the House, the Clerk's roll to establish a quorum of Representatives-elect at the convening of a new Congress is prepared and called alphabetically by states.

The Clerk's roll at the beginning of the 92d Congress was both prepared and called by state delegations, listed alphabetically.[7] The roll to establish a quorum has taken that form at the beginning of every Congress.[8] However, unless the roll is taken by electronic device (see Chs. 20, 30, infra) regular roll calls of the House are required to be called alphabetically by surname under House Rule XV.[9] (After a quorum is established at the opening of a new Congress, the roll to elect a Speaker is called alphabetically, to which the Member responds by calling the surname of the nominee of his choice.)[10]

§ 4.2 Where the Clerk has died between Congresses, and in

5. See § 4.11, infra. On the same occasion, resignations of Members received during adjournment were not laid down prior to the vote for Speaker, although their names had been stricken from the roll of the House (see § 4.10, infra). That practice is to be distinguished from the procedure at the convening of a new Congress, where the Clerk announces before the election of the Speaker the names of those resigned Members-elect whose names have been stricken from the roll. See, *e.g.*, announcement of the Clerk as to a vacancy in the 92d Congress, 117 CONG. REC. 10, Jan. 21, 1971.

6. After organization, the roll of the House consists of those Members chosen, sworn, and living whose membership has not been terminated by resignation or by the action of the House. See 4 Hinds' Precedents §§ 2889 2890; 6 Cannon's Precedents § 638.

7. 117 CONG. REC. 9, 10, 92d Cong. 1st Sess., Jan. 21, 1971.

8. In former Congresses, the roll to establish a quorum at the beginning of a new session during the term of a Congress was also called by states (see 1 Hinds' Precedents § 83).

9. Rule XV clause 1, *House Rules and Manual* § 765 (1973).

10. *See, e.g.*, 117 CONG. REC. 10, 11, 92d Cong. 1st Sess., Jan. 21, 1971. See also 1 Hinds' Precedents §§ 204–222.

the absence of the Sergeant at Arms, the Doorkeeper of the House directs the call of the roll of Representatives-elect, prepared under his auspices.

On Jan. 3, 1947,[11] the opening of the 80th Congress, the Doorkeeper of the House, Ralph R. Roberts, directed the call of the roll to establish a quorum and to elect a Speaker. The Doorkeeper assumed the functions of the Clerk of the House, in preparing the roll and directing the call thereof, pursuant to title 2, United States Code, section 26, appointing the Doorkeeper to perform those duties in the absence of both the Clerk and the Sergeant at Arms.

Clerk's Review of State Law

§ 4.3 A certificate of election in due form having been filed, the Clerk placed the name of the Member-elect on the roll, although he was subsequently advised that the state supreme court had issued a writ restraining the Secretary of State from issuing such certificate.

On Jan. 3, 1949,[12] Clerk John Andrews, of Massachusetts, made the following announcement:

> A certificate of election is on file in the Clerk's office, showing the election of John C. Davies as a Representative-elect to the Eighty-first Congress from the Thirty-fifth Congressional District of the State of New York.
>
> Several communications have been received from the executive deputy secretary of state for the State of New York informing the Clerk that a case is pending before the supreme court, Albany County, N.Y., and that the said secretary of state is restrained from certifying the election of a Representative from this congressional district. However, in view of the fact that a certificate of election in due form has been filed with the Clerk by John C. Davies, the Clerk has therefore placed his name on the roll. [13]

§ 4.4 The House may authorize the Speaker to administer the oath of office to a Member-elect who appears with-

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11. 93 CONG. REC. 33, 34, 80th Cong. 1st Sess.

12. 9.5 CONG. REC. 8. 81st Cong. 1st Sess.

13. Under New York law, although Congress is the final judge of the qualifications of its own Members, until the certificate of election has been transmitted to and acted upon by Congress, New York state courts are open to a candidate who alleges that the certificate is being issued in violation of the law. *People ex rel. Brown* v *Board of Suprs. of Suffolk County*, 216 N.Y. 732, 110 N.E. 776 (1915) (mem.).

out credentials but whose name has been placed upon the roll of Members-elect by the Clerk, pursuant to a communication from the state Governor.

On Mar. 9, 1933,[14] the House adopted a resolution authorizing the administration of the oath of office to Mr. John G. Utterback, of Maine, who reported on opening day without a signed certificate of election from the Governor of the State of Maine. The Clerk had placed the name of Mr. Utterback upon the Clerk's roll pursuant to a letter from the Governor of Maine stating that although the Member-elect apparently received a majority of the votes cast in the district the Governor was without authority to issue credentials due to the terms of a state law which required the concurrent action of the Governor and executive counsel before an election certificate could be issued.[15]

Adding New States to Roll

§ 4.5 The Clerk announced receipt of the proclamation of statehood for a new state during the call of the Clerk's roll, and directed that the new state be called.

On Jan. 7, 1959,[16] after the commencement of the call of the Clerk's roll on opening day, and after the call of the names of Members-elect from Alabama, the Clerk made the following announcement:

> A certified copy of the Presidential proclamation indicating that the Territory of Alaska has qualified as a State pursuant to provisions of law has been received.
>
> The clerk will proceed.

The Representative-elect from Alaska was then called.

Correcting the Roll for Deaths

§ 4.6 At the opening of a Congress the Clerk informs the House of vacancies in the Clerk's roll, occasioned by the death of Members-elect.

On Jan. 3, 1973,[17] the opening day of the 93d Congress, the Clerk announced after the call of the Clerk's roll, which did not include the name of Member-elect George W. Collins, that the death of that Member-elect created a va-

14. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

15. See the remarks, in opposing the enrolling of and the administration of the oath to the Member-elect without credentials, of Mr. Bertrand Snell (N.Y.), arguing that the action of the House and of the Clerk set a dangerous precedent. 73 CONG. REC. 71, 72, 73d Cong. 1st Sess.

16. 105 CONG. REC. 11, 86th Cong. 1st Sess.

17. 119 CONG. REC. 12, 93d Cong. 1st Sess.

cancy in the state delegation of Illinois.

§ 4.7 On an exceptional occasion, where a Representative-elect whose certificate of election was on file with the Clerk died moments before the House convened, his name was included on the Clerk's roll until the House was informed of his death after assembly.

On Jan. 10, 1967,[18] the opening day of the 90th Congress, the name of Member-elect John E. Fogarty, of Rhode Island, was included on the Clerk's roll to establish a quorum, although Mr. Fogarty had died in his office shortly before the House was to convene. His name was not stricken from the roll of the House until the Clerk informed the House of his death, shortly after the call of the roll.

§ 4.8 The Clerk of the House omitted from the roll at the beginning of the 93d Congress the name of a Representative-elect, pursuant to the receipt of judicial certification of presumptive death, and of the state executive's declaration of vacancy.

On Jan. 3, 1973,[19] the opening day of the 93d Congress, the Clerk of the preceding House, W. Pat Jennings, directed the call of the Clerk's roll to establish a quorum. The reading clerk announced that the delegation of the State of Alaska was vacant. The name of Mr. Nick Begich, Representative-elect at large from that state, had been omitted from the Clerk's roll pursuant to the receipt by the Clerk of a certified copy of the certificate of presumptive death of Mr. Begich. The Clerk also informed the House, after the election of the Speaker, that the Governor of Alaska had declared the seat of Mr. Begich vacant.

§ 4.9 Where the state of representation did not certify, either through its judiciary or through its executive, the presumptive death of a Representative-elect, his name was placed on the Clerk's roll and not stricken from the roll of the House until the House determined the seat to be vacant.

On Jan. 3, 1973,[20] the opening day of the 93d Congress, Clerk of

18. 113 CONG. REC. 11, 12, 90th Cong. 1st Sess.

19. 119 CONG. REC. 11 et seq., 93d Cong. 1st Sess.

20. 119 CONG. REC. 15, 93d Cong. 1st Sess.

the House W. Pat Jennings informed the House that he had placed upon the roll of Representatives-elect the name of Mr. Hale Boggs, of Louisiana, pursuant to the receipt of his certificate of election. The Clerk had, however, omitted from the roll the name of Mr. Nick Begich, of Alaska, who had been missing since Oct. 16, 1972, the date of the disappearance of an airplane on which Mr. Boggs had also been a passenger. Mr. Begich's name had been omitted from the roll pursuant to the receipt by the Clerk of a presumptive death certificate from the State of Alaska and pursuant to a telegram from the Governor of that state notifying the House that he had declared Mr. Begich's seat vacant. In Mr. Boggs' case, however, the Clerk had received certification from the State of Louisiana stating that no state court actions had been instituted to change Mr. Boggs' status or to affect the validity of his certificate of election, and stating that the Governor himself had taken no action to affect Mr. Boggs' status as a Representative-elect. Therefore Mr. Boggs' name had been placed on the roll and called to establish a quorum.

The House subsequently adopted a resolution determining Mr. Boggs' seat to be vacant, based on documentary evidence and on the official certification by the State of Alaska of Mr. Begich's presumptive death. The name of Mr. Boggs was stricken from subsequent roll calls.

The resolution adopted by the House read as follows:

H. RES. 1

Whereas a certificate of election has been received by the Clerk of this House showing the election of Hale Boggs as a Representative in the Ninety-third Congress from the Second Congressional District in the State of Louisiana; and

Whereas Representative-elect Hale Boggs has not appeared to take the oath of office as a Member of this House; and

Whereas the Clerk of the House of Representatives, acting at the direction of the Speaker of this House for the Ninety-second Congress, has ascertained that Representatives Nick Begich and Hale Boggs, Members of the Ninety-second Congress, together with Russell L. Brown and Don E. Jonz of the State of Alaska, all of whom departed together by plane from Anchorage, Alaska, on October 16, 1972, on a flight bound for Juneau, Alaska, have been missing since that date and despite repeated and thorough searches have not been located; and

Whereas the District Court for the State of Alaska, Third Judicial District, after hearing witnesses and studying all available evidence relative to the disappearance of Representative Begich, Russell L. Brown and Don E.

Jonz, has determined that these three men cannot be found alive after such a lapse of time and are presumed dead; and

Whereas as a result of the findings of the jury in the aforementioned judicial proceeding the judge of the said court has signed certificates of presumptive death with respect to Representative Begich, Russell L. Brown and Don E. Jonz; and

Whereas no evidence has been presented to this House or is known to it which distinguishes the missing status of Representative-elect Hale Boggs from that of the three men for whom the aforementioned certificates of presumptive death have been issued; Therefore be it

Resolved, That based on information provided by its Clerk, this House of Representatives hereby determines that there is a vacancy in the Ninety-third Congress in the representation from the Second Congressional District in the State of Louisiana because of the absence of Representative-elect Hale Boggs.

Resolved, That the Speaker of the House is hereby directed to notify the Governor of the State of Louisiana of the existence of this vacancy so that appropriate measures to fill this vacancy may be undertaken by the Governor pursuant to Article I, Section 2 of the Constitution of the United States.

Resolved, That the Speaker be authorized to appoint a delegation of Members of this House, together with such Members of the Senate as may be joined, to attend memorial services to be held for the former Majority Leader in New Orleans, Louisiana, on January 4, 1973.

Resolved, That the Sergeant at Arms of the House be authorized and directed to take such steps as may be necessary to carry out the provisions of these resolutions and that the necessary expenses in connection therewith, as well as any incurred by the Clerk at the Speaker's request, be paid out of the contingent fund of the House.

Resolved, That the Clerk communicate these resolutions to the Senate, to the Governor of the State of Louisiana, and transmit a copy to the family of the missing Representative-elect Hale Boggs.

Roll to Begin Session

§ 4.10 Election of a new Speaker being the first order of business, resignations of Members received during the *sine die* adjournment after the first session were not laid down prior to the vote, but their names had been stricken from the roll and were not called to establish a quorum or to elect a Speaker at the opening of the second session.[1]

1. This practice is distinguished from the procedure at the opening of a new Congress, where the Clerk announces vacancies immediately after the call of the Clerk's roll (which does not include the names of resigned Members) but before the election of a Speaker. See, *e.g.*, announcement of the Clerk as to a vacancy in the 92d Congress, 117 CONG. REC. 10, January 21, 1971.

On Jan. 10, 1962,[2] the opening day of the second session, following the death of Speaker Sam Rayburn, of Texas, during the *sine die* adjournment, Clerk of the House Ralph R. Roberts called the roll to establish a quorum and proceeded immediately to the election of a Speaker. The names of Mr. Frank Ikard, of Texas, and Mr. Lester Holtzman, of New York, who had submitted their resignations during the *sine die* adjournment, were not included on the roll to establish the quorum or to elect a Speaker. Their resignations were not announced until after the election.

§ 4.11 Where the Speaker had died between sessions of the 87th Congress and a new Speaker was elected immediately after the second session had convened, Members-elect to fill vacancies with credentials on file were not called to establish the quorum or to elect a Speaker.[3]

On Jan. 10, 1962,[4] the opening day of the second session, Mr. Henry B. Gonzalez, of Texas, Mr. Joe Waggonner, Jr., of Louisiana, and Mr. Lucien N. Nedzi, of Michigan, all Representatives-elect to fill vacancies, were not sworn in until after the election of Speaker John W. McCormack, of Massachusetts. Their names were not placed on the roll to establish a quorum or to elect a Speaker.

§ 5. Administering the Oath

The Constitution requires, at article 6, clause 3, that every Senator and every Representative swear or affirm to uphold the Constitution of the United States. Since neither the form, nor the procedure of administration, nor the time of administration of the oath of office are specified by constitutional provisions, they are all regulated by statute. The form of the oath taken by Members-elect (the same oath taken by the Speaker and officers of the House)[5] has undergone revision

2. 108 CONG. REC. 5–7, 87th Cong. 2d Sess.

3. The procedure followed in this instance differs from the practice at the opening of a new Congress, where all Members-elect with regular credentials are called to establish a quorum and to vote for a Speaker (see detailed discussion at § 4, supra).

4. 108 CONG. REC. 5–7, 87th Cong. 2d Sess.

5. 2 USC § 26 requires the oath of the Speaker and Clerk as well as of Members. The form of the oath prescribed for an individual elected or appointed to an office in the civil

since the first Congress,[6] and now reads as followings:

> I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Since appearing to be sworn is a mandatory step to bestow full membership on persons elected to Congress, there has been some debate on whether the requirement can be construed as a "qualification" for membership, with Congress determining whether that qualification has been met.[7] But

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service or uniformed service appears at 5 USC § 3331. If a new Speaker is elected after the organization of the House, and after he has taken the oath of office as a Member, he nevertheless must be administered the oath again as Speaker. See 1 Hinds' Precedents § 225.

6. The first oath of office was worded, by the Act of June 1, 1789, Ch. 1, 1 Stat. 23, as follows: "I, A. B., do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States." National sentiment in the wake of the Civil War lead to a new oath, under the Act of July 2, 1862, Ch. 128, 12 Stat. 502, which disqualified for a congressional seat any person with a past record of disloyalty to the United States (disloyalty was exhaustively defined within the wording of that oath). Pursuant to the ratification of the Fourteenth Amendment (whose clause 3 disqualified, among others, past supporters of the Confederate cause, with a provision for removal of such disqualification), Congress provided in the Act of July 11, 1868, Ch. 129, 15 Stat. 85, for a specific oath to be taken by those who "participated in the late rebellion" but whose disability for membership in Congress had been removed by an act of Congress. The 1868 act contained the form of the oath that is used today. Finally, the Act of May 13, 1884, Ch. 46, 23 Stat. 22, repealed all of the lengthy and disqualifying 1862 oath and provided for the 1868 oath to be thenceforth applicable to all officers of the United States government save the President. Further minor revisions, now incorporated in 5 USC § 3331, were added by the Act of Sept. 6, 1966, Pub. L. 89–554, 80 Stat. 424.

7. See Ch. 7, infra, wherein is discussed the limits on the power of the House to exclude a Member-elect for disloyalty.

For a recent general statement on the oath as bestowing membership, see § 2.1, supra. As to the responsibility of governmental officials who have omitted to take the required oath, one federal court stated that where such an official has been elected or appointed and has discharged his duties, he would be estopped to deny his right to the office if prosecuted for an offense committed in the discharge of duties. "[I]t is not

no precedents grant to the taking of the oath the status of a constitutional qualification whereby the House becomes the judge of the willingness and sincerity of the Member taking it. The United States Code (2 USC) § 25) provides that the oath be administered to the Speaker, and by him to the Members and Delegates present and to the Clerk, "previous to entering on any other business. . . ." Although that statute has been considered directory and not mandatory as to the general sequence of events at organization,[8] the oath is always administered first to the Speaker (immediately after his election) and then to the Members-elect.[9]

In contemporary practice, the Members are sworn in all at one time, after the Speaker directs them to rise for that purpose.[10] If a challenge is to be made to the right of a Member-elect to be sworn, it is made after the Speaker directs the Members (and the Delegates and the Resident Commissioner)[11] to rise to take the oath.[12] Where Members-elect are absent on opening day, the House may authorize the Speaker himself or a deputy to be appointed by him to administer the oath to such absentees away from the House.[13] After the Speaker, or the deputy appointed by him,[14]

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probable that a failure to take the oath would affect the acts of one who is by the [United States] Senate actually admitted to a seat therein, and who actually exercises the functions of that office, or that it would constitute any defense to a prosecution for a criminal offense . . . committed during his incumbency of the office." *U.S.* v *Dietrich*, 126 F 676, 681, 682 (C.C. Neb. 1904) (dicta). In some Congresses, Members have taken seats and discharged their functions without taking the oath for months afterwards; see, for example, 1 Hinds' Precedents § 185. In current practice, Members-elect take the oath as soon as they appear. See §§ 5.13–5.16, infra.

8. See Ch. 1, § 7, supra, for the traditional sequence of events based on the statutory language.

9. See Ch. 1, § 7.1, supra.

10. See § 5.1, infra, for the modern practice and for a discussion of the former method of administering the oath by states.

11. Since the Resident Commissioner is elected for a four-year term, as opposed to Members and Delegates, he rises to take the oath only at the beginning of that term, and not at the convening of the second Congress for which elected. See § 5.4, infra.

12. See § 6.1, infra.

13. See §§ 5.8, 5.9, 5.11, infra. Although the statute directing the administration of the oath to Members-elect only designates the Speaker as the proper official, the House has decided that it has constitutional power to authorize a "Deputy" to administer the oath as well as to perform other functions of the Speaker. See 1 Hinds' Precedents § 170.

14. While the Speaker has discretion to select a deputy, by custom a Member

informs the House that the oath has been administered in absentia,[15] the House adopts a resolution accepting the administration of the oath to the missing Member-elect.[16] On occasion, the Speaker pro tempore may be authorized by the House to administer the oath when the Speaker is absent,[17] but this procedure is rarely followed because of the explicit statutory directive to the Speaker.[18] Where the Speaker's office becomes vacant during a Congress, the oath cannot be administered to Members-elect until after a new Speaker is elected.[19]

On occasion, it is necessary to administer the oath individually to Members who are not present for the en masse swearing in ceremony; by statute, such Members-elect may not take their seats until they are sworn.[20] The administration of the oath to individual Members is a privileged matter, and takes precedence over other business.[1] Administering the oath is in order after the previous question is ordered on a pending question,[2] during debate on a resolution, [3] and on a day when no other business is permitted.[4]

In some instances, the House authorizes the administration of the oath by resolution, as where the right to be sworn has been challenged or where no credentials have been received for the Member-elect. Some such resolutions have included provisions collateral to the actual administration of the oath, such as condi-

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of the House is appointed, unless inexpedient, in which case an official authorized to administer oaths is appointed. 1 Hinds' Precedents §§ 14–16. See § 5.11, infra (state supreme court justice appointed).

15. See §§ 5.8, 5.10, 5.12, infra.

16. See §§ 5.8, 5.10, 5.12, infra.

17. See § 5.2, infra.

18. Only on rare occasions has the oath been administered to Members-elect, in the Speaker's absence, by a Speaker pro tempore (see § 5.2, infra and 6 Cannon's Precedents § 20).

19. See § 5.3, infra.

20. 2 USC § 25. For the procedure of administering the oath to detained Members-elect, see §§ 5.13, 5.14, infra.

1. See *House Rules and Manual* § 233 (comment) (1973). The right of Members-elect to seats and questions incidental thereto, including oath administration, are raised under the privilege of the House itself and not as a matter of personal privilege. See *Cannon's Procedure in the House of Representatives,* H. DOC. NO. 122, p. 284, 86th Cong. 1st Sess. (1959).

The administration of the oath takes precedence over even the privileged motion to adjourn (see 1 Hinds' Precedents § 622).

2. See § 5.17, infra.

3. See § 5.18, infra.

4. See § 5.19, infra (adjournment out of respect to deceased Member).

tions of punishment[5] or conditions that the final right to the seat be referred to committee.[6]

In former times, there existed no documentary evidence of the fact that the oath had been administered to an individual Member-elect. A Member-elect might state that he had taken the oath, and his declaration would be the sole evidence thereof.[7] To remedy that situation, Congress has by law provided for official copies of the oath of office taken by a Member-elect, to be accorded conclusive evidentiary weight, and required that a record of all those subscribing to the oath be printed in both the Journal and in the *Congressional Record*.[8] The single aim of the enactment was to "provide a way by which any Member of the House could establish by record evidence the fact that he took the oath of office and so became a Member.[9]

The only persons entitled to be administered the oath on opening day are those whose names appear on the Clerk's roll, with the exclusion of those whose right to take the oath is challenged;[10] as stated above, the House may add the names of those Members whose credentials have not appeared but about whose election there is no contest or question.[11] Members-elect entitled to take the oath may, however, decline or refuse to do so, by resigning before taking a seat in the House,[12] since membership in (Congress

5. See § 5.7, infra.

6. For resolutions relating to challenges and the right to seats, see § 6, infra.

7. See, for example, the confusing situation created at the beginning of the 79th Congress, when several Members who were absent for the calling of the Clerk's roll were present for the swearing in ceremonies (§ 5.20, infra). An early oath provision, the Act of July 2, 1862, Ch. 128, 12 Stat. 502, required a signed oath to be preserved in the House files, but the practice was seldom followed (see 1 Hinds' Precedents § 128). Currently, 5 USC § 2906, enacted in 1966, specifically requires such preservation by the House.

8. For the form in which the oath administration is recorded in the Journal and in the Record, see § 5.21, infra. The authorizing provision which Congress enacted in 1948 (Act of Feh. 18, 1948, Ch. 53, 62 Stat. 20) appears as the second paragraph of 2 USC § 25.

9. 2 U.S. Code Cong. Serv. p. 1048 (1948).

10. The oath is administered to "Members and Delegates present" previous to their taking their seats. 2 USC § 25. U.S. Const. art. VI, clause 3 requires the taking of the oath by "Representatives before mentioned."

11. See § 3.5, infra.

12. See 1 Hinds' Precedents §§ 1230–35 for past instances of declination to take the oath by resignation.

cannot be imposed on one without his consent.[13] A Member-elect may be permitted to defer his taking of the oath, without declining his seat, until such time that he meets qualifications not theretofore met.[14] However, the House may determine a Member's seat vacant if he is not qualified at the time of convening.[15]

A few notable distinctions may be drawn between the administration of the oath of office in the House and in the Senate. Under Senate practice, Senators-elect are sworn in four at a time, in alphabetical order and not by state.[16] And the Senate rarely authorizes the administration of the oath to an absent Senator-elect away from the Chamber.[17] In addition, there is no provision according evidentiary weight to certified copies of the oath of office taken by Senators-elect, nor is there any statutory provision directing the sequence of the administration of the oath in relation to other business. The United States Code merely provides that the oath of office shall be administered by the President of the Senate to each Senator-elect, previous to his taking his seat.[18]

Administering Officer; Time of Administration

§ 5.1 In contemporary practice, immediately following the election of the Speaker of a new Congress, he swears in Members-elect all at one time.

On Jan. 5, 1937, the opening day of the 75th Congress,[1] after the election of Speaker William B. Bankhead, of Alabama, he made the following announcement:

> Some years ago a precedent which had theretofore existed of having the oath administered to Members by States was discontinued and a precedent set whereby all Members took the oath of office at one and the same time. In order to avoid confusion the Chair thinks it best to follow the latter precedent, and the Chair asks each Member of the House and each Delegate to rise in his place while the Chair administers the oath of office.

13. See *U.S.* v *Dietrich*, 126 F 676, 681 (C. C. Neb. 1904), holding, inter alia, that a person elected a U.S. Senator is not a "Member of Congress" until he has been accepted by the Senate as a Member and until he has voluntarily assumed the duties of his office, including the taking of the oath.

14. See § 2.5, supra.

15. See 1 Hinds' Precedents § 500.

16. See § 5.23, infra.

17. See § 5.24, infra, for instances wherein the Secretary of the Senate was authorized to administer the oath to a Senator-elect in his home state.

18. 2 USC § 21.

1. 81 CONG. REC. 12, 75th Cong. 1st Sess.

The practice preferred by Speaker Bankhead has been followed from the 71st Congress to the present.[2]

§ 5.2 The House has authorized, by unanimous consent, the Speaker pro tempore to administer the oath of office to a Member-elect in the absence of the Speaker.

On Mar. 12, 1940,[3] the House authorized Speaker pro tempore Sam Rayburn, of Texas, who had been appointed for three legislative days by Speaker Bankhead on Mar. 11, to administer the oath of office to Mr. Robert K. Goodwin, of Iowa, in the absence of the Speaker, after the receipt of a certificate of election of Mr. Goodwin.[4]

§ 5.3 Where the Speaker dies during the term of a Congress, the oath cannot be administered to Members-elect to fill vacancies until after a new Speaker is elected.

On Jan. 10, 1962,[5] the House convened for the second session after the Speaker, Sam Rayburn, of Texas, had died during the adjournment *sine die*. The House immediately proceeded to the election of Speaker John W. McCormack, of Massachusetts, who then administered the oath of office to several Representatives-elect to fill vacancies. The Members-elect had not been included on the roll to establish a quorum or to elect a Speaker.[6]

Administration to Resident Commissioner

§ 5.4 A Resident Commissioner elected to the House for a four year term takes the oath of office only once, at the beginning of his term of office.

On Jan. 21, 1971,[7] the opening day of the 92d Congress, the Resi-

2. *House Rules and Manual* § 230 (comment to U.S. Const. art. VI, clause 3) (1973) The "latter precedent" referred to, beginning the prevailing practice of swearing in Members and Delegates all at one time, occurred on Apr. 15, 1929, as an innovation by Speaker Nicholas Longworth (Ohio). 71 CONG. REC. 25, 71st Cong. 1st Sess. (paraphrased at 6 Cannon's Precedents § 8).
3. 86 CONG. REC. 2724, 76th Cong. 3d Sess.
4. Apparently on only one other occasion has the oath been administered to an individual Member-elect in the absence of the Speaker by consent of the House (see 6 Cannon's Precedents §20).
5. 108 CONG. REC. 5–7, 87th Cong. 2d Sess.
6. Where there exists a vacancy in the Speaker's office, there is no official authorized to administer the oath to Members-elect. See 2 USC § 25 and 1 Hinds' Precedents §170.
7. 117 CONG REC. 13, 92d Cong. 1st Sess.

dent Commissioner from Puerto Rico, Mr. Jorge L. Cordova, did not arise to take the oath of office en masse with the Members-elect, as he had taken the oath at the beginning of his four-year term, with the commencement of the 91st Congress.[8]

Resolutions Authorizing Oath Administration

§ 5.5 When a Member offers a resolution authorizing the Speaker to administer the oath to a challenged Member before the adoption of the rules, no amendments are in order unless the Member in control yields for that purpose or the previous question is rejected.

On Jan. 4, 1965,[9] Mr. Carl Albert, of Oklahoma, offered the following resolution:

> *Resolved,* That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from New York, Mr. Richard L. Ottinger.

In response to two parliamentary inquiries by Mr. James C. Cleveland, of New Hampshire, Speaker John W. McCormack, of Massachusetts, ruled: the pending resolution was not subject to amendment unless Mr. Albert yielded for that purpose; and unless Mr. Albert yielded there would be no opportunity to discuss the merits of the case prior to the vote on the resolution.

The previous question was ordered and the resolution was agreed to. Immediately after adoption of the resolution, the challenged Member appeared at the bar of the House and took the oath of office.[10]

§ 5.6 An amendment providing for conditions of punishment is not germane to a resolution authorizing the administration of the oath of office to a Member-elect.

On Jan. 3, 1969,[11] Speaker John W. McCormack, of Massachusetts, ruled not germane, to a resolution providing that the Speaker administer the oath of of-

8. 115 Cong. Rec. 15, 91st Cong. 1st Sess.

9. 111 Cong. Rec. 20, 89th Cong. 1st Sess.

10. Under general parliamentary law, employed by the House before the adoption of rules (applicable in this instance), the 40 minutes debate permitted under Rule XXVII clause 3 [*House Rules and Manual* § 907 (1971)] after the ordering of the previous question on a debatable proposition is not in order. See Ch.1 § 9, supra.

11. 115 Cong. Rec. 23–25, 91st Cong. 1st Sess.

fice to Mr. Adam Clayton Powell, Jr., of New York, an amendment adding several conditions of punishment predicated on acts committed in a prior Congress.

§ 5.7 On one occasion, a Representative-elect was administered the oath of office pursuant to a resolution authorizing the administration of the oath, but providing for a fine to be deducted on a monthly basis, reducing seniority to that of a new Member, and specifying that the Representative-elect must take the oath by a certain date or his seat would be declared vacant.

On Jan. 3, 1969, Representative-elect Adam Clayton Powell, Jr., of New York, appeared in the well and was administered the oath of office as a Member of the 91st Congress,[2] subsequent to the adoption by the House of a resolution authorizing such administration of the oath, but including other provisions as follows:

H. RES. 2

Resolved—

(1) That the Speaker administer the oath of office to the said Adam Clayton Powell, Member-elect from the Eighteenth District of the State of New York.

(2) That as punishment Adam Clayton Powell be and he hereby is fined the sum of $25,000, said sum to be paid to the Clerk to be disposed of by him according to law. The Sergeant-at-Arms of the House is directed to deduct $1,150 per month from the salary otherwise due the said Adam Clayton Powell, and pay the same to said clerk until said $25,000 fine is fully paid.

(3) That as further punishment the seniority of the said Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 91st Congress.

(4) That if the said Adam Clayton Powell does not present himself to take the oath of office on or before January 15, 1969, the seat of the Eighteenth District of the State of New York shall be deemed vacant and the Speaker shall notify the Governor of the State of New York of the existing vacancy.

Administration to Absentees

§ 5.8 The Speaker informs the House of the fact that he has administered the oath of office to an absent Member-elect pursuant to an order of the House, whereupon a resolution is offered accepting such oath.

On Mar. 13, 1933,[13] Speaker Henry T. Rainey, of Illinois, informed the House that he had ad-

12. 115 CONG. REC. 33, 34, 91st Cong. 1st Sess.

13. 77 CONG. REC. 283, 73d Cong. 1st Sess.

ministered the oath of office to absent Member-elect Wilburn Cartwright, of Oklahoma, as authorized by House Resolution 36. The House then adopted the following resolution:

> Whereas Wilburn Cartwright, a Representative from the State of Oklahoma, has been unable from sickness to appear in person to be sworn as a Member of this House, but has sworn to and subscribed the oath of office before the Speaker, authorized by resolution of this House to administer the oath, and the said oath of office has been presented in his behalf to the House, and there being no contest or question as to his election: Therefore
>
> *Resolved*, That the said oath be accepted and received by the House as the oath of office of the said Wilburn Cartwright as a Member of this House.

Administration by Deputies

§ 5.9 When authorized by resolution to designate deputies to administer the oath of office to absent Members-elect, the Speaker usually appoints as deputies Members of the House from the home states of the absentees.

On Jan. 8, 1937,[14] Speaker William B. Bankhead, of Alabama, announced that pursuant to authorizing resolutions, he had appointed Mr. Schuyler O. Bland, of Virginia, to administer the oath of office to Mr. Andrew J. Montague, of Virginia, Mr. William J. Driver, of Arkansas, to administer the oath of office to Mr. William B. Cravens, of Arkansas, and Mr. Clarence F. Lea, of California, to administer the oath of office to Mr. Henry E. Stubbs, of California.

§ 5.10 A Member designated by the Speaker to administer the oath of office to an absent Member-elect informs the House when he has performed that duty and offers a resolution accepting the oath.

On Jan. 20, 1943,[15] Mr. Edward J. Hart, of New Jersey, made the following report to the House:

> Mr. Speaker,[16] in accordance with your designation of me, pursuant to House Resolution 45, Seventy-eighth Congress, adopted by the House of Representatives, to administer the oath of office to Representative-elect Mary T. Norton, of the Thirteenth District of New Jersey, I have the honor to report that on the 16th day of January 1943, at Jersey City, N.J., I adminis-

14. 81 Cong. Rec. 133, 75th Cong. 1st Sess.

15. 89 Cong. Rec. 245, 246, 78th Cong. 1st Sess.

16. Speaker Sam Rayburn (Tex.).

tered the oath of office to Mrs. Norton, form prescribed by section 1757 of the Revised Statutes of the United States, being the form of oath administered to Members of the House of Representatives, to which Mrs. Norton subscribed.

Mr. Hart then offered a resolution providing that the House accept the oath so administered to the absent Member-elect.

§ 5.11 The Speaker may designate officers of the state judiciary to administer the oath to absent Members-elect.

On Jan. 7, 1959,[17] the Clerk read the following statement of Speaker Sam Rayburn, of Texas:

> Pursuant to the authority of House Resolution 11, 86th Congress, the Chair appoints the Honorable Donald Stephen Taylor, Justice of the Supreme Court of New York, Troy, N.Y., to administer the oath of office to the Honorable Dean P. Taylor.

§ 5.12 A non-Member named by the Speaker to administer the oath of office to an absent Member-elect informs the House when he has performed that duty, whereupon the House adopts a resolution receiving and accepting such oath.

On Mar. 21, 1933,[18] there was laid before the House a communication from Judge Blanton Fortson, of the Western Judicial Circuit, Athens, Georgia, informing the House that he had administered the oath of office to Mr. Charles H. Brand, of Georgia, in Athens, Georgia, pursuant to House Resolution 37 and pursuant to the designation by Speaker Henry T. Rainey, of Illinois, of Judge Fortson to administer the oath to the absent Member-elect. The House then adopted the following resolution:

> Whereas Charles H. Brand, a Representative from the State of Georgia, from the tenth district thereof, has been unable from sickness to appear in person to be sworn as a Member of this House, but has sworn to and subscribed the oath of office before Judge Blanton Fortson, authorized by resolution of this House to administer the oath, and the said oath of office has been presented in his behalf to the House, and there being no contest or question as to his election: Therefore
>
> *Resolved*, That the said oath be accepted and received by the House as the oath of office of the said Charles H. Brand as a Member of this House.

Administration to Delayed Members

§ 5.13 Members arriving too late on opening day to take the oath en masse are administered the oath as they appear at the bar of the House for that purpose.

17. 105 Cong. Rec. 16, 86th Cong. 1st Sess.
18. 77 Cong. Rec. 660, 73d Cong. 1st Sess.

On Jan. 3, 1945,[19] Speaker Sam Rayburn, of Texas, made the following statement, on opening day, in relation to detained Members:

> The Members who have not taken the oath of office will present themselves in the well of the House and all others will clear the well of the House.

§ 5.14 Members-elect who appear subsequent to the day other Members-elect are sworn in present themselves in the well of the House and the Speaker administers the oath to them.

On Jan. 13, 1953,[20] ten days after the opening of the 83d Congress, two House Members-elect who had not yet taken the oath of office presented themselves in the well of the House and were administered the oath.

§ 5.15 When a term of a Member began on Jan. 3, 1943, he did not receive the oath of office until Sept. 14, 1943, due to illness.

On Sept. 14, 1943,[1] Speaker Sam Rayburn, of Texas, administered the oath of office to Representative-elect Lawrence Lewis, of Colorado, whose term of office commenced with the beginning of the 78th Congress on Jan. 3, 1943. Mr. Lewis was absent due to illness.

§ 5.16 A Member announced, for the information of constituents, that an absent Member-elect would be delayed in taking the oath because of his duties as a naval officer overseas.

On Jan. 4, 1945,[2] Mr. John Taber, of New York, made the following announcement:

> Mr. Speaker,[3] Henry J. Latham was elected to Congress from the Third District of New York last November. He is a lieutenant in the Navy, and was at that time, and is now, on duty in the far Pacific. He will not be able to return to this country to be sworn in until the month of February. I feel, in justice to his constituents, that I should make this announcement at this time.

Privilege of Oath Administration

§ 5.17 Administration of the oath of office to a Member-elect is a matter of high privilege and is in order after the previous question is

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19. 91 Cong. Rec. 14, 79th Cong. 1st Sess.

20. 99 Cong. Rec. 368, 83d Cong. 1st Sess.

1. 89 Cong. Rec. 7549, 78th Cong. 1st Sess.

2. 91 Cong. Rec. 34, 79th Cong. 1st Sess.

3. Speaker Sam Rayburn (Tex.).

ordered on a pending question.

On Oct. 3, 1969,[4] after the previous question had been ordered on a bill reported from the Committee of the Whole, Mr. Carl Albert, of Oklahoma, asked that a Member-elect be permitted to take the oath of office at that time. The request was granted, and Speaker John W. McCormack, of Massachusetts, administered the oath to Mr. Michael J. Harrington, Representative-elect from Massachusetts to fill a vacancy. Since Mr. Harrington's certificate of election had not yet arrived, the administration of the oath was authorized by unanimous consent.

§ 5.18 On one occasion, debate on a resolution reported from the Committee on Rules was interrupted to allow a new Member to take the oath of office.

On Dec. 24, 1963,[5] debate on a privileged resolution reported from the Committee on Rules and making in order a conference report was interrupted to allow Mr. James J. Pickle, of Texas, to take the oath of office.

§ 5.19 Administration of the oath of office to a Member-elect was the only business permitted on the day of the death of the Chairman of the Committee on Appropriations.

On May 12, 1964,[6] the day on which Mr. Clarence A. Cannon, of Missouri, passed away in the early morning hours, the only item of business permitted was the administration of the oath to Mr. William J. Green III, of Pennsylvania.

Form; Record Evidence of Administration

§ 5.20 Where various Members, detained on opening day, were absent for the roll call but were present for the swearing in of Members en masse, the Speaker stated that he would accept the statement of any Member declaring that he was present for the swearing-in ceremony; this was permitted prior to the 1948 amendments to 2 USC § 25, establishing record evidence of swearing-in ceremonies.

On Jan. 3, 1945, after Speaker Sam Rayburn, of Texas, had accepted the statements of several Members that they were present

4. 115 Cong. Rec. 28487, 91st Cong. 1st Sess.

5. 109 Cong. Rec. 25526, 88th Cong. 1st Sess.

6. 110 Cong. Rec. 10695, 88th Cong. 2d Sess.

for the swearing-in ceremony, but were absent for the roll call due to late trains,[7] the Speaker made a statement on the subject pursuant to a parliamentary inquiry by Mr. Harold Knutson, of Minnesota:[8]

> MR. KNUTSON: Mr. Speaker, a number of Members were not in the city at the time the roll call was had but were here in time to be sworn in. What is their status?
>
> THE SPEAKER: The Chair has sworn in quite a number of Members since the roll was called.
>
> MR. KNUTSON: They were sworn in but the Record does not show that they were here.
>
> THE SPEAKER: If any Member says he was here at the time of the swearing in, the Chair will take his statement for it.

§ 5.21 The form of the oath and the record of subscription to the oath of office, as specified by law, appear in the Congressional Record and in the Journal of the House.

In the 91st Congress, the record of the subscription to the oath by Members was printed in the Record of Feb. 18, 1969, as follows:

> The oath of office required by the sixth article of the Constitution of the United States, and as provided by section 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members and Delegates of the House of Representatives, the text of which is carried in section 1757 of title XIX of the Revised Statutes of the United States and being as follows:
>
> > I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.
>
> has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by each of the following Members and Resident Commissioner of the 91st Congress, pursuant to Public Law 412 of the 80th Congress entitled "An act to amend section 30 of the Revised Statutes of the United States" (U.S.C., title 2, sec. 25), approved February 18, 1948. . . .[9]

§ 5.22 Copies of the signed oath of office executed by House Members cannot be mandated by the process of ordinary courts without the permission of the House of Representatives.

7. 91 CONG. REC. 14, 79th Cong. lst Sess.

8. 91 CONG. REC. 16, 79th Cong. 1st Sess.

9. 115 CONG. REC. 3788, 91st Cong. 1st Sess., Feb. 18, 1969; H. Jour. 269, 91st Cong. 1st Sess. (1969).

On Jan. 9, 1959,[10] the House was informed by the Clerk of a subpoena from the United States District Court for the Middle District of Pennsylvania, in the case of *United States* v *John P. Gilroy, Jr., et al.*, No. 12880, criminal, commanding the Clerk of the House to appear before the court with certified copies of the signed oaths of offices executed by a certain Congressman. In response, the House adopted a resolution stating that under the privilege of the House no evidence of a documentary character under the control and in the possession of the House of Representatives could be mandated by process of the ordinary courts without the permission of the House. The resolution further stated that the House would permit the production of certified copies of the oath of office, along with other papers, pursuant to a determination by the court upon the materiality and the relevancy of the papers and documents called for in the subpoena duces tecum.

Senate Procedure

§ 5.23 In Senate practice, the oath of office is administered to four Senators at a time in alphabetical order; each four Senators are accompanied to the desk by four other Senators.

On Jan. 3, 1953,[11] Vice President Alben W. Barkley, of Kentucky, announced as follows:

> The Secretary will now call, alphabetically, and in groups of four, the names of the Senators-elect who as their names are called will advance to the desk and the oath of office will be administered to them.

The legislative clerk called the names of the first four Senators, who were escorted to the desk by four other Senators.

§ 5.24 Although the House regularly authorizes the administration of the oath to absent Members-elect, the Senate has done so only on rare occasions, one occurring since 1936.

On many occasions, the House authorizes the administration of the oath at the beginning of a new Congress to absentees, either by the Speaker himself or through deputies.[12] The Senate, however, has provided such authorization on only two recorded occasions, the first on May 3, 1929,[13] and

10. 105 Cong. Rec. 363, 86th Cong. 1st Sess.

11. 99 Cong. Rec. 7, 83d Cong. 1st Sess.

12. See §§ 5.8, 5.9, and 5.11, supra. See also 6 Cannon's Precedents §§ 14–16.

13. 71 Cong. Rec. 833, 71st Cong. 1st Sess.

the second on Jan. 3, 1973, when the Secretary of the Senate was authorized by resolution to administer the oath of office to Senator-elect Joseph R. Biden, of Delaware, absent because of a death in his family.[14]

§ 6. Challenging the Right to be Sworn

When the Speaker directs the membership-elect of the House to arise to take the oath of office, any Member-elect may challenge the right of any other Member-elect to be sworn at that time.[15] In stating his objection to the right of another to be sworn, the Member-elect must base his challenge either on his own responsibility as a Member-elect, or on specific grounds.[16] If neither basis is stated to support the challenge, the House may decline to entertain it.[17] A Member-elect may also challenge the right of an entire state delegation to be administered the oath.[18] Usually, such a challenge relates not to the qualifications or elections of the individual members of the state delegation, but to the status of the constituency.[19]

When a challenge is proposed, the Speaker asks the challenged Member(s) not to rise to take the oath with the rest of the membership, as the House and not the Speaker determines both the preliminary and the final action to be taken on any challenges.[20]

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14. 119 CONG. REC. 9, 93d Cong. 1st Sess.

15. For the procedure of challenging, see § 6.1, infra. The authority to challenge the right of a Member-elect to be sworn is based on U.S. Const. art. I, § 5, clause 1, which constitutes the House as the sole judge of the elections, returns, and qualifications of Members. Challenges are made before the oath is administered because the oath is given under art. VI, clause 3, to "Representatives before mentioned", meaning those who meet the qualifications and election requirements stated in the Constitution. The right of one Member-elect not yet sworn to challenge the right of another not yet sworn is unquestioned (see 1 Hinds' Precedents § 141).

House as judge of qualifications, see The Power of a House of Congress to Judge the Qualifications of Its Members, 81 Harv. L. Rev. 673–84 (Jan. 1968).

16. See § 6.2, infra.

17. 1 Hinds' Precedents § 455.

18. See, for example, 1 Hinds' Precedents §§ 457, 460–462.

19. See Parliamentarian's Note, § 6.4, infra (systematic state denial of voting rights). For occasions following the Civil War when entire state delegations were challenged on the ground of collective disloyalty, see 1 Hinds' Precedents §§ 457, 460–462.

20. See § 6.1, infra. The statement has been made that the Speaker may,

When the right to be sworn of an individual Member-elect is challenged, he generally loses no rights thereby,[1] except for his right to vote.[2] While his case is pending, he may be permitted to debate his own right to the seat,[3] and may serve on committees.[4] Challenged cases are taken up in the order in which challenges were made.[5]

The pendency of a challenge does not preclude the entertainment of other business before the House, and all other organizational business may be completed before a challenge is resolved.[6] By unanimous consent, the House may also proceed to general legislative business pending consideration of the right of a Member to be sworn.[7]

After the unchallenged membership of the House has been sworn, some preliminary action is usually taken on each challenge. The House may simply seat a Member by authorizing the administration of the oath; such a resolution may determine his prima facie as well as final right to the seat.[8] A com-

but is not required to, direct the challenged Member-elect to stand aside (1 Hinds' Precedents §§ 143–146). The Speaker has held, however, that such request is a matter of order, for the convenience of procedure (1 Hinds' Precedents § 145). The Speaker has recently held that debate on the right to be sworn of a challenged Member-elect is not in order until after the remaining Members have been sworn (see § 6.3, infra).

1. See 1 Hinds' Precedents § 155. See § 2, supra, for the status of Members-elect.
2. After the membership of the House has been sworn in en masse, Members-elect who have not taken the oath due to absence or due to challenges are not entitled to vote until being sworn. See § 2.2, supra.
3. See § 2.5, supra. Rule XXXII clause 1, *House Rules and Manual* § 919 (1973) grants the privilege of the floor to contestants in election cases.
4. See 4 Hinds' Precedents § 4483. This is the traditional view, as stated by Jefferson's Manual: ". . . Before a return be made a Member elected may be named of a committee, and is to every extent a Member except that he cannot vote until he is sworn." *House Rules and Manual* § 300 (1973). For a summary of the rights and privileges of Members-elect not yet sworn, see § 2, supra.
5. See 1 Hinds' Precedents §§ 147, 148. Where a division is demanded on one resolution to seat several claimants, the oath may be administered to each as soon as his case is decided (see 1 Hinds' Precedents § 623).
6. See 1 Hinds' Precedents § 474.
7. See 1 Hinds' Precedents §§ 151, 152.
8. See, for example, the resolution at § 6.5, infra. The Member proposing a resolution to seat a challenged Member-elect may, prior to the adoption of rules, move the previous question and cut off all debate on the subject,

mon type of resolution authorizes the administration of the oath to the challenged Member-elect based on his prima facie right to the seat, but refers the determination of his final right to committee.[9] The third type of resolution refers the prima facie as well as the final right to the seat to committee, without authorizing the administration of the oath.[10] The determination by the House as to which kind of resolution to adopt depends on both the sufficiency of the credentials and on the strength of the grounds for challenge.[11]

Except for the exclusion of Members-elect from the Clerk's roll for irregularities in credentials, no action is taken upon the right of a Member-elect to his seat until the time comes for his taking the oath. Therefore, when a Representative-elect was excluded from the 90th Congress and was re-elected to the same Congress after a vacancy in the seat had been declared, Speaker John W. McCormack, of Massachusetts, ruled that no action would be taken upon his right to membership until he appeared to take the oath and was challenged once again.[12]

Forms

Form of resolution providing that a Member, who had been asked to stand aside when the oath was administered to the other Members, be permitted to take the oath of office.

Resolved, That the gentleman from Missouri, Mr. Morgan M. Moulder, be now permitted to take the oath of office.[13]

since House Rule XXVII clause 3 (House *Rules and Manual* § 907 [1973]), allowing 40 minutes debate in certain situations when the previous question is moved, is inapplicable prior to the adoption of rules (see Ch. 1, supra, for a full discussion; see § 5.5, supra, for a recent instance thereof). If the previous question is rejected, or if the proposing Member yields for the purpose, amendments may be offered, if germane, to a resolution authorizing the administration of the oath to a Member-elect (see Ch. 1, § 12, supra, for a general discussion; see Ch. 1, § 12.7, supra, for an occasion where such an amendment was held not germane).

9. Admission on prima facie right, without regard to final right, usually occurs when the Member-elect comes from a recognized constituency, vith credentials in due form and with unquestioned qualifications (see 1 Hinds' Precedents §§ 528–534)

10. See §§ 6.6, 6.7, infra.

11. For specific election contests and House action thereon, see Ch. 9, infra.

12. See § 6.8, infra, for the ruling. See § 6.9, infra, for the challenge that was made when the Representative-elect appeared to take the oath.

13. 107 CONG. REC. 24, 87th Cong. 1st Sess., Jan. 3, 1961.

Form of resolution authorizing the Speaker to administer the oath of office to a challenged Member-elect and providing that the question of final right to his seat be referred to the Committee on House Administration.

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from Arkansas, Mr. Dale Alford.

Resolved, That the question of the final right of Dale Alford to a seat in the 86th Congress be referred to the Committee on House Administration, when elected, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution.[14]

Form of resolution providing that the question of the right of either of two contestants for a seat be referred to the Committee on House Administration, and providing that until that committee has reported, and the House decided, neither the Member-elect nor the contestee should take the oath of office.

Resolved, That the question of the right of J. Edward Roush or George O. Chambers, from the Fifth Congressional District of Indiana, to a seat in the 87th Congress be referred to the Committee on House Administration, when elected, and said committee shall have the power to send for persons and papers and examine witnesses on oath in relation to the subject matter of this resolution; and be it further.

Resolved, That until such committee shall report upon and the House decide the question of the right of either J. Edward Roush or George O. Chambers to a seat in the 87th Congress, neither shall be sworn.[15]

Form and Procedures of Challenges

§ 6.1 A Member-elect challenges the right of another Member-elect to take the oath prior to the swearing in of Members-select en masse, whereupon the Speaker requests the challenged Member-elect to stand aside.

On Jan. 5, 1937,[16] after Speaker William B. Bankhead, of Alabama, had requested the membership of the House to rise for the administration of the oath of office, Mr. John J. O'Connor, of New York, arose and said:

Mr. Speaker, I ask that the gentleman from New Hampshire [Mr. Jenks] stand aside.

Despite the fact that a certificate of his election has been filed with the Speaker, it may be impeached by certain facts which tend to show that he has not received a plurality of the votes duly cast in that congressional district.

THE SPEAKER: The gentleman from New Hampshire will stand aside momentarily.[17]

14. 105 CONG. REC. 14, 86th Cong. 1st Sess., Jan. 7, 1959.

15. 107 CONG. REC. 24, 87th Cong. 1st Sess., Jan. 3, 1961.

16. 81 CONG. REC. 13, 75th Cong. 1st Sess.

17. For examples of similar requests by the Speaker when challenges have

§ 6.2 A Member-elect challenging the right of another to be sworn offers, as a basis for challenge, either his own responsibility as a Member-elect, or the strength of documents, or both.

On Jan. 10, 1967,[18] Member-elect Lionel Van Deerlin, of California, stated a challenge to the right of another Member-elect to be sworn in the following terms:

> Mr. Speaker, upon my responsibility as a Member-elect of the 90th Congress, I object to the oath being administered at this time to the gentleman from New York [Mr. Adam C. Powell]. I base this upon facts and and statements which I consider reliable. ...

The same language has often been used to propose challenges,[19] although on Jan. 3, 1937,[20] Member-elect John J. O'Connor, of New York, stated a challenge not on the basis of his responsibility but on facts tending to show that the challenged Member-elect had not received a plurality of votes in the district from which elected.[1]

Debate on Challenges

§ 6.3 It is not in order to debate a challenged Member's right to take the oath of office at the beginning of a Congress until the remaining Members-elect have been sworn in.

On Jan. 5, 1937,[2] after Mr. John J. O'Connor, of New York, had challenged the right of a Member-elect to take the oath, Mr. Bertrand H. Snell, of New York, arose to state certain remarks as to the certificate held by the challenged Member-elect and as to the principle that in standing aside, the challenged Member-elect yielded none of his rights or privileges as a Member of the House. Mr. O'Connor then arose to state a point of order, as follows:

> MR. O'CONNOR: Mr. Speaker, I make the point of order that at this par-

been made, see 111 CONG. REC. 18, 19, 89th Cong. 1st Sess., Jan. 4, 1965; 113 CONG. REC. 14, 90th Cong. 1st Sess., Jan. 10, 1967; 115 CONG. REC. 15, 91st Cong. 1st Sess., Jan. 3, 1969.

18. 113 CONG. REC 14, 90th Cong. 1st Sess.

19. See, *e.g.*, statement of Mr. William F. Ryan (N.Y.), 111 CONG. REC. 18, 89th Cong. 1st Sess., Jan. 4, 1965; statement of Mr. Clifford Davis (Tenn.), 107 CONG. REC. 23, 87th Cong. 1st Sess., Jan 3, 1961.

20. 81 CONG. REC. 13, 75th Cong. 1st Sess.

1. If a challenge does not propose either the strength of documents or the responsibility of the challenging Member-elect, the House will not entertain it. 1 Hinds' Precedents § 455.

2. 81 CONG. REC. 13, 75th Cong. 1st Sess.

ticular time the matter is not debatable. . . .

MR. SNELL: I think I have the right to make this statement now and under the circumstances should be allowed to make it.

THE SPEAKER:[3] The request made by the gentleman from New York was that the gentleman holding the certificate of election from the State of New Hampshire stand aside momentarily.

The Chair is of the opinion that he waives no rights and just as soon as the other Members take the oath the matter can be settled. ...

The Chair will recognize the gentleman later if he desires to extend his argument.

Challenge to a Delegation

§ 6.4 The right of an entire state delegation of Representatives-elect to take the oath may be challenged.

On Jan. 4, 1965,[4] Mr. William F. Ryan, of New York, challenged, on his behalf and on the behalf of a number of colleagues, the right of the Representatives-elect from Mississippi (Mr. Abernathy, Mr. Whitten, Mr. Williams, Mr. Walker, and Mr. Colmer) to take the oath of office. Speaker John W. McCormack, of Massachusetts, requested the Representatives-elect from Mississippi as well as a challenged Member-elect from another state not to rise to take the oath with the other Members being sworn in en masse.

Parliamentarian's Note: The challenge to the Mississippi delegation was based on the constitutional argument that systematic denial of Negro voting rights throughout Mississippi invalidated the election of the entire House delegation from that state.

§ 6.5 The House may authorize, through one resolution, the administration of the oath to an entire state delegation which has been challenged.

On Jan. 4, 1965,[5] after unchallenged Members of the House had been sworn in, the following resolution was offered, in relation to an entire state delegation that had been challenged:

> *Resolved*, That the Speaker is hereby authorized and directed to administer the oath of office to the gentlemen from Mississippi, Mr. Thomas G. Abernathy, Mr. James L. Whitten, Mr. John Bell Williams, Mr. William M. Colmer, and Mr. Prentiss Walker.

Immediately after the adoption of the resolution, the five Members-elect from Mississippi were sworn in all at one time.

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3. William B. Bankhead (Ala.).

4. 111 CONG. REC. 18, 19, 89th Cong. 1st Sess.

5. 111 CONG. REC. 18, 19, 89th Cong. 1st Sess.

Preliminary House Action on Challenges

§ 6.6 When two persons claimed a seat in the House from the same congressional district, one with a certificate of election signed by the Governor of the state and the other with a certificate of election from a citizens' election committee of the congressional district, the House refused to permit either to take the oath of office and referred the question of their prima facie as well as final right to the seat to the Committee on Elections.

On Jan. 3, 1934,[6] the Clerk of the House, South Trimble, transmitted to the House a signed certificate of the Governor of Louisiana attesting to the election of Mrs. Bolivar E. Kemp, Sr., to fill the vacancy caused by the death of the Honorable Bolivar E. Kemp. He also transmitted a communication from the Citizens' Election Committee of the Sixth Congressional District of the State of Louisiana in the form of a certificate of election of Mr. J.Y. Sanders, Jr., to fill the same vacancy. The House then adopted the following resolution:

> *Resolved*, That the question of prima facie as well as the final right of Mrs. Bolivar E. Kemp, Sr., and J.Y. Sanders, Jr., contestants, respectively, claiming a seat in this House from the Sixth District of Louisiana, be referred to the Committee on Elections No. 3; and until such committee shall have reported in the premises and the House decided such question neither of said contestants shall be admitted to a seat.

§ 6.7 The House agreed to a resolution excluding a Member-elect pending an investigation of his right to the seat, which referred to a select committee questions of his right to be sworn and to take the seat, permitted him pay and allowances of the House pending a final determination, and required the committee to report back to the House within a prescribed time.

On Jan. 10, 1967,[7] the House agreed to a resolution excluding Mr. Adam C. Powell, Jr., of New York, from his seat pending the final determination of his right to be sworn:

> *Resolved*, That the question of the right of Adam Clayton Powell to be sworn in as a Representative from the State of New York in the Ninetieth Congress, as well as his final right to a seat therein as such Representative, be referred to a special committee of

6. 78 CONG. REC. 11, 12, 73d Cong. 2d Sess.

7. 113 CONG. REC. 24–26, 90th Cong. 1st Sess.

nine Members of the House to be appointed by the Speaker, four of whom shall be Members of the minority party appointed after consultation with the minority leader. Until such committee shall report upon and the House shall decide such question and right, the said Adam Clayton Powell shall not be sworn in or permitted to occupy a seat in this House.

For the purpose of carrying out this resolution the committee, or any subcommittee thereof authorized by the committee to hold hearings, is authorized to sit and act during the present Congress at such times and places within the United States, including any Commonwealth or possession thereof, or elsewhere, whether the House is in session, has recessed, or has adjourned, to hold such hearings, and to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary; except that neither the committee nor any subcommittee thereof may sit while the House is meeting unless special leave to sit shall have been obtained from the House. Subpoenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

Until such question and right have been decided, the said Adam Clayton Powell shall be entitled to all the pay, allowances, and emoluments authorized for Members of the House.

The committee shall report to the House within five weeks after the members of the committee are appointed the results of its investigation and study, together with such recommendations as it deems advisable. Any such report which is made when the House is not in session shall be filed with the Clerk of the House.

Challenge to Member Once Excluded

§ 6.8 Where a Representative-elect, excluded from membership in a particular Congress is re-elected to the same Congress, it is for the House to determine the procedure to be followed if and when he appears to take the oath; no action is taken until such time that the Representative-elect appears to take the oath and is again challenged.

On May 1, 1967,[8] Speaker John W. McCormack, of Massachusetts, responded to a parliamentary inquiry as to the necessity of the House to take affirmative action when a Representative-elect, excluded from membership "in the Ninetieth Congress", by resolution, was re-elected to the same Congress. The Speaker stated that when the Member appeared, if he was challenged, it would be a matter for the House to decide and for the

8. 113 CONG. REC. 11298, 90th Cong. 1st Sess.

House to express its will upon. He stated that the leadership intended to take no action with regard to the seating of such Member until he appeared to take the oath.

§ 6.9 The right to take the oath of a Member-elect. who had been excluded by resolution from membership in the 90th Congress, was challenged in the 91st Congress.

On Jan. 3, 1969,[9] the right to be sworn of Mr. Adam C. Powell, Jr., of New York, Representative-elect to the 91st Congress, was challenged. Mr. Powell had been excluded by the House from membership in the 90th Congress. The Speaker[10] asked Mr. Powell to stand aside while the oath of office was administered to the other Members.

Senate Challenges

§ 6.10 On one occasion, a Senator-elect died while there was pending in the Senate a question as to his right to take the oath of office.

On Jan. 4, 1947,[11] the Senate laid on the table the credentials of Mr. Theodore G. Bilbo, of Mississippi, whose seat was challenged, pending the improvement of his physical condition. Mr. Bilbo died on Aug. 21, 1947, before the matter was again brought before the Senate.

9. 115 CONG. REC. 15, 91st Cong. 1st Sess.

10. John W. McCormack (Mass.).

11. 93 CONG. REC. 109, 80th Cong. 1st Sess.

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Party Organization

A. INTRODUCTION

§ 1. In General

This chapter describes the nature and functions of the party structure in the House, including the party leadership and the major party organizations.[1] It should be borne in mind that some of the organizations described do not remain constant in their influence or importance as instruments for the formation or promotion of party policy. Thus, the Democratic Caucus is more active at present than at times in the recent past;[2] the Republican Conference has in some measure assumed functions formerly undertaken by the Policy Committee;[3] and the Democratic Steering Committee has been relatively inactive in recent years.[4]

Much of the legislative business that is done is, of course, a result of interaction between the political parties. Many of the rules and procedures of the House can be understood only in the context of the system of government through parties. Jefferson regarded the rules of proceeding as, in some degree, a check on the power of the majority; he stated that,[5]

> . . . [A]s it is always in the power of the majority, by their numbers, to stop any improper measures proposed on the part of their opponents, the only weapons by which the minority can defend themselves against similar attempts from those in power are the forms and rules of proceeding which . . . [have] become the law of the House, by a strict adherence to which the weaker party can only be protected from those irregularities and abuses which these forms were intended to check. . . .

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1. See also the discussion of party organizations in 8 Cannon's Precedents §§ 3602–3629.

This chapter discusses significant developments through the 93d Congress, first session. For discussion of later changes in the structure and procedures of the party organizations, see supplements to this edition as they appear.

2. See Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), p. 604.

3. *Id.* at p. 142.

4. *Id.*

For discussion of recent developments, including the new role assumed by the Democratic Steering and Policy Committee, see supplements to this edition as they appear.

5. Jefferson's Manual, sec. 1 (*House Rules and Manual* § 283 [1973]).

At the same time, it has often been observed that the rules of proceeding are an instrument through which a majority may work its will in the face of the determined opposition of a minority.

Although not always the case, frequently the attitude of members of the same party toward particular legislation is fairly uniform,[6] so that sentiment in the House with respect to such legislation divides according to party alignment.[7] Despite the traditional role of partisan rivalry in shaping legislation, however, the spirit of comity that exists between the parties has often been noted.[8]

Steps are taken to ensure that in every phase of legislative proceedings each party's interests are represented. Thus, each standing committee is composed of members selected by the respective parties.[9] Where memberships are added to a committee, they are apportioned between majority and minority.[10] Similar principles of apportionment are applied with respect to subcommittees.[11] With respect to the appointment of committee staff personnel, the rules typically contain a provision such as the following:

> The minority party on any such standing committee is entitled to and shall receive fair consideration in the appointment of committee staff personnel pursuant to each such primary or additional expense resolution.[12]

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6. See § 10, infra, as to means by which a party may seek to promote uniformity among its members.

7. The terms "majority" and "minority," of course, need not necessarily refer to parties, but may refer to the division of sentiment on an issue where such sentiment does not depend on party alignment. For an instance in which the term "minority" in a special order was construed to refer to the minority party in the House and not to those in the minority on the pending question, see 7 Cannon's Precedents § 767. It is also stated (in 7 Cannon's Precedents § 766) that a division of time for debate between those "for and against" a proposition does not necessarily provide for such division between the majority and minority parties of the House but between those actually favoring and opposing the measure.

8. See, for example, 117 CONG. REC. 1709, 92d Cong. 1st Sess., Feb. 4, 1971 (remarks of Mr. James G. Fulton [Pa.]).

9. See § 9, infra.

10. See § 17.8 infra.

11. See, for example, 4 Hinds' Precedents § 4551.

12. Rule XI clause 32(c), *House Rules and Manual* (1971). This language, offered as part of H. Res. 5, 92d Cong. 1st Sess. (1971), engendered considerable controversy, being a modification of a proposed more specific rule.

A statute [2 USCA § 72a(b)] provides that, subject to appropriations which it shall be in order to include in appropriation bills, the Committee on Appropriations of each House is

Similarly, provision is generally made for majority and minority representation on joint committees.[13]

Care is also taken that the parties are fairly represented on other committees or commissions created for special purposes. For example, commissions that have been appointed for purposes of making recommendations regarding improvement, reconstruction, or the like, of the physical facilities of the Capitol, have been comprised of Members apportioned from the majority and minority parties, including designated party leaders.[14]

Although the majority party's candidates for various House offices are routinely elected thereto, the minority's candidates for the offices are generally named to positions as "minority employees" in the House.[15] Moreover, provision is made for the appointment and compensation of a minority pair clerk and a "staff director to the minority."[16]

On occasion, a Member has changed party affiliation, sometimes after acts on his part that his party has deemed disloyal and for which the party has imposed discipline on the Member. Thus, Mr. Albert W. Watson, of South Carolina, who had been elected to the 89th Congress as a Democrat, was the subject of punitive action taken by the caucus on account of his having supported a Republican Presidential candidate. Mr. Watson subsequently announced his intention to change his political affiliation from Democratic to Republican and to resign so that his constituents could, by their votes in a special election, indicate

authorized to appoint such staff, in addition to the clerk thereof and assistants for the minority, as each such committee, by a majority vote, shall determine to be necessary, such personnel, other than the minority assistants, to possess such qualifications as the committees respectively may prescribe.

As to committees and committee staff generally, see Ch. 17, infra.

13. See *House Rules and Manual* §§ 983a et seq. (1973).

14. See 40 USCA § 166 (notes); see also § 17 infra, discussing measures taken to ensure equitable representation on the Commission on the Extension of the Capitol.

15. See 117 CONG. REC. 13 (resolution naming minority candidates), 15 (resolution as to compensation of certain minority employees), 92d Cong. 1st Sess., Jan. 21, 1971. As a further example, see 99 CONG. REC. 15, 24, 25, 83d Cong. 1st Sess., Jan. 3, 1953. Resolutions relating to minority employees of the House are discussed further in § 17.10, infra.

16. See, for example, 117 CONG. REC. 15 (H. Res. 6), 92d Cong. 1st Sess., Jan. 21, 1971. See also H. Res. 441, 91st Cong. 1st Sess. (1969).

their approval or disapproval of his activities. Mr. Watson's letters tendering his resignation to the Governor of his state and informing the Speaker of such resignation appear in the *Congressional Record*.[17]

In the 85th Congress, Mr. Vincent J. Dellay, of New Jersey, changed his party affiliation from Republican to Democratic. A letter written by him to the Republican floor leader appears in the *Congressional Record;*[18] the letter indicated that Mr. Dellay had informed certain Democratic leaders on both the national and state levels of his intention to change party affiliation. Also appearing in the Record[19] is Mr. Dellay's letter of resignation from a House committee as a Republican Member. Mr. Dellay was subsequently elected as a Democratic Member to certain House committees.[20]

17. 111 CONG. REC. 1452, 89th Cong. 1st Sess., Jan. 28, 1955.

As to constitutionality, construction, and application of statutes regarding party affiliation or change thereof as affecting eligibility to nomination for public office, see annotation, 153 ALR 641.

18. 104 CONG. REC. 674, 85th Cong. 2d Sess., Jan. 20, 1958.

19. *Id.*

20. See H. Res. 452, 85th Cong. 2d Sess. (1958).

Speaker's Relation to Party Structure

Since the Speaker is the subject of another chapter (Ch. 6, infra) no attempt will be made here to discuss his office in depth. It is worth quoting here, however, certain remarks of Minority Leader Gerald R. Ford, of Michigan, on the subject of the Speakership; the remarks, made during discussion of a resolution commending John W. McCormack, of Massachusetts, on his length of service as Speaker, were as follows:[1]

> The office of the Speaker is a unique one in the American Government. He is at once the leader of his party and the impartial Presiding Officer of the House. As his powers are great, so must his sense of fairness be extraordinary. As his position is exalted among his legislative equals, so must his tact and consideration . . . be constantly exercised.

The Speaker is, of course, his party's leader. Nominated by the party caucus, he has received, in the election that takes place in the House at the beginning of a Congress, the universal support of the members of his party despite the range of ideological variations that may exist in the party. Historically, moreover, the Speaker will frequently rise to that posi-

1. 116 CONG. REC. 17021, 91st Cong. 2d Sess. May 26, 1970.

tion after having served as his party's floor leader and perhaps, prior to that service, as the party whip. The minority party's candidate for Speaker generally becomes that party's floor leader, and may reasonably expect to be elevated to the Speakership upon a shift of power in the House.[2]

The Speaker has on occasion taken the floor to promote certain measures that have been endorsed by his party. Thus, on Jan. 4, 1965,[3] Speaker John W. McCormack, of Massachusetts, took the floor to urge adoption of rules for the 89th Congress that included certain provisions that had the endorsement of the Democratic Caucus. He stated that since the resolution under consideration contemplated certain changes in the rules, he felt that his views should be made known to the Members of the House.

On one occasion, the caucus chairman inserted in the Record a resolution, previously approved by the caucus, praising the Speaker of the House for his efforts on behalf of Democratic candidates in a recent election campaign.[4]

In fulfilling the duties of the Chair, the Speaker is impartial, and assiduous in protecting the rights of the minority. Of course, this does not mean that the exigencies of business in the House cannot interfere with his ability to accommodate the minority party in particular instances. Thus, on a day on which the House was considering the 1951 amendments to the Universal Military Training and Service Act, the Speaker declined to entertain a request of the Minority Leader, made shortly after convening on that day, that the House take a two-hour recess for a Republican Conference.[5] But a Speaker must always concur with the sentiments expressed by Speaker John W. McCormack, of Massachusetts, in the 91st Congress:[6]

2. See, generally, the discussion of leadership posts in the House in Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), pp. 140, 141. In 6 Cannon's Precedents § 35 is cited an unusual instance in which Speaker Joseph G. Cannon, of Illinois, following a vote upon an essential question indicating a change in the party control of the House, announced that under such circumstances it was incumbent upon the Speaker either to resign or to recognize for a motion declaring vacant the office of Speaker.

3. 111 CONG. REC. 23, 89th Cong. 1st Sess.

4. See § 3.18, infra.

5. See § 5.5, infra.

6. 116 CONG. REC. 17041, 91st Cong. 2d Sess., May 26, 1970.

There is one thing that I would like to be remembered for by my colleagues and that is that John McCormack was always the Members' Speaker. . . . It is because of the intense love I have in my heart for the House of Representatives and the deep respect I have for all Members. And also for the fact that whenever a Member takes the Chair as Speaker he represents all of the Members without regard to political party; to protect their rights under the Rules of the House of Representatives; and, even more, protecting their rights on a broader scale where that is necessary. I have always tried to impartially carry out the Rules of the House of Representatives.

B. PARTY CAUCUS OR CONFERENCE

§ 2. In General; Nature and Purposes

The primary party organizations in the House are the Democratic Caucus and the Republican Conference. Generally, the Democratic Caucus is composed of all Democratic Members of the House,[7] and the Republican Conference is composed of all Republican Members.[8] The main functions of the two party organizations are to promote unity; to determine party policy with respect to anticipated legislation; to select their respective candidates for the Speakership and other offices in the House; to choose party leaders; and to play a role in selecting party members for positions on

7. See Rule 1, Democratic Caucus Rules (July 20, 1971).

8. See Riddick, Floyd M., *Congressional Procedure,* Chapman and Grimes (Boston, 1941), p. 31.

Collateral references: Binkley, Wilfred Ellsworth, *American Political Parties; Their Natural History*, 4th edition, rev., Alfred A. Knoph Co. (New York, 1972); Fine, Nathan, *Labor and Farmer Parties in the United States, 1828–1928*, Russell and Russell (New York, 1961); Haynes, Frederick E., *Third Party Movements Since the Civil War*, Russell and Russell (New York, 1966); Hesseltine, William B., *Third Party Movements in the United States*, Van Nostrand (Princeton, N.J., 1962); Hicks, John Donald, *The Populist Revolts; A History of the Farmers' Alliance and the People's Party*, University of Nebraska Press (Lincoln, 1961); Nash, Howard Pervear, *Third Parties in American Politics*, Public Affairs Press (Washington, D.C., 1959); Ripley, Randall B., *Party Leaders in the House of Representatives*, The Brookings Institution (Washington, 1967) pp. 41–46 (development of party caucuses); Steadman, Murry Salisbury and Susan W. Stedman, *Discontent at the Polls; A Study of Farmer and Labor Parties, 1827–1948*, Russell and Russell (New York, 1967).

House committees. These functions are discussed in detail in succeeding sections.

§ 3. Chairmen—Functions

At the beginning of a Congress, the Democratic Caucus and Republican Conference elect chairmen.[9]

The chairman has duties and functions which are to some extent specified in the caucus or conference rules. Thus, the following rule defines the authority of the Democratic Caucus Chairman with respect to determining the time and place of caucus meetings:

> Meetings of the Democratic caucus may be called by the chairman upon his own motion and shall be called by him whenever requested in writing by 50 members of the caucus or at the request of the party leader. While the House is in session the Democratic caucus shall meet regularly at a time and place to be determined by the chairman, on the third Wednesday of each month, except January of odd numbered years. If the House not be in session on the third Wednesday, the monthly caucus shall be held on the next succeeding Wednesday on which the House is in session. The chairman may cancel any monthly caucus, but not two consecutive monthly caucuses, provided members are given reasonable notice of such cancellation.[10]

The caucus rules also delimit the role of the chairman in determining the order and nature of business to be transacted at caucus meetings. The caucus rules provide that, at each monthly caucus,

> . . . members shall have the right to place before the caucus any question, provided that notice of such intention is (1) delivered to the office of the chairman, and (2) transmitted to all members of the caucus not later than 5:00 p.m. on the ninth day immediately preceding the day of such caucus. The chairman shall prescribe the order of business and shall provide members with an agenda at least 5 days before caucus. Amendments to the agenda shall be in order only if

9. See 8 Cannon's Precedents §§ 3603, 3604a; *Cannon's Procedure in the House of Representatives*, H. Doc. No. 122, 86th Cong. 1st Sess. (1959) p. 187; Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), pp. 31, 32.

The chairman of the caucus for the preceding Congress may call the initial meeting to order. See *Cannon's Procedure in the House of Representatves*, H. Doc. No. 122, 86th Cong. 1st Sess. (1959), p. 187.

For discussion of more recent developments, including procedures for calling an organizational meeting of the caucus prior to the opening of a new Congress, see supplements to this edition as they appear.

10. Rule 3, Democratic Caucus Rules (July 20, 1971). For general discussion of the caucus rules, see § 4, infra.

submitted to caucus members at least 48 hours before the hour of convening and if supported in writing by 50 members.[11]

The following are rules of a general nature that relate to the conduct of business by the chairman:

General parliamentary law, with such special rules as may be adopted, shall govern the meetings of the Caucus.[12]

That the 5-minute rule that governs the House of Representatives shall govern debate in the Democratic Caucus, unless suspended by a vote of the caucus.[13]

. . . If the absence of a quorum is established, the chairman may continue the meeting for purposes of discussion only, but no motion of any kind, except a motion to adjourn, shall be in order at such continued meeting.[14]

No persons, except Democratic Members of the House of Representatives, a caucus Journal Clerk, and other necessary employees, shall be admitted to the meetings of the caucus without the express permission of the chairman.[15]

In addition to those activities relating directly to his conduct of caucus or conference business, the chairman undertakes certain functions, described in succeeding sections, on the floor of the House. It should also be noted that the chairman may serve as an ex officio member of various party committees; the Chairman of the Democratic Caucus, for example, has in past Congresses been an ex officio member of the Steering Committee.[16]

Announcement of Candidate for Speaker

§ 3.1 At the beginning of every Congress, each caucus or conference chairman announces in the House the name of his party's candidate for the office of Speaker.

At the beginning of the 91st Congress, immediately following the roll call of the states to establish a quorum and the announcement of the receipt of the credentials of the Resident Commissioner from Puerto Rico, the Clerk called for nominations for Speaker. The Chairman of the Democratic Caucus, Mr. Daniel D. Rostenkowski, of Illinois, presented the name of Mr. John W. McCormack, of Massachusetts. The Chairman of the Republican Con-

11. Rule 3, Democratic Caucus Rules (July 20, 1971).

12. Rule 5, Democratic Caucus Rules (July 20, 1971).

13. Rule 9, Democratic Caucus Rules (July 20, 1971).

14. Rule 4, Democratic Caucus Rules (July 20, 1971).

15. Rule 10, Democratic Caucus Rules (1971).

16. See § 13, infra.

ference, Mr. John Anderson, of Illinois, presented the name of Mr. Gerald R. Ford, of Michigan.[17]

§ 3.2 The Speaker having died prior to the second session of the 87th Congress, the Clerk at the beginning of the second session called for nominations for Speaker, and the Chairmen of the Democratic Caucus and Republican Conference announced their respective parties' nominations for Speaker.

On Jan. 10, 1962,[18] the Clerk called the House to order for the purpose of electing a Speaker. Immediately following the call of the roll, the following proceedings took place:

> THE CLERK: Nominations for Speaker of the House of Representatives are now in order.
>
> The Clerk recognizes the gentleman from Pennsylvania (Mr. Walter).
>
> MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Clerk, as chairman of the Democratic Caucus I am directed by the unanimous vote of that caucus to present for election to the office of Speaker of the House of Representatives the name of the Honorable John W. McCormack, a Representative from the State of Massachusetts.
>
> THE CLERK: The gentleman from Iowa [Mr. Hoeven] is recognized.
>
> MR. [CHARLES B.] HOEVEN [of Iowa]: Mr. Clerk, by authority, by direction, and by unanimous vote of the Republican Conference, I nominate for Speaker of the House of Representatives the Honorable Charles A. Halleck, a Representative from the State of Indiana.

Third-Party Nomination for Speaker

§ 3.3 A third party may organize as a conference and name its candidate for Speaker, and the chairman of such conference announces his party's candidate for the Speakership in the same manner as the major parties' candidates are announced.

On Jan. 5, 1937,[19] following the nominations by the Chairman of the Democratic Caucus and Republican Conference of candidates

17. 115 CONG. REC. 13, 91st Cong. 1st Sess., Jan. 3, 1969. For substantially the same proceedings in prior Congresses, see, for example, 113 CONG. REC. 12, 90th Cong. 1st Sess., Jan. 10, 1967; and 111 CONG. REC. 17, 89th Cong. 1st Sess., Jan. 4, 1965. In the 90th Congress, 1st Sess. (113 CONG. REC. 12), the proceedings differed mainly in that the Clerk, before calling for nominations for Speaker, announced a vacancy in the second district of Rhode Island occasioned by the recent death of a Representative-elect.

18. 108 CONG. REC. 5, 87th Cong 2d Sess.

19. 81 CONG. REC. 11, 75th Cong. 1st Sess.

for the Speakership, the following proceedings took place:

> THE CLERK: Are there any further nominations?
>
> MR. [GARDNER R.] WITHROW [of Wisconsin]: Mr. Clerk, as chairman of the Farmer-Labor-Progressive Party's Conference, I have been directed, and I have the authority, to present to this body as a candidate for the Speakership of the Seventy-fifth Congress Hon. George J. Schneider, a Representative-elect from the State of Wisconsin.

Resolution Electing Speaker Pro Tempore

§ 3.4 The Chairman of the Democratic Caucus offered a resolution electing a Speaker pro tempore.

On Jan. 10, 1966, Carl Albert, of Oklahoma, the Speaker pro tempore by designation, left the chair pending the offering of a resolution electing him as Speaker pro tempore during the absence of the Speaker.[20] Mr. Albert requested that the chair be temporarily assumed by Mr. Hale Boggs, of Louisiana, who thereupon assumed the chair and recognized the Chairman of the Democratic Caucus for purposes of offering the resolution.

A similar resolution was offered by the caucus chairman in the 87th Congress.[1] Speaker Rayburn being absent on Aug. 31, 1961, Carl Albert, the Democratic whip, called the House to order and laid down a letter from the Speaker designating Carl Albert as Speaker pro tempore for the day. Following the prayer, approval of the Journal and receipt of a message from the Senate, the caucus chairman offered the resolution electing John W. McCormack, of Massachusetts, as Speaker pro tempore.

Announcement of Election of Party Leader

§ 3.5 At the beginning of a Congress, it is usual for announcements to be made by the caucus and conference chairmen as to their respective parties' floor leaders.

On Jan. 3, 1969,[2] following the transaction of business relating to

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20. 112 CONG. REC. 6, 89th Cong. 2d Sess.

Parliamentarian's Note: Speaker John W. McCormack (Mass.) was absent because of the death of his brother. Since the duration of the Speaker's absence was uncertain, and since there were new Members present to be sworn as well as business requiring a signature, the election of a Speaker pro tempore was considered essential.

1. 107 CONG. REC. 17765, 17766, 87th Cong. 1st Sess., Aug. 31, 1961.

2. 115 CONG. REC. 34, 91st Cong. 1st Sess.

the swearing in of Members, the following proceedings took place:

MR. [DANIEL D.] ROSTENKOWSKI [of Illinois]: Mr. Speaker, as Chairman of the Democratic caucus, I have been directed to report to the House that the Democratic Members have selected as majority leader the gentleman from Oklahoma, the Honorable Carl Albert.

MR. [JOHN B.] ANDERSON [of Illinois]: Mr. Speaker, as Chairman of the Republican Conference, I am directed by that Conference to officially notify the House that the gentleman from Michigan, the Honorable Gerald R. Ford, has been selected as the minority leader of the House.[3]

§ 3.6 Where a vacancy has occurred in the office of floor leader, the chairman of the party caucus announces the party's selection of a new floor leader.

On Jan. 10, 1962,[4] the Chairman of the Democratic Caucus announced the selection of Carl Albert as Majority Leader, to replace John W. McCormack, of Massachusetts, who had been elevated to the Speakership after the death of Speaker Rayburn. The announcement was made as follows:

MR. WALTER: Mr. Speaker, as Chairman of the Democratic caucus I am directed to report to the House that the Democratic Members have selected as majority leader the gentleman from Oklahoma, the Honorable Carl Albert.

Announcement of Republican Whip

§ 3.7 Generally,[5] after the members of the Republican Conference select their party whip, such selection is announced to the House by the chairman of the conference.[6]

On Jan. 3, 1969,[7] immediately after announcements relating to the selection of party floor leaders, the following announcement was made by the Chairman of the Republican Conference:

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, as Chairman of the Republican Conference, I am directed by that conference to notify the House officially that the Republican Members

3. Substantially the same procedure has been followed in other Congresses. See, for example, 113 CONG. REC. 27, 90th Cong. 1st Sess., Jan. 10, 1967; 111 CONG. REC. 20, 89th Cong. 1st Sess., Jan. 4, 1965; and 109 CONG. REC. 13, 88th Cong. 1st Sess., Jan. 9, 1963.

4. 108 CONG. REC. 7, 87th Cong. 2d Sess.

5. For occasions on which the selection of the Republican whip has been announced by the Republican floor leader, see § 23.3, infra.

6. As to the announcement of the selection of the Democratic whip, see § 20.3, infra.

7. 115 CONG. REC. 34, 91st Cong. 1st Sess.

have selected as minority whip the gentleman from Illinois, the Honorable Leslie C. Arends.[8]

Announcements as to Other Party Officers

§ 3.8 The Chairman of the Republican Conference has on occasion announced to the House the selection of other party officers, in particular the Chairman of the Republican Policy Committee and the Chairman of the Republican Committee on Research and Planning.

On Jan. 10, 1967,[9] the Chairman of the Republican Conference, after announcing the selection of the Minority Leader and the minority whip, announced:

> The Conference has also directed me to notify the House officially that the Republican Members have selected as Chairman of the Republican Committee on Policy the gentleman from Arizona, the Honorable John J. Rhodes, and has chosen as Chairman of the Republican Committee on Research and Planning the gentleman from New York, the Honorable Charles E. Goodell.

Resolution Naming Officers of the House

§ 3.9 The chairman of the caucus or conference customarily introduces a resolution pertaining to the election of the Clerk of the House, Sergeant at Arms, Doorkeeper, Postmaster, and Chaplain.

On Jan. 3, 1969,[10] the Chairman of the Democratic Caucus of-

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8. Substantially similar proceedings have taken place in other Congresses. See, for example 113 CONG. REC. 27, 90th Cong. 1st Sess., Jan. 10, 1967. Of course, announcements relating to the selection of the whips are not always made at the same time as announcements relating to the selection of floor leaders. In the 89th Congress, for example, the Chairman of the Republican Conference announced the selection of the minority whip on Jan. 14, 1965 (111 CONG. REC. 656, 89th Cong. 1st Sess.), whereas the selection of the floor leaders had been announced on Jan. 4 (111 CONG. REC. 20, 89th Cong. 1st Sess.).

9. 113 CONG. REC. 27, 90th Cong. 1st Sess. See also 109 CONG. REC. 506, 88th Cong. 1st Sess., Jan. 17, 1963, in which the Chairman of the Republican Conference announced the selection of the minority whip and the Chairman of the Republican Policy Committee. In the 89th Congress (111 CONG. REC. 20, 89th Cong. 1st Sess.), on Jan. 4, 1965, the conference chairman announced first the selection of the Minority Leader and immediately thereafter the selection of the Chairman of the Republican Policy Committee; the announcement of the selection of the minority whip was made by the conference chairman on Jan. 14, 1965 (111 CONG. REC. 656, 89th Cong. 1st Sess.).

10. 115 CONG. REC. 34, 91st Cong. 1st Sess.

fered the following resolution, which was read by the Clerk:

H. RES. 3

Resolved, That W. Pat Jennings, of the Commonwealth of Virginia, be, and he is hereby, chosen Clerk of the House of Representatives;

That Zeake W. Johnson, Jr., of the State of Tennessee, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives;

That William M. Miller, of the State of Mississippi, be, and he is hereby, chosen Doorkeeper of the House of Representatives;

That H. H. Morris, of the Commonwealth of Kentucky, be, and he is hereby, chosen Postmaster of the House of Representatives;

That Reverend Edward G. Latch, of the District of Columbia, be, and he is hereby, chosen Chaplain of the House of Representatives.

Immediately after the introduction of the above resolution, the Chairman of the Republican Conference announced that he had a substitute to offer to the resolution. He thereupon requested that there be a division on the question on the resolution so as to permit a separate vote on the office of the Chaplain. After that portion of the resolution providing for the election of the Chaplain was agreed to, the Chairman of the Republican Conference offered a substitute amendment for the remainder of the resolution; such amendment, in the same form as the original resolution, named different persons to fill the posts of Clerk, Sergeant at Arms, Doorkeeper, and Postmaster. In the proceedings that followed, the substitute amendment was rejected, and the resolution offered by the Chairman of the Democratic Caucus was agreed to.[11]

In the 89th Congress,[12] no substitute amendment was offered, and the resolution offered by the caucus chairman pertaining to the election of the House officers was immediately agreed to.

Resolution as to Compensation of Minority Employees

§ 3.10 The chairman of the minority caucus or conference may introduce a resolution relating to the compensation of certain minority employees.

On Jan. 3, 1969,[13] the Chairman of the Republican Conference

11. 115 CONG. REC. 34, 91st Cong. 1st Sess., Jan. 3, 1969. In the 90th Congress (113 CONG. REC. 27, 90th Cong. 1st Sess., Jan. 10, 1967), the proceedings were substantially the same, except that the request for a division of the resolution electing officers was made by the minority whip.

12. 111 CONG. REC. 20, 89th Cong. 1st Sess., Jan. 4, 1965.

13. 115 CONG. REC. 35, 91st Cong. 1st Sess. For further discussion of the minority employees, see § 1, supra.

offered a resolution relating to the compensation of certain minority employees as follows:

MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, I offer a resolution (H. Res. 8) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 8

Resolved, That pursuant to the Legislative Pay Act of 1929, as amended, six minority employees authorized therein shall be the following-named persons . . . to wit: Harry L. Brookshire and Richard T. Burress to receive gross compensation of $28,000 respectvely. . . .

Election of Members to Committee on Ways and Means

§ 3.11 Resolutions electing Democratic Members to the Committee on Ways and Means, including resolutions to fill vacancies, are offered in the House by the Chairman of the Democratic Caucus.

[Note: For more recent changes in the functions and composition of the Committee on Ways and Means, see supplements to this edition as they appear.]

On Jan. 14, 1969,[14] the following proceedings took place:

MR. [DANIEL D.] ROSTENKOWSKI [of Illinois]: Mr. Speaker, I offer a privileged resolution (H. Res. 124) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 124

Resolved, That Sam Gibbons, of Florida, be, and he is hereby, elected a Member of the standing committee of the House of Representatives on Ways and Means.

The resolution was agreed to.

Substantially the same procedure has been followed in other Congresses.[15] On Jan. 16, 1962,[16] the resolution offered by the caucus chairman named two persons for membership on the Committee on Ways and Means, one of them the first woman elected to the committee. The proceedings were as follows:

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, by direction of the Democratic Caucus, I send to the desk a resolution and ask for its immediate consideration.

14. 115 CONG. REC. 611, 91st Cong. 1st Sess.

15. See, for example, 114 CONG. REC. 24220, 90th Cong. 2d Sess., July 30, 1968, in which the caucus chairman called up a resolution electing Omar Burleson to the Committee on Ways and Means; Mr. Burleson had previously resigned (114 CONG. REC. 24215, 90th Cong. 2d Sess., July 30, 1968) from two positions on committees pending his election to the Committee on Ways and Means. See also 110 CONG. REC. 10027, 88th Cong. 2d Sess., May 5, 1964.

16. 108 CONG. REC. 263, 87th Cong. 2d Sess.

The Clerk read as follows:

H. RES. 507

Resolved, That Clark W. Thompson, of Texas, and Martha W. Griffiths, of Michigan, be, and they are hereby, elected members of the standing committee of the House of Representatives on Ways and Means.

Resolution Electing Members to Other Standing Committees

§ 3.12 On occasion, the caucus chairman has offered a resolution electing Members to various standing committees of the House.

On Jan. 5, 1937,[17] the Chairman of the Democratic Caucus, Robert L. Doughton, of North Carolina, offered a resolution electing Members to certain standing committees of the House.

On Jan. 23, 1961,[18] the Chairman of the Democratic Caucus, Francis E. Walter, of Pennsylvania, offered separate resolutions electing Members respectively to the standing Committee on Rules and the standing Committee on Appropriations.

Announcement of Caucus Meeting

§ 3.13 The caucus chairman has on occasion made announcements in the House concerning caucus meetings.

On Jan. 12, 1937,[19] the Chairman of the Democratic Caucus made the following announcement in the House:

MR. [ROBERT L.] DOUGHTON [of North Carolina]: Mr. Speaker, I have asked for this time to inform the majority Members of the House that there will be a Democratic Caucus at 10:30 o'clock tomorrow morning to hear a report of the majority Committee on Committees.

Ceremonial Activities; Courtesies

§ 3.14 The chairmen of the caucus and conference have on occasion been appointed to the committee of escort[20] which traditionally accom-

17. 81 CONG. REC. 15, 75th Cong. 1st Sess. Ordinarily, at the beginning of recent Congresses, the resolution electing Democratic Members to the standing committees of the House has been offered by the Democratic Chairman of the Ways and Means Committee. For further discussion of assignments to standing committees, see §§ 9.1–9.5, infra; see also Ch. 17, infra.

18. 107 CONG. REC. 1155. 87th Cong. 1st Sess.

19. 81 CONG. REC. 190, 75th Cong. 1st Sess.

20. At times, the committee of escort has consisted only of the majority and minority floor leaders. See § 21.1, infra.

panies a new Speaker-elect to the chair.

On Jan. 10, 1967,[1] following the Clerk's announcement of the election of the Speaker, the following proceedings took place:

> [THE CLERK:] The Clerk appoints the following Committee to escort the Speaker-elect to the chair: . . . the gentleman from Wisconsin [Mr. Laird] . . . the gentleman from Illinois [Mr. Rostenkowski]. . . .
>
> The Doorkeeper announced the Speaker-elect of the House of Representatives of the 90th Congress, who was escorted to the chair by the committee of escort.

Committee to Notify President

§ 3.15 The chairman of the majority caucus has been appointed on occasion to the committee to notify the President as to the assembly of Congress.

In the 86th Congress, the committee to notify the President as to the assembly of Congress consisted of the Majority Leader, the Minority Leader, and the Chairman of the Democratic Caucus.[2]

Administration of Oath to Speaker Pro Tempore

§ 3.16 On occasion,[3] the Chairman of the Democratic Caucus has administered the oath to a newly-elected Speaker pro tempore.

On Aug. 31, 1961,[4] after the adoption by the House of a resolution introduced by the caucus chairman electing John W. McCormack, of Massachusetts, the Speaker pro tempore, the caucus chairman administered the oath to Mr. McCormack.

Assumption of Duties as Speaker Pro Tempore

§ 3.17 In the 88th Congress, the Chairman of the Republican Conference[5] presided as Speaker pro tempore during consideration of a resolution expressing the appreciation of the House for the manner in which Speaker John W.

1. 113 CONG. REC. 13, 90th Cong. 1st Sess.
2. See 105 CONG. REC. 15, 86th Cong. 1st Sess., Jan. 7, 1959.
3. For a discussion of other persons who might administer the oath to a newly-elected Speaker pro tempore, see Ch. 6, infra.
4. 107 CONG. REC. 17766, 87th Cong. 1st Sess.
5. The chairman was acting for the minority whip, who was absent. The minority whip usually fulfills the duties that were undertaken by the conference chairman on the occasion described above. See § 24.1, infra.

McCormack, of Massachusetts, performed the duties of the Chair in the 88th Congress.

On Oct. 3, 1964,[6] shortly before adjournment of the second session of the 88th Congress, the Speaker requested the Chairman of the Republican Conference to assume the Chair as Speaker pro tempore. Having assumed the Chair, the Speaker pro tempore, Gerald R. Ford, of Michigan, recognized the Minority Leader, who sent to the desk the resolution of thanks to the Speaker of the House. The Minority Leader then delivered to the House remarks in praise of the Speaker, at the conclusion of which the Speaker pro tempore stated, "The question is on the resolution." The resolution having been unanimously agreed to, the Speaker pro tempore recognized the Speaker, who responded to the resolution.

Tribute to Speaker for Campaign Efforts

§ 3.18 In the 91st Congress, the Chairman of the Democratic Caucus inserted in the *Congressional Record* the text of a resolution adopted by the caucus expressing gratitude to the Speaker for his efforts during the recent election campaign.

On Nov. 18, 1970,[7] the Chairman of the Democratic Caucus asked and was given permission to address the House for one minute and to revise and extend his remarks and include extraneous matter.

> MR. [DANIEL D.] ROSTENKOWSKI [of Illinois]: Mr. Speaker, this morning in the Democratic Caucus an extremely meritorious resolution was unanimously adopted commending the Honorable John W. McCormack, of the State of Massachusetts, for his participation in last November's campaign.
>
> This resolution was offered by our distinguished majority leader, the gentleman from Oklahoma (Mr. Albert), and I wholeheartedly subscribe to the resolution which is as follows:
>
> RESOLUTION BY REPRESENTATIVE CARL ALBERT, DEMOCRATIC CAUCUS, NOVEMBER 18, 1970
>
> . . . Whereas the Speaker elevated [the] campaign to a higher plane by focusing on valid issues, promoting rational debate, maintaining a demeanor fitting of high public office, and disdaining divisive and inflammatory rhetoric; and
>
> . . . Whereas his efforts in the late days of the campaign, and the catalyzing effect of his statements on the issues were resoundingly [successful] . . . Be it therefore

6. 110 CONG. REC. 24058, 24059, 88th Cong. 2d Sess.

7. 116 CONG. REC. 37821, 37822, 91st Cong. 2d Sess.

Resolved, That this Democratic Caucus express its unanimous gratitude to Speaker John W. McCormack for his leadership and guidance during the election period just completed. . . .

Expressions of Praise or Recognition

§ 3.19 On special occasions, the caucus or conference chairman has made appropriate remarks of felicitation or recognition.

On many occasions, the caucus or conference chairman has been among those offering expressions of felicitation or recognition. Thus, during proceedings relating to a resolution offered in the 91st Congress commending Speaker John W. McCormack, of Massachusetts, on his length of service as Speaker, the conference chairman, John B. Anderson, of Illinois, was among those speaking in recognition of the Speaker's record of service.(8)

Similarly, the chairman has announced birthdays and the like, extending appropriate felicitations.(9)

8. 116 CONG. REC. 17023, 91st Cong. 2d Sess., May 26, 1970.
9. See, for example, 112 CONG. REC. 15706, 89th Cong. 2d Sess., July 14, 1966 (birthday of party floor leader).

§ 4. Adoption of Rules; Recent Changes

[Note: Later versions of the caucus rules will be discussed in supplements to this edition as they appear.]

The party caucus or conference adopts rules that govern its proceedings.(10) The Republicans have in the past adopted as the rules for the conference the rules of the preceding Congress so far as applicable and except as modified.(11) Democratic Caucus rules adopted at the commencement of each Congress have, with few exceptions, remained substantially unchanged for a period of many years. The earlier caucus rules are set forth elsewhere,(12) and a more recent, though substantially similar, version was inserted in the Record of the 92d Congress.(13) Only the significant changes in the rules will be noted here.(14)

10. See 8 Cannon's Precedents §§ 3603, 3604a, 3609, and 3610.
11. 8 Cannon's Precedents § 3610. See also Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), p. 32.
12. See 8 Cannon's Precedents § 3609.
13. 117 CONG. REC. 434, 92d Cong. 1st Sess., Jan. 25, 1971.
14. Further discussion of the caucus rules as they relate to specific subjects is to be found in the sections that deal with such subjects. See, for

Some changes have taken place in the caucus rules with respect to time and place of meeting and the agenda. Former rule 3[15] provided simply that "Meetings of the Democratic Caucus may be called by the Chairman upon his own motion, and shall be called by him whenever requested in writing by 25 members of the caucus."

The present rule[16] specifies in some detail the conditions under which meetings will be held and the matters that will form the agenda.

Present rule 4 provides, as did the former rule 4, that "A quorum of the Caucus shall consist of a majority of the Democratic Members of the House." Additional language in the present rule 4, however, sets forth specific limits on the business that may be transacted in the absence of a quorum. The rule states:[17]

> 4. . . . If the absence of a quorum is established, the chairman may continue the meeting for purposes of discussion only, but no motion of any kind, except a motion to adjourn, shall be in order at such continued meeting.

Finally, with respect to persons permitted to attend meetings of the caucus, the former rule 10[18] prohibited all but certain persons from attending meetings. The present rule 10[19] gives to the caucus chairman some authority to admit persons to meetings.

§ 5. Time and Place of Meetings

A caucus rule, quoted above,[1] contains detailed provisions as to when caucus meetings may or must be held.

The Hall of the House may be used for caucus meetings. A rule

example, § 9, infra, for discussion of election of Members to committees; and § 10, infra, for discussion of instances in which party members will be considered bound by vote of the caucus.

15. 8 Cannon's Precedents § 3609.

16. Rule 3, Democratic Caucus Rules (July 20, 1971), quoted in § 3, supra.

17. Rule 4, Democratic Caucus Rules (July 20, 1971).

18. 8 Cannon's Precedents § 3609.

19. Democratic Caucus Rules (July 20, 1971), quoted in § 3, supra.

Note: An addendum to the caucus rules as adopted in 1973 set forth certain procedures to be followed when it was proposed that a bill be considered in the House pursuant to a closed rule. The procedures to be followed in such circumstances were designed primarily to afford the caucus an opportunity to decide whether the bill should be open to particular amendments. Some discussion of the operation of this provision can be found in Ch. 21, infra, of this edition. Further discussion will be found in this chapter in supplements to this edition as they appear.

1. Rule 3, Democratic Caucus Rules (July 20, 1971), quoted in § 3, supra.

of the House[2] provides that, with certain exceptions, "The Hall of the House shall be used only for the legislative business of the House and for the caucus meetings of its Members. . . ."

Notice of caucus or conference meetings may be by letter from the caucus or conference chairman.[3] Notice of the meeting at which the caucus or conference organizes for a new Congress is given by the chairman of the caucus or conference of the preceding Congress.[4]

Although the caucus or conference chairman is the officer generally responsible for calling and announcing caucus or conference meetings, other party leaders have on occasion taken the initiative in this regard. Thus, announcements respecting such meetings have been made in the House by the party floor leaders[5] and even by the Speaker of the House.[6]

The demands of business in the House may prevent the scheduling of meetings at the times desired by the party leaders. On one occasion, the Minority Leader asked that the House take a recess so that a meeting of the Republican Conference could take place; the Speaker declined to entertain the request.[7]

Announcement by Caucus Chairman

§ 5.1 On occasion, the caucus chairman has made an announcement in the House respecting a caucus meeting to be held.

On Jan. 12, 1937,[8] the Democratic Caucus Chairman, Robert L. Doughton, of North Carolina, announced:

> MR. DOUGHTON: Mr. Speaker, I have asked for this time to inform the ma-

2. Rule XXXI. See § 5.3, infra, for an announcement of a meeting to be held in the Hall of the House.
3. See *Cannon's Procedure*, H. Doc. No. 122, 86th Cong. 1st Sess. (1959), p. 187.
4. *Id.*
5. See §§ 5.3 (Majority Leader), 5.4 and 5.5 (Minority Leader), infra. For an occasion on which the Minority Leader, without calling a conference meeting, asked on the floor of the House for an informal indication of Republican sentiment on particular legislation, see § 19.2, infra.

For discussion of the more recent procedures used in calling organizational meetings of the caucus prior to the convening of a new Congress, see supplements to this edition as they appear.

6. See § 5.2, infra.
7. See § 5.5. infra.
8. 81 CONG. REC. 190, 75th Cong. 1st Sess.

jority Members of the House that there will be a Democratic Caucus at 10:30 o'clock tomorrow morning to hear a report of the majority Committee on Committees.

Announcement by Speaker

§ 5.2 The Speaker announced to the House the calling of a Democratic Caucus to fill a vacancy on the Committee on Ways and Means.

On July 23, 1968,[9] a Member's letter of resignation from the Committee on Ways and Means having been laid before the House,[10] Speaker John W. McCormack, of Massachusetts, announced from the floor:

> Mr. Speaker, I want to announce publicly that there will be a Democratic Caucus on Friday morning at 10 o'clock for the purpose of filling a vacancy that exists on the Ways and Means Committee by reason of the resignation of the gentleman from Florida [Mr. Herlong], whose resignation has been accepted today. I want to make this announcement for the benefit of my Democratic colleagues, so we can have as democratic a caucus as possible.

Announcement by Floor Leader

§ 5.3 In the 90th Congress, the Majority Leader announced in the House that the Democratic Caucus would meet to elect Members to the Committee on Ways and Means.

[Note: For discussion of procedures recently adopted with respect to announcement of organizational meetings of the caucus prior to the convening of a new Congress, see supplements to this edition as they appear.]

On July 30, 1968,[11] the following proceedings took place:

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent to address the House for one minute and to revise and extend my remarks.
>
> THE SPEAKER: Is there objection to the request of the gentleman from Oklahoma?
>
> There was no objection.
>
> MR. ALBERT: Mr. Speaker, I take this time to advise the Democratic Members that a caucus of the Democratic Members of the House is called to meet in the Hall of the House of Representatives on Thursday, August 1, 1968, at 10 a.m., for the purpose of electing Members to the Ways and Means Committee.

§ 5.4 The Minority Leader made an announcement in the House concerning a meeting of the Republican Conference.

On Jan. 13, 1937,[12] the Minority Leader, Bertrand H. Snell, of New York, announced as follows:

---

9. 114 CONG. REC. 22800, 90th Cong. 2d Sess.

10. See 114 CONG. REC. 22795, 90th Cong. 2d Sess., July 23, 1968.

11. 114 CONG. REC. 24269, 90th Cong. 2d Sess.

12. 81 CONG. REC. 201, 75th Cong. 1st Sess.

MR. SNELL: Mr. Speaker, there will be a meeting of the . . . Committee on Committees . . . and there will be a Republican Conference in this Hall at 10 o'clock tomorrow morning.

§ 5.5 The Speaker having declined to entertain a request of the Minority Leader that the House take a two-hour recess for a Republican Conference, the Minority Leader subsequently announced a meeting of the Republican Members to take place following adjournment.

On Apr. 11, 1951,[13] the following proceedings took place:

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: I inquire if the Speaker would agree that the House would take a recess of two hours. I make this request because of the tragic situation that prevails in the world. I should like, if I could, to have a Republican conference. .

THE SPEAKER [Sam Rayburn, of Texas]: The Chair will say that that is a very unusual request. . . .

. . . [T]here is an amendment coming up to the bill that the Chair thinks will take some hours, in all probability.

MR. MARTIN: The Chair understands that in accordance with his policies and the policies I have previously agreed with, too, we desire all our membership to be on the floor when these various bills are being read for amendment. Because of the tremendous importance of the situation in the world today, I should like to submit [the] request. . . .

THE SPEAKER: The gentleman from Massachusetts poses a very hard question for the Chair. For the moment the Chair thinks he will not entertain the request.

Subsequently,[14] Mr. Martin made the following remarks:

. . . I should like to make one more statement: The Members will recall that I was hopeful we might have a recess for two hours in order that we could have a Republican Conference in which we could discuss these latest developments. That request was not granted. May I say, however, that I think the Speaker acted wholely within his province when he did not entertain that request, I know it was neither personal or partisan because I can understand how it might lead to abuses. I am not finding any fault, but I am giving notice that following the adjournment of the House today there will be a meeting of the Republican Members of the House in this Chamber.[15]

§ 6. Specific Functions—Selection of Leaders

The caucus and conference organize at the beginning of a Con-

13. 97 CONG. REC. 3673, 82d Cong. 1st Sess., considering the 1951 amendments to the Universal Military Training and Service Act.

14. 97 CONG. REC. 3676, 82d Cong. 1st Sess., Apr. 11, 1951.

15. For an occasion on which the Minority Leader, without calling a conference meeting, asked on the floor of the House for an informal indication of Republican sentiment on particular legislation, see § 19.2, infra.

gress[16] electing their respective chairmen[17] and attending to preliminary business.

An important function of the caucus or conference early in the Congress is to select the party's candidate for Speaker.[18] Each party then selects its floor leader;[19] customarily, it is understood that the minority party's candidate for Speaker will become Minority Leader upon the election of the other party's candidate for Speaker.[20]

16. 8 Cannon's Precedents §§ 3602–3604a. For discussion of procedures recently adopted with respect to calling meetings of the caucus for organizational purposes prior to the convening of a new Congress, see supplements to this edition as they appear.
17. See 8 Cannon's Precedents §§ 3603, 3604a; and *Cannon's Procedure,* H. Doc. No. 122, 86th Cong. 1st Sess. (1959), p. 187. See also Riddick, Floyd M., *Congressional Procedure,* Chapman and Grimes (Boston, 1941), p. 32.
18. See §§ 6.1–6.3, infra.
    If a Speaker dies in office, the caucus and conference nominate candidates for the vacant office. See § 3.2, supra.
19. See § 6.4, infra.
20. See Congressional Quarterly's *Guide to the Congress of the United States,* Congressional Quarterly Service (Washington, D.C., 1971), p. 140 (discussion of Minority Leader). See also, Riddick, Floyd M., *Congressional Procedure,* Chapman and Grimes (Boston, 1941), p. 34.

The Republican Conference selects its party whip.[1]

A Democratic Caucus rule [2] provides that, "In the Election of Officers and in the Nomination of Candidates for Office in the House, the Majority of Those Present and Voting Shall Bind the Membership of the Caucus."

Selection of Candidate for Speaker

§ 6.1 Prior to the beginning of a Congress, the Democratic Caucus and the Republican Conference select their respective candidates for Speaker.

In the 92d Congress,[3] as in prior Congresses,[4] the Clerk

1. See § 6.6, infra. The Democratic whip is appointed by the Democratic floor leader (See § 23, infra).
2. Rule 6, Democratic Caucus Rules (July 20, 1971).
    See also Ripley, Randall B., *Party Leaders in the House of Representatives,* The Brookings Institution (Washington, D.C., 1967), pp. 58–61, 64, 72, and 76 (functions of party caucuses and committees).
3. 117 CONG. REC. 10, 92d Cong. 1st Sess., Jan. 21, 1971.
4. For further examples of announcements made by caucus and conference chairmen in prior Congresses

called on the first day of the Congress for nominations for Speaker; the chairmen of the caucus and conference then presented to the House the names of the persons nominated by

> THE CLERK: The next order of business is the election of a Speaker of the House of Representatives for the 92nd Congress. Nominations are now in order.
>
> MR. [OLIN E.] TEAGUE of Texas: Mr. Clerk, as Chairman of the Democratic Caucus, I am directed by the unanimous vote of that caucus to present for election to the office of the Speaker of the House of Representatives of the 92nd Congress the name of the Honorable Carl Albert, a Representative-elect from the State of Oklahoma.
>
> MR. [JOHN B.] ANDERSON of Illinois: Mr. Clerk, as Chairman of the Republican Conference and by authority, by direction, and by unanimous vote of the Republican Conference, I nominate for Speaker of the House of Representatives the Honorable Gerald R. Ford, a Representative-elect from the State of Michigan.
>
> THE CLERK: . . . are there further nominations? (After a pause.) There being no further nominations, the Clerk will appoint tellers.

Role in Filling Vacancy in Office

§ 6.2 Upon the death of a Speaker, the caucus and conference select their respective candidates for Speaker, and the names of the candidates are presented to the House as at the beginning of a Congress.

Speaker Sam Rayburn, of Texas, died prior to the second session of the 87th Congress. Proceedings in the second session for selection of a new Speaker are set forth in 3.2, supra.

Parliamentarian's Note: In the case of the Speaker's absence, the Chair may be assumed by one who has been designated Speaker pro tempore by the Speaker.[5] In a case where the Speaker was to be absent for an uncertain length of time, the Chairman of the Democratic Caucus, having been requested to do so by the Speaker, offered in the House a resolution electing the Majority Leader as Speaker pro tempore.[6]

Third-Party Candidate for Speaker

§ 6.3 A third party may organize as a conference and name its candidate for Speaker, and the chairman of such conference announces to the House his

respecting the selection of candidates for Speaker, see §§ 3.1–3.3, supra. the respective parties. The proceedings were as follows:

5. See Ch. 6, infra.
6. See the proceedings set forth in § 3.4, supra.

party's candidate for the Speakership.

In the 75th Congress, the chairman of the Farmer-Labor-Progressive party's conference, Gardner R. Withrow, of Wisconsin, presented to the House the name of his party's candidate for Speaker, George J. Schneider.[7]

Election of Floor Leader

§ 6.4 The caucus and conference elect their respective party floor leaders.

At the beginning of each Congress, the caucus and conference chairmen announce the election by their respective parties of the floor leaders. Thus, in the 75th Congress,[8] the following announcements were made:

> MR. [ROBERT L.] DOUGHTON [of North Carolina]: Mr. Speaker, the Democratic Caucus at a meeting yesterday elected Hon. Sam Rayburn, of Texas, as floor leader of the Seventy-fifth Congress. [Applause]
>
> MR. [ROY O.] WOODRUFF [of Michigan]: Mr. Speaker, I take this opportunity to announce that by the authority and direction of the Republican Conference the honorable gentleman from New York, Mr. Bertrand H. Snell, has been selected as minority leader of this House. [Applause]
>
> MR. [GARDNER R.] WITHROW [of Wisconsin]: Mr. Speaker, I announce to the House that the Farmer-Labor-Progressive Party's Conference by unanimous consent selected Hon. Gerald J. Boileau, of Wisconsin, as floor leader for the Seventy-fifth Congress. [Applause]

In the 92d Congress,[9] the announcements were as follows:

> MR. [OLIN E.] TEAGUE of Texas: Mr. Speaker, as chairman of the Democratic caucus, I have been directed to report to the House that the Democratic Members have selected unanimously as majority leader the gentleman from Louisiana, the Honorable Hale Boggs.
>
> MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, as Chairman of the Republican Conference, I am directed by that conference to officially notify the House that the gentleman from Michigan, the Honorable Gerald R. Ford, has been unanimously selected as the minority leader of the House.[10]

§ 6.5 When a vacancy occurs in the office of floor leader, the caucus or conference elects a new floor leader, whose name is presented to the House in the usual manner.

On Jan. 10, 1962,[11] the Chairman of the Democratic Caucus an-

7. See the proceedings set forth in § 3.3, supra. For references relating to third parties generally, see § 2, supra.

8. 81 CONG. REC. 15, 75th Cong. 1st Sess., Jan. 5, 1937.

9. 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971.

10. Substantially the same proceedings have taken place in other Congresses. See § 3.5, supra.

11. 108 CONG. REC. 5, 87th Cong. 2d Sess.

nounced the selection of Carl Albert, of Oklahoma, as Majority Leader, to replace John W. McCormack, of Massachusetts, who had been elevated to the Speakership after the death of Speaker Rayburn. The announcement was made as follows:

> MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, as Chairman of the Democratic Caucus I am directed to report to the House that the Democratic Members have selected as Majority Leader the gentleman from Oklahoma, the Honorable Carl Albert.

Selection of Republican Whip

§ 6.6 The members of the Republican[12] Conference select their party whip.[13]

Announcements traditionally made in the House with respect to the selection of the Republican whip have generally indicated that such selection is made by the party members in their conference. There is reference in some authorities[14] to a practice, at least at one time, whereby the Republican party's Committee on Committees would recommend to the Republican Conference the name of the person to be designated Republican whip. The role of the Committee on Committees was reflected, for example, in the announcement by Mr. Charles A. Halleck, of Indiana, in the 83d Congress:[15]

> MR. HALLECK: Mr. Speaker, on behalf of the Committee on Committees, I hereby wish to announce the selection of Hon. Leslie C. Arends, of Illinois, as majority whip.

In other announcements, reference has been made to the "approval" by the Republican Conference of the Republican whip. In the 88th Congress,[16] for example, the conference chairman announced as follows:

> MR. [GERALD R.] FORD [of Michigan]: Mr. Speaker, as the chairman of the Republican Conference, it is my privilege to report to the House that the Republican conference has unanimously approved the gentleman from Illinois [Mr. Arends] as minority whip. . . .

12. The Democratic whip is appointed by the Democratic floor leader. See § 23, infra.

13. See, in addition to the discussion in this section, 8 Cannon's Precedents § 3615, in which Mr. Guy U. Hardy, of Colorado, is quoted as remarking, (69 CONG. REC. 8439, 1st Sess. 70th Cong., May 11, 1928), "The Republican Whip was formerly appointed by the Speaker, but is now chosen by the party caucus."

14. See Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), pp. 36, 37.

15. 99 CONG. REC. 134, 83d Cong. 1st Sess., Jan. 6, 1953.

16. 109 CONG. REC. 506, 88th Cong. 1st Sess., Jan. 17, 1963.

In the 82d Congress,[17] Joseph W. Martin, Jr., the Minority Leader, announced:

> Mr. Speaker, I would like to announce to the House that the gentleman from Illinois, Mr. Leslie C. Arends, has been elected Republican whip.

More recent announcements have been as follows:

> MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, as Chairman of the Republican Conference, I am directed by that conference to notify the House officially that the Republican Members have selected as minority whip the gentleman from Illinois, the Honorable Leslie C. Arends.[18]

And in the 90th Congress:

> Mr. [Melvin R.] Laird [of Wisconsin]: Mr. Speaker, as Chairman of the Republican Conference, I am directed by that conference to notify the House officially that the Republican Members have selected as minority whip the gentleman from Illinois, the Honorable Leslie C. Arends.[19]

§ 7. —Nomination of House Officers

The Constitution[20] states that, "The House of Representatives shall chuse their Speaker[1] and other Officers." Officers include the Clerk, Sergeant at Arms, Doorkeeper, Postmaster, and Chaplain,[2] no one of whom has ever been chosen from the sitting Membership of the House, and who continue in office until their successors are chosen and qualified,[3] in one case continuing through the entire Congress succeeding that in which they were elected.[4]

In practice, each party in its caucus or conference selects its candidates for election to the posts of Clerk, Sergeant at Arms, Doorkeeper, Postmaster, and Chaplain. The names of the persons selected as candidates are then presented to the House in the form of a resolution, usually offered by the caucus or conference chairman.[5]

It is customary for both parties to present their respective can-

17. 97 CONG. REC. 40, 82d Cong. 1st Sess., Jan. 4, 1951.

18. 115 CONG. REC. 34, 91st Cong. 1st Sess., Jan. 3, 1969.

19. 113 CONG. REC. 27, 90th Cong. 1st Sess., Jan. 10, 1967.

20. U.S. Const. art. I, § 2.

1. As to selection by the caucus and conference of candidates for Speaker, see § 6, supra.

2. 1 Hinds' Precedents § 187.

3. *Id.*

4. 1 Hinds' Precedents §§ 244, 263. An amendment to the Legislative Reorganization Act of 1946 was enacted by the 83d Congress (2 USC § 75a–1) authorizing temporary appointments by the Speaker to fill vacancies in the offices of Clerk, Sergeant at Arms, Doorkeeper, Postmaster, or Chaplain.

5. See § 3.9, supra.

didates for House offices, the minority party candidates being presented in the form of a substitute amendment to the resolution offered by the chairman of the majority caucus.[6] There have been exceptions, however; in the 89th Congress,[7] no substitute amendment was offered, and the resolution offered by the caucus chairman pertaining to the election of the House officers was immediately agreed to.

A Democratic Caucus rule[8] provides that, "In the Election of Officers and in the Nomination of Candidates for Office in the House, a Majority of Those Present and Voting Shall Bind the Membership, of the Caucus."

Nomination Procedure

§ 7.1 The names of the majority party's candidates for House offices are presented to the House by resolution, and a substitute resolution is usually offered by the minority party naming that party's candidates for the offices.

On Jan. 3, 1969,[9] the Chairman of the Democratic Caucus offered a resolution naming selections for Clerk of the House, Sergeant at Arms, Doorkeeper, Postmaster, and Chaplain. The Chairman of the Republican Conference asked for a division on the question on the resolution so as to have a separate vote on the office of Chaplain; that portion of the resolution providing for the election of Chaplain was then agreed to. The Chairman of the Republican Conference then offered a substitute amendment to the remainder of the resolution, naming different persons to the posts; the substitute amendment was rejected, the original agreed to.[10]

§ 8. —Creation of Party Committees

The main party organizations in the House, the caucus and the conference, have from time to time delegated some of their functions to smaller party committees. Generally, the creation of, and the determination of membership on, such specialized committees are in large measure functions of the caucus or conference.

6. The proceedings relating to the election of House officers are discussed in detail in § 3.9, supra. See also Ch. 6.
7. 111 Cong. Rec. 20, 89th Cong. 1st Sess., Jan. 4, 1965.
8. Rule 6, Democratic Caucus Rules (July 20, 1971).
9. 115 Cong. Rec. 34, 91st Cong. 1st Sess.
10. See also § 3.9, supra.

A Republican Committee on Committees consisting of one Member from each state having Republican representation in the House was created in 1919 by resolution of the conference.[11] The Republican Committee on Committees is largely responsible for assigning Republican Members of the House to House committees.[12] Members of the Republican Committee on Committees are selected by the Republican delegations in the House from the several states,[13] subject to the approval of the conference.[14]

The Democratic Caucus has also delegated to a Committee on Committees the responsibility for assigning party members to House committees, such assignments being subject to caucus approval.[15] In past Congresses, Democratic members of the Committee on Ways and Means have served as the Committee on Committees for their party[16] and the caucus, by secret ballot, has elected the Democratic members of the Committee on Ways and Means.[17]

A Steering Committee was created in 1933 by the Democratic Caucus.[18]

The responsibilities of the Steering Committee lay mainly in the area of ascertaining and consolidating party sentiment with respect to particular legislation, and assisting in the development of party policy and floor strategy.[19] In order to provide a geographical basis of representation on the Steering Committee, the caucus in 1933 authorized the division of the United States into geographical regions, each member of the Steering Committee to be elected by the Democratic Members of the House from the several states comprising a particular region.[20]

In 1919, the Republican Conference created a Steering Committee, the members of which were to be nominated by the Com-

11. See 8 Cannon's Precedents § 3616.

12. See § 11, infra, for further discussion of the party Committee on Committees.

13. See 8 Cannon's Precedents § 3616.

14. See Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), p. 36.

15. See 8 Cannon's Precedents § 3617.

16. See § 11, infra, for further discussion of the party Committee on Committees.

17. See § 9.1, infra.

18. 8 Cannon's Precedents § 3622.

19. See § 13, infra, for more detailed discussion of the party Steering Committee. For discussion of recent changes leading to development of the present Steering and Policy Committee, see supplements to this edition as they appear.

20. See 8 Cannon's Precedents § 3622.

mittee on Committees and elected by the conference.[1] Now known as the Policy Committee, the committee advises the Republican leadership on matters of party policy and strategy.[2]

Other committees that have been created by, and derive their authority from, the party caucus or conference include patronage committees,[3] political campaign committees,[4] and research committees.[5]

§ 9. —Assigning Members to House Committees

The House rules provide for election by the House of the standing committees,[6] their chairmen,[7] and election by the House of Members to fill vacancies in standing committees.[8]

In practice, the political parties decide as to assignments of their respective party members to House committees, and resolutions providing for such elections are presented in the House by the majority and minority parties as soon as they are able to perfect their lists. The practice is indicated in the following exchange from the Record of the 92d Congress:[9]

> MR. GERALD R. FORD [of Michigan]: Is it correct that the resolution presently before the House is a resolution offered on behalf of the Democratic caucus? The resolution is the recommendations for committee assignment on the Democratic side.
>
> THE SPEAKER:[10] The gentleman is correct.
>
> MR. FORD: Is it the procedure to be followed that subsequently a com-

1. See 8 Cannon's Precedents § 3621.
2. See Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), pp. 142, 604.
3. § 14, infra.
4. § 16, infra.
5. § 12, infra.
6. Rule X clause 1, *House Rules and Manual* § 669 (1973). A former version of Rule X provided that unless otherwise specially ordered by the House the Speaker should appoint the standing committees (see 4 Hinds' Precedents § 4448); the Speaker in practice usually, but not always, accepted the Minority Leader's recommendations with respect to minority party members' committee assignments (see discussion in 8 Cannon's Precedents § 2172 [quoted remarks of Joseph G. Cannon]). For further discussion comparing the former with the present practice, see Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), pp. 35, 36.
7. Rule X clause 4, *House Rules and Manual* § 672 (1973).
8. Rule X clause 5, *House Rules and Manual* § 673 (1973).
9. 117 CONG. REC. 1710, 1711, 92d Cong. 1st Sess., Feb. 4, 1971.
10. John W. McCormack (Mass.).

parable resolution will be offered representing the views of the Republican conference?

THE SPEAKER: The gentleman is correct.

The lists presented by the parties indicate not only the membership but also the ranking of the Members on the House committees.[11]

The caucus and conference thus play a major role in determining assignments to House committees. Each party has created[12] a committee on committees,[13] which is charged with the responsibility of nominating party members for positions on House committees. The caucus or conference elects or approves[14] the membership of the party's committee on committees.

In addition to having created the committee on committees and selecting or approving the membership thereof, the caucus or conference may formulate rules or guidelines affecting the composition of House committees. For example, in an addendum to the caucus rules of 1971,[15] it was stated to be the sense of the Democratic Caucus that no Member should be a member of more than two committees with legislative jurisdiction. Another provision in the addendum[16] stated that recommendations by the Committee on Committees as to nominees for chairmen and membership of the committees "need not necessarily follow seniority." In similar fashion, the ratio between the majority and minority parties on the standing committees, which varies with the respective membership of the parties in the House, may be in large measure determined by the caucus. An addendum to the caucus rules of 1971[17] stated the following to be the sense of the caucus:

> Committee ratios should be established to create firm working majorities on each committee. In determining the ratio on the respective standing committees, the Speaker should provide for a minimum of three Democrats for each two Republicans. On those committees on which the Resident Commissioner of Puerto Rico serves, said Commissioner shall be considered, in the 92nd Congress, as a Member of the minority and the Democratic mem-

11. For further discussion of procedures for electing House committees, see Ch. 17, infra.

12. See § 8, supra.

13. For a general description of the committee on committees, see § 11, infra.

14. See § 9.1, infra.

15. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 3. For discussion of later versions of the caucus rules, see supplements to this edition as they appear.

16. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 5.

17. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 10.

bership should be increased accordingly.[18]

Finally, the assignments made by the party Committee on Committees are subject to caucus or conference approval.[19]

An addendum to the caucus rules of 1971[20] stated that, "The Committee on Committees shall recommend to the caucus nominees for chairmen and membership of each committee and such recommendation need not necessarily follow seniority." It was stated further:[1]

> The Committee on Committees shall make recommendations to the caucus, one committee at a time. Upon a demand supported by 10 or more Members, a separate vote shall be had on any committee chairman or any member of the committee. If any such motion prevails, the committee list of that particular committee shall be considered recommitted to the Committee on Committees. Further, such demand, if made and properly supported, shall be debated for no more than 40 minutes with the time equally divided between proponents and opponents. If the caucus and the Committee on Committees be in disagreement after completion of the procedure herein provided, the caucus may make final and complete disposition of the matter.

[Note: For discussion of the current version of this provision, see supplements to this edition as they appear.]

The Republican Conference has similarly adopted procedures whereby certain recommendations of the Republican Committee on Committees are submitted to a vote in the conference.[2]

The list of committee assignments presented by each party to the House in the form of a resolution has generally been routinely approved by the whole House. But in the 92d Congress, a challenge was made to the tradition whereby each party, rather than the whole House, assumes primary responsibility for determining assignments of members of that party to House committees. Dissatisfied with one committee chairmanship as determined by the majority caucus, certain members of the majority party attempted to present the issue of that chairmanship for determina-

18. For further discussion of the determination of the ratio between the majority and minority parties on standing committees, see 8 Cannon's Precedents §§ 2186, 2187. Rule X clause 1, of the House Rules indicates the total number of Members to be elected to each standing committee.

19. For more detailed discussion of such approval, see § 9.2, infra.

20. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 5.

1. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 6.

2. See § 9.2, infra.

tion by both majority and minority party members. The House declined to depart from tradition, however, and the resolution naming members of the majority party to positions on House committees was adopted without change.[3]

The presence of third parties in the House may complicate procedures for determining committee ratios and making committee assignments. In the 75th Congress,[4] for example, members of the Farmer-Labor and Progressive parties sparked a debate in the House over procedures by which committee assignments should be allotted to third parties. The Farmer-Labor-Progressive group were critical of the procedure whereby members of that group had been given their committee assignments from the quota for the Democratic majority and had been nominated for committee membership in the resolution naming Democratic Members to committees. Members of the Farmer-Labor-Progressive group contended that their committee assignments should either have been taken out of the quota set aside for minority Members of the House, or awarded from a bloc of assignments specifically reserved for their group. The arguments of the Farmer-Labor-Progressive group did not prevail, and the House adopted the resolution assigning Democrats and the third party members to committees.[5]

It is worth noting here that the power of each party to determine committee assignments and rank of Members on committees is sometimes the instrument by which party discipline is maintained and party members "punished" for actions considered disloyal to the party.[6] Factors other than party loyalty, however, enter more frequently into the determination of Members' committee assignments; such factors include length of service in the House, geographical considerations, and the desires of the individual Member himself.[7]

Election by Caucus of Committee on Committees

§ 9.1 Democratic members of the Committee on Ways and Means, who serve as their party's Committee on Com-

3. See § 9.3, infra.
4. For a detailed discussion of the proceedings described here, see § 9.4, infra.
5. See § 9.4, infra.
6. See § 9.5, infra.
7. For further discussion of committees and committee assignments, see Ch. 17, infra.

mittees[8] are elected in the party caucus by secret ballot.

[Note: The following is descriptive of the practice that has been in effect in some Congresses. For discussion of current practice in which the function of determining committee assignments has been delegated to a different committee, see supplements to this edition as they appear.]

On Mar. 2, 1956,[9] a Member addressed remarks to the House concerning a newspaper article that had charged Speaker Sam Rayburn, of Texas, with exercising influence over the selection of members of the Committee on Ways and Means for the purpose of excluding from that committee any Member who might be opposed to certain tax benefits enjoyed by the oil industry. At the conclusion of the Member's remarks, the Speaker pro tempore, John W. McCormack, of Massachusetts, observed:

> The Chair may make the personal observation that members of the Ways and Means Committee on the Democratic side are elected in caucus by secret ballot.

Parliamentarian's Note: Announcements made in the House have referred to caucus meetings to be held for purposes of electing members of the Committee on Ways and Means. See § 5.3, supra.

Approval of Committee Assignments

§ 9.2 Nominations for assignments to standing committees of the House are made by the party Committee on Committees and reported to the caucus or conference for approval.

This practice is of long standing.[10] Thus, on Jan. 14, 1965,[11] Majority Leader Carl Albert, of Oklahoma, announced a caucus meeting "for the purpose of agreeing to recommendations of the Democratic Committee on Committees in designating Democratic Members of the several committees and their assignment thereon."

The excerpts below, from a debate[12] in the House over the procedures for making certain committee assignments, indicate that the practice as now followed reflects reforms recently adopted by

8. The Republican Committee on Committees is constituted somewhat differently. See § 8, supra.

9. 102 Cong. Rec. 3839, 84th Cong. 2d Sess.

10. See 8 Cannon's Precedents § 3617, discussing the practice of the Democratic party.

11. 111 Cong. Rec. 660, 89th Cong. 1st Sess.

12. For more detailed discussion of the debate, see § 9.3, infra.

both parties[13] with respect to the effect of seniority on committee assignments.

During the debate, which centered upon a certain committee chairmanship,[14] the following remarks were made by the Republican floor leader, Gerald R. Ford, of Michigan:

> . . . Let me make another observation, Mr. Speaker. In 1970, the Republican Party took the initiative to make some changes in the election of our ranking Republican member, or the chairman, if we were in the majority. Under the Conable task force, a great deal of time and study resulted in a procedure which we followed yesterday. Each of our ranking Members was voted on separately and secretly. The net result was that we chose responsible members for each committee to be the ranking minority member. We have made that decision on our side, and we do not think you should come over and upset those decisions on our side. And I do not think . . . that we should make any decision as far as your party caucus is concerned.[15]

In response, the Majority Leader, Hale Boggs, of Louisiana, made the following remarks:[16]

> First, I wish to commend the minority leader for the statement he has made . . .
>
> I would also point out that we, too, had a task force, known as the Hansen Committee. That committee worked hard and diligently . . . [t]hey came to a unanimous resolution on their recommendations, and those recommendations in turn were adopted by the caucus.
>
> Just as the gentleman from Michigan said that they had the right to vote on each of their ranking Members separately, so we had the same right and did so on yesterday.

At a later point in the debate, Mr. Ford again stated:[17]

> Mr. Speaker, if the gentleman will yield further, our Members will have voted for our nominees for ranking members on each of the committees and we did it in our caucus or conference by a secret ballot with a separate vote in each case.

Parliamentarian's Note: As previously noted in this section, the Democratic Committee on Committees has traditionally nominated Democratic party members for assignment to House committees and reported such nominations to the caucus for approval.[18] Pursuant to recommendations of the Hansen Committee mentioned above in the remarks of Mr. Boggs, the

13. See the Parliamentarian's note at the end of this section.

14. In the caucus, "a majority decision [had been made] to [accept] the committee chairman as recommended by the committee on committees." (Remarks of Mr. Boggs, 117 CONG. REC. 1709, 92d Cong. 1st Sess., Feb. 4, 1971.)

15. 117 CONG. REC. 1711, 92d Cong. 1st Sess., Feb. 4, 1971.

16. *Id.*

17. 117 CONG. REC. 1712, 92d Cong. 1st Sess., Feb. 4, 1971.

18. 8 Cannon's Precedents § 3617.

Democrats provided in an addendum to the caucus rules that, "The Committee on Committees shall recommend to the caucus nominees for chairman and membership of each committee and such recommendation need not necessarily follow seniority,"[19] and that the Committee on Committees should make its recommendations "one committee at a time."[20] Provision was also made for a separate vote, in certain circumstances, on any committee chairman or member of a committee."[1]

The history of Republican procedures for making committee assignments has been similar in many respects to that of the Democratic party's procedures. In 1919,[2] the Republican Conference defined the duties of the Committee on Committees to include the selection of the Republican members of the standing committees of the House, the selection of members for specified party positions, and the duty to report its action to a Republican Conference. Pursuant to recommendations of a task force, the Republican Committee on Committees now names its choice, not necessarily on the basis of seniority, for the ranking Republican Member on each House committee; the Republican Conference then votes, by secret ballot, on each such nomination separately.[3]

Refusal by House to Overrule Caucus

§ 9.3 In the 92d Congress, the House declined to depart from the procedure whereby each party determines the assignments and rank of its

19. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 5. For discussion of a more recent version of this provision, including special procedures for nominating members of the Committee on Rules, see supplements to this edition as they appear.

20. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 6.

1. See Democratic Caucus Rules (July 20, 1971), addendum, paragraph 6.

2. See 8 Cannon's Precedents § 3621.

3. See the remarks of Mr. Gerald R. Ford, of Michigan, quoted in this section, supra. See also Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971) p. 171, discussing the changes noted above in the use of seniority as a basis for determining committee assignments.

For general discussion of procedures by which party members are assigned to House committees, see Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), DD. 35–37.

members on standing committees of the House.

In the 92d Congress,[4] a few Democratic Members opposed their party's selection of Mr. John L. McMillan, of South Carolina, as Chairman of the Committee on the District of Columbia. One of the Democratic Members, Mr. Jerome R. Waldie, of California, announced his intention to submit the issue of such committee assignment to the whole House, thereby challenging the custom that committee assignments as determined by the respective parties will not be challenged in the House. The announcement was as follows:[5]

> MR. WALDIE: Mr. Speaker, at the appropriate time in today's proceedings a resolution that encompasses the decisions of the majority caucus with relationship to chairmen of standing committees and members thereof will be presented to the House for approval. It is my understanding that customarily the decision of the majority caucus in these matters has been traditionally accepted without any objection from any Member of the House of Representatives. It will be my intention at this particular moment, however, to subject that tradition to a test today, and I will ask the House to vote down the previous question when the previous question is sought in order to permit that resolution to be open to amendment.
>
> If the previous question is voted down, and the resolution is thereupon open for amendment, it would be my intention to offer an amendment to the resolution appointing standing committee chairmen to delete the standing committee chairman of the House District of Columbia Committee.

After the introduction of the resolution assigning Democratic Members to House committees, a debate took place in the House on the issues raised by Mr. Waldie's action, as follows:

> MR. WALDIE: . . . [It is] my intention to request the entire House to consider this proposal. I recognize that is a departure not from the rules of the House, which are explicit that the entire House of Representatives participate in this decision, but from the custom of the House, which is that the majority party in the enclaves of their caucus make the determinations and the minority party accepts those decisions. It is my own personal conviction that this issue is of national importance and all of the legislative representatives of the Nation, of the minority and of the majority, should participate. . . .
>
> It has been usually the case that the minority party has been outspoken in their concern and condemnation of the seniority system because their opportunity of implementing any change in that system would not be existent. Today, that opportunity will be afforded you and I hope you will join with those who believe that the deci-

4. See 117 CONG. REC. 1708–1714, 92d Cong. 1st Sess., Feb. 4, 1971.

5. 117 CONG. REC. 1707 92d Cong. 1st Sess., Feb. 4, 1971.

sion to continue this committee as it has been in the past was a wrong decision which was made in the majority caucus.[6]

In opposition to Mr. Waldie's proposal, Majority Leader Hale Boggs, of Louisiana, spoke as follows:[7]

MR. BOGGS: Would the gentleman not agree that we would be establishing a precedent here that could be carried to any length and in truth and in fact, if the majority party voted unanimously, we could displace any committee member or every committee member nominated by the minority.

In response to the Majority Leader's question, Mr. Waldie stated as follows:[8]

MR. WADE: . . . I would say that in those instances where the national interest is not being properly cared for, that comity, custom, and courtesy of the House should be reconsidered and the rules of the House followed in those instances where comity, courtesy, and custom are contrary to the rules and to the interest of the American people.

The following discussion then took place:[9]

MR. BOGGS: . . . [I]s it not accurate that if a minority on the Democratic side and a majority on the minority side get together they could take over control of the entire committee system in the House? . . .

MR. WALDIE: That is true, but if by so doing the national interest were advanced I would not find that objectionable.

MR. BOGGS: As to the question of whether or not the national interests are involved, again I defer to the distinguished chairman, but the gentleman was here on yesterday when this matter was debated and the gentleman knows that this matter was debated fully, without any effort to limit debate, and that a vote was taken, and that a majority decision was made to adopt the committee chairman as recommended by the committee on committees.

MR. WALDIE: I recognize . . . that the debate was fair and proper, and that the decision represented the vote of the majority, but the national interests, however, are not represented per se by the majority of the Democratic caucus . . . and I would like to again accord under our rule the opportunity of the minority to participate in the determination as to whether the national interests have been served.

Mr. Phillip Burton, of California, in expressing his objections to Mr. Waldie's proposal, stated in part as follows:

MR. BURTON: . . . It is a most dangerous precedent, I would think, without regard to the political point of view that any of us might hold, to in effect give the minority caucus veto power over the majority caucus deliberations as to whom they select to lead the various committees of the Congress.[10]

6. 117 CONG. REC. 1709, 92d Cong. 1st Sess., Feb. 4, 1971.

7. *Id.*

8. *Id.*

9. *Id.*

10. 117 CONG. REC. 1710, 92d Cong. 1st Sess., Feb. 4. 1971.

In a series of exchanges with other Members, Minority Leader Gerald R. Ford, of Michigan, made clear his opposition to Mr. Waldie's proposal. The following excerpts[11] reveal the Minority Leader's position:

> MR. FORD: Is it correct that the resolution presently before the House is a resolution offered on behalf of the Democratic Caucus? The resolution is the recommendations for committee assignment on the Democratic side.
>
> THE SPEAKER: [Carl Albert, of Oklahoma]: The gentleman is correct.
>
> MR. FORD: Is it the procedure to be followed that subsequently a comparable resolution will be offered representing the views of the Republican Conference?
>
> THE SPEAKER: The gentleman is correct.
>
> MR. FORD: Mr. Speaker, I think this factual situation clearly sets forth the issue that is before us. The Democratic Caucus made a decision on committee chairman. Whether we on our side agree with it or not, by precedent that is a matter within the ranks and prerogatives of the majority party.
>
> . . . [Mr. Waldie] was unable to persuade a majority of the Democrats to his view. I do not think that we on the Republican side ought to succumb to his arguments of this occasion. Therefore, Mr. Speaker, I would certainly hope and trust that the Republicans on this issue, on a Democratic resolution expressing the views of the Democratic Party, should not under any circumstances vote "nay" on the motion to order the previous question. As Republicans we should exercise our option to vote "yea" or "present" on the previous question, because the matter is one for the Democrats to decide and not for us.

Mr. Wilbur D. Mills, of Arkansas, who had introduced the resolution naming Democratic Members to committees, moved the previous question on the resolution.[12] By vote of the House, the previous question was ordered, and the Speaker announced that the question was on the resolution. The resolution was agreed to.[13]

Parliamentarian's Note: It has been stated[14] that, "motions for the election of Members to committees are debatable and are subject to amendment." Although the House in the above proceedings declined to allow an amendment to the Democratic resolution, it is worth noting the procedure employed in challenging the resolution, comprising a request for a "no" vote on the previous question, which would have opened the resolution to amendment.[15] If the House had permitted an amendment deleting

11. See 117 CONG. REC. 1710–1712, 92d Cong. 1st Sess., Feb. 4, 1971.

12. 117 CONG. REC. 1714, 92d Cong., 1st Sess., Feb. 4, 1971.

13. *Id.*

14. 8 Cannon's Precedents § 2172.

15. 117 CONG. REC. 1709, 92d Cong., 1st Sess., Feb. 4, 1971.

the portion relating to the chairmanship of the Committee on the District of Columbia and adopted the resolution as amended, another chairman of that committee would have had to be recommended by the Committee on Committees for caucus approval.[16]

Committee Assignments of Third-Party Members

§ 9.4 The role of third party caucuses in obtaining committee assignments for their members has been minimal. In the most recent practice, committee assignments for members of third parties have been determined by the majority party, and such assignments have been included in the resolution naming majority party members to committees.

In the 75th Congress, the resolution naming Democratic Members to House committees included as well the names of members of the Farmer-Labor and Progressive parties. Members of the Farmer-Labor Progressive group, as they were referred to, objected to the method by which their committee assignments were determined, and the issues raised by their objections were debated on the floor of the House.

Following the introduction of the majority party's resolution pertaining to committee assignments, the following proceedings took place:[17]

> MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, I ask unanimous consent that the reading of the names in the resolution be dispensed with and that the names be printed in the Record. It is simply a list of the majority members of the various committees.
>
> MR. [GERALD J.] BOILEAU [of Wisconsin]: Will the gentleman yield?
>
> MR. RAYBURN: I yield to the gentleman. . . .
>
> MR. BOILEAU: Does the gentleman state to the House these are merely the names of the majority members?
>
> MR. RAYBURN: There are also assigned the so-called Progressive Members.
>
> MR. BOILEAU: The Members of the Farmer-Labor and Progressive Parties are included in there?
>
> MR. RAYBURN: YES.

Mr. Boileau, after making certain parliamentary inquiries, addressed the House on the subject of the committee assignments for the Farmer-Labor and Progressive Members of the House. The de-

16. See 117 CONG. REC. 1707, 92d Cong., 1st Sess., Feb. 4, 1971 (remarks of Mr. Waldie).

17. 81 CONG. REC. 203, 75th Cong. 1st Sess., Jan. 13, 1937.

For references relating to third parties generally, see § 2 supra.

bate that ensued[18] centered on the contention of the Farmer-Labor Progressive Members that either their group should have been given a definite bloc of committee assignments to be apportioned among their Members as the group itself should decide, or that the assignments of the Farmer-Labor-Progressive Members should have been taken out of the quota of committee assignments set aside for minority Members of the House. The remarks of Mr. Boileau and other Members were as follows:[19]

> MR. BOILEAU: . . . I had received word, entirely unofficially, that the majority committee on committees, consisting of the Democratic members of the Ways and Means Committee, had made the assignments to the various committees covering the majority Members of the House, and that the question had been decided by the Democratic committee on committees as to the number and importance of committees to which the Farmer-Labor and Progressive Members of the House were to be assigned. After I had received that notice I thought it was the proper thing to notify the Democratic chairman of the Committee on Ways and Means, who is also chairman of the Democratic committee on committees, that I intended to address the House on this particular subject. I felt that he and other members of the committee should know that we, the Farmer-Labor and Progressive Members, were entirely dissatisfied with the treatment accorded us, not only in the matter of committee assignments but also in a slight degree we were dissatisfied because we had not had adequate opportunity to present our request to the committee on committees with reference to individual assignments. . . .
>
> We of the Farmer-Labor Progressive group . . . demand that we be considered for all intents and purposes as a minority group. In no sense of the word can we ever be considered as a majority group. The precedents of the House are clear on that subject. It has been established over a long period of years that those Members with political designations other than the two dominant parties—in our instance the third party or fourth party, the Farmer-Labor-Progressive Members, or the so-called third party Members of the House—have received their appointments from the Members of the majority party.
>
> This is probably as it should be. We prefer to have a definite bloc of committees assigned to us, but we are not pressing that issue now. We are asking for proper recognition on the committees, and it has been the traditional policy of the Congress . . . that the dominant or the majority party . . . should make assignments to the third party men in the resolution electing the majority Members. . . .
>
> It is good parliamentary procedure that the Democrats in this instance should give us our assignments, but we do maintain that our assignments should come out of the assignments set aside for minority Members.

18. See 81 CONG. REC. 203–212, 75th Cong. 1st Sess., Jan. 13, 1937.

19. See 81 CONG. REC. 203, 204, 75th Cong. 1st Sess., Jan. 13, 1937.

. . . [O]ur assignments as committee members of the House should be taken out of the quota that the precedents and the rules set aside for minority Members.

There is nothing in the rules of the House that provides that such assignments should be divided between Democrats and Republicans. All the rules and all the precedents are that the assignments should be made as among the majority on the one hand and among the minority Members on the other, and I submit to you that as minority Members of the House—and this is the crux of our entire argument and I hope you will get this point—we are entitled to be given just the same consideration as is given to other minority Members of the House. In other words, we should be given as much consideration, in proportion to our percentage of the minority Members of the House, as the Republicans or any other group of minority Members in this body. . . .

During the Seventy-fourth Congress there were 82 major committee assignments made to minority members. The Republicans, the Farmer-Laborites, and Progressives altogether had 82 assignments on the 11 major committees of the House.

There are 102 minority Members over on this side of the House in this Congress. There are 89 Republicans, 8 Progressives, and 5 Farmer-Laborites, a total of 102 minority Members. The fair proportion of this group of 13 Progressives and Farmer-Laborites is 12¾ percent of the major committee assignments. That is fair. If we are to have our share of minority assignments on major committees, that is what we are entitled to. If we are to be given 12¾ percent of the minority committee assignments on major committees, we would be entitled to 10.45. . . . We are willing to have 10.

Gardener R. Withrow, of Wisconsin, Chairman of the Farmer-Labor-Progressive party's Conference, stated the reasons underlying his party's contentions. Stating that his group had not been treated fairly, he continued as follows: [20]

MR. WITHROW: . . . I do want to say that in my opinion the crux of this question is that some time ago an agreement was made between the Republicans and the Democrats, who at that time were the only parties in the House of Representatives. That unwritten agreement was to the effect that a certain ratio would be maintained between the majority and the minority parties regardless of how few Members the minority party had. In accordance with said agreement the ratio is being maintained at the present time. But what has happened? There has come to the House of Representatives another group, a truly minority group. The Republicans demand in this particular case that the ratio shall be maintained, and the result is that we the Progressive and Farmer-Labor groups are being sacrificed.

If we were treated on a par with the Republican membership of this House, we should have 10 major committee assignments, whereas we have only 3 major committee assignments. This is the unfairness of it all, and, my friends on the Democratic side of the aisle, you are being penalized as well as we, because our committee assignments at

20. 81 CONG. REC. 208, 75th Cong. 1st Sess., Jan. 13, 1937.

> the present time really belong to you as a majority. We should not be forced to take our committee assignments from the majority or from the committee on committees of the Republicans; they should be assigned to us in a block for us to do with as we please, because, Mr. Speaker, we are in every sense a part of the minority group of this House.

Members speaking in opposition to the position taken by the Farmer-Labor-Progressive party members attached importance to that party's alleged lack of status as a national party.[1] In addition, those supporting the resolution listing committee assignments relied on the alleged failure of the Farmer-Labor-Progressive Members to make timely application to the Democratic Committee on Committees for the particular committee assignments desired.[2]

Mr. Fontaine M. Maverick, of Texas, while characterizing the Progressive group as a national movement and praising their work, stated that he would vote to sustain the committee assignments as made by the Democratic members of the Committee on Ways and Means. Mr. Maverick's remarks were as Follows:[3]

> . . . I believe that we should go out of our way to be fair with this group of Progressives. I am, however, going to vote to sustain the Committee on Ways and Means, because . . . I do not believe the Progressive-Farmer-Labor group has been quite as aggressive as they should have been in asking for these committee assignments ahead of time. . . .

The resolution assigning members of the Democratic Party and the Farmer-Labor-Progressive group was adopted by the House without change.[4]

Parliamentarian's Note: A rule has been stated[5] that, in the allotment of committee assignments the party in control is termed the majority and all the other parties constitute the minority and that committee assignments of all parties other than the controlling party are charged to the minority.[6]

Committee Assignments as Instrument of Party Discipline

§ 9.5 The power to determine committee assignments has been used by the caucus as a means of disciplining Members for actions considered disloyal to the party.

1. See 81 Cong. Rec. 209, 75th Cong. 1st Sess., Jan. 13, 1937 (remarks of Mr. John W. McCormack [Mass.]).
2. See 81 Cong. Rec. 210, 211, 75th Cong. 1st Sess., Jan 13, 1937 (exchange between Messrs. McCormack and Boileau).
3. 81 Cong. Rec. 211, 212, 75th Cong., 1st Sess., Jan. 13, 1937.
4. 81 Cong. Rec. 212, 75th Cong. 1st Sess., Jan. 13, 1937.
5. 8 Cannon's Precedents § 2184.
6. Instances of the application of this rule are cited. See 8 Cannon's Precedents §§ 2184, 2185.

In the 90th Congress, the resolution assigning Democratic Members to House committees left vacancies on two committees—the Committees on the District of Columbia and on Interstate and Foreign Commerce—pending further consideration by the caucus of the committee assignments and seniority of Mr. John Bell Williams, of Mississippi.[7] Mr. Williams, who had endorsed the 1964 Republican Presidential candidate, had for that reason been reduced in rank on the two committees by action of the Democratic Caucus.[8] In the 90th Congress, following the introduction of the Democratic resolution, the following proceedings took place:[9]

> MR. WILLIAMS of Mississippi: . . . Mr. Speaker, in view of the extraordinary action which was taken in the last Congress with respect to my seniority position on the Committee on Interstate and Foreign Commerce and the Committee on the District of Columbia, it is my understanding that the Democratic Committee on Committees has felt it incumbent on them to take the matter of my committee rank to the caucus for final determination. In view of that, Mr. Speaker, I have directed a letter to the chairman of the Committee on Committees requesting that I not be assigned to any committee until such time as this matter can be determined finally by the caucus.
>
> Mr. Speaker, it is my understanding, in view of the committee assignments that have just been read, that this request was acceded to.
>
> Now, Mr. Speaker, in fairness to my Democratic colleagues . . . it would appear to me that this matter should be disposed of as soon as practicable.
>
> Mr. Speaker, this afternoon I am prepared to direct a letter to the chairman of the caucus, requesting that a caucus be called as soon as practicable for the purpose of determining my relative rank in being assigned to my two committee assignments.

The letter referred to by Mr. Williams was included in the Record,[10] and reads in part as follows:

> . . . If the Committee on Committees is unable at this time to place me other than in fifteenth position on the Committee on Interstate and Foreign Commerce, I respectfully request that I not be assigned now.
>
> This request applies to the Committee on the District of Columbia, also. . . .

Later in the first session of the 90th Congress, Mr. Thomas G.

7. See resolution assigning Democratic Members to committees in the 90th Congress in 113 CONG. REC. 1086, 90th Cong. 1st Sess., Jan. 23, 1967.

8. See the resolution assigning Democratic Members to committees in the 89th Congress, 111 CONG. REC. 809, 810, 89th Cong. 1st Sess., Jan. 18, 1965.

9. 113 CONG. REC. 1086, 1087, 90th Cong. 1st Sess., Jan. 23, 1967.

10. 113 CONG. REC. 1087, 90th Cong. 1st Sess., Jan. 23, 1967.

Abernethy, of Mississippi, made the following remarks respecting the retirement of Mr. Williams from the Congress and the disciplinary action that had been taken by the Democratic Caucus. Mr. Abernethy's remarks were in part as follows:[11]

> MR. ABERNETHY: Mr. Speaker, my friend and colleague, the gentleman from Mississippi, Mr. John Bell Williams, will shortly retire from the House of Representatives. . . .
>
> There are numerous Members of this body and literally millions around the country who feel that the treatment accorded Mr. Williams was unreasonable and unjustified. Certainly it was unprecedented. . . .
>
> . . . His would-be disciplinarians unsuspectingly and unintentionally made a great contribution toward elevating him to the high position of Governor of his home State, the State of Mississippi.

The Democratic Caucus in the 89th Congress also took similar action with respect to Mr. Albert W. Watson, of South Carolina. Mr. Watson had been elected to the 89th Congress as a Democrat, and, like Mr. Williams, had supported the Republican Presidential candidate in 1964. For that reason, the caucus directed that Mr. Watson be given a low-ranking committee position. Subsequently, Mr. Watson announced his intention to change his political affiliation. As a result, he was elected to the Committee on Interstate and Foreign Commerce as a Republican.[12] At the time he made his declaration regarding the change in his party affiliation, Mr. Watson announced his decision to resign so that his constituents could, by their votes in a special election, indicate their approval or disapproval of his action. On Jan. 18, 1965, the Speaker laid before the House a letter from Mr. Watson stating that Mr. Watson had submitted a letter of resignation to the Governor of South Carolina,[13] such resignation "to become effective upon such date as the Governor or may set for a special election to fill the vacancy." Mr. Watson actually resigned from the House on Feb. 1, 1965.[14]

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11. 113 CONG. REC. 36598, 36599, 90th Cong. 1st Sess., Dec. 14, 1967. See also the remarks of Mr. Walter B. Jones (N.C.) (113 CONG. REC. 3513, 90th Cong. 1st Sess., Feb. 16, 1967), to the effect that the Democrats had been inconsistent in the treatment accorded by different segments of the party to those party members who refused to support Democratic political candidates.

12. See resolution assigning Republican Members to committees at 111 CONG. REC. 992, 89th Cong. 1st Sess., Jan. 21, 1965.

13. Mr. Watson's letters to the Speaker and to the Governor appear at 111 CONG. REC. 805, 806, 89th Cong. 1st Sess., Jan. 18, 1965.

14. See communications laid before the House by the Speaker on Jan. 28,

In a special election, Mr. Watson was re-elected to the House as a Republican. On June 16, 1965,[15] the House, at the request of Minority Leader Gerald R. Ford, of Michigan, permitted Mr. Watson to be sworn although his certificate of election had not arrived.

More recently, the seniority of Democratic Member John R. Rarick, of Louisiana, was reduced by action of the caucus. Mr. Rarick, who had refused to support his party's Presidential candidate in 1968, was for that reason assigned a lower rank on the Committee on Agriculture than he would otherwise have had.[16]

In each of the above instances, the party's discipline was imposed on a Member for his opposition to the party's Presidential candidate. Cannon cites an instance[17] wherein Republican Members were disciplined by removal from committees or reduction in committee rank for their failure to abide by the action of their party caucus with respect to matters under consideration in the House. It should be noted, however, that the discipline in this case was imposed by the Speaker of the House at a time when the Speaker made appointments to standing committees.

§ 10. —Policy Determination; Party Decisions as Binding

[Note: The following is descriptive of the practices in some Congresses. For discussion of current

1965 (111 CONG. REC. 1452, 89th Cong. 1st Sess.); such communications, signed by Mr. Watson, stated in part that, "It now clearly appears that the Governor intends no affirmative action on this matter. Therefore . . . I have this day transmitted to him my resignation effective upon the adjournment of the House on Monday, February 1, 1965."

15. See 111 CONG. REC. 13774, 89th Cong. 1st Sess.

16. See the resolution assigning Democratic Members to standing committees of the House at 115 CONG. REC. 2083, 91st Cong. 1st Sess., Jan. 29, 1969. For discussion of departures from the seniority rule in both the House and Senate, frequently for purposes of imposing the party's discipline, see *Congressional Quarterly's Guide to the Congress of the United States,* Congressional Quarterly Service (Washington, D.C., 1971), pp. 171, 172. See also the discussion of caucus action, taken in the 90th Congress, whereby Mr. Adam Clayton Powell, Jr. (N.Y.) was divested of a committee chairmanship on various grounds (113 CONG. REC. 22, 90th Cong. 1st Sess., Jan. 10, 1967 [remarks of Mr. James C. Wright, Jr., of Texas]).

17. See 8 Cannon's Precedents § 3606.

practices that may differ in some particulars from those stated, see supplements to this edition as they appear.]

The party caucus or conference develops party positions with respect to specific issues. Thus, a consensus may be reached in the caucus or conference with regard to legislation or rules changes currently under consideration, or desired to be presented for consideration, by the House or committees in the House. Party leaders and other members are thus advised of the party's sentiment on particular issues, and actions may be authorized in the House based on the decisions of the caucus or conference.[18]

As an example of how a caucus decision may be reflected in action taken in the House, a view adopted by the Democratic Caucus with respect to certain committee procedures was incorporated in a resolution introduced to the House in the 92d Congress. A resolution expressing the sense of the Democratic Caucus[19] stated, in part,

> *Resolved*, That it is the sense of the Democratic Caucus that . . .
>
> 9. All committees shall provide in their rules of procedure for the application of the 5-minute rule in the interrogation of witnesses until such time as each member of the committee who so desires has had an opportunity to question the witness.

The above provision was incorporated in a resolution introduced in the House on Jan. 21, 1971.[20] The same House resolution reflected another paragraph of the caucus resolution,[1] containing a recommendation "that the Select Committee on Small Business be made a permanent select committee of the House without legislative jurisdiction except to make investigations and reports."

A Democratic Caucus Rule provides:[2]

> 7. In deciding upon action in the House involving party policy or principle, a two-thirds vote of those present and voting at a caucus meeting shall bind all members of the caucus; provided, the said two-thirds vote is a ma-

18. For remarks indicating that particular resolutions were offered "by direction of the . . . caucus" or "under instructions of the . . . caucus," see for example, 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971 (remarks of Mr. William M. Colmer [Miss.]); and 111 CONG. REC. 23, 89th Cong. 1st Sess., Jan. 4, 1965 (remarks of Mr. Carl Albert [Okla.]).

19. See Democratic Caucus Rules (July 20 1971), addendum, paragraph 9.

20. See H. Res. 5 at 117 CONG. REC. 14, 92d Cong. 1st Sess.

1. Democratic Caucus Rules (July 20, 1971), addendum, paragraph 11.

2. Democratic Caucus Rules (July 20, 1971), Rule 7.

jority of the full Democratic membership of the House: and provided further, that no Member shall be bound upon questions involving a construction of the Constitution of the United States or upon which he made contrary pledges to his constituents prior to his election or received contrary instructions by resolutions or platform from his nominating authority.

The rule permitting decisions of the caucus in some instances to bind all Democratic Members is one of long standing.[3] It has been applied to permit the caucus to issue directives to Democratic members of House committees with respect to disposition of matters under consideration,[4] and to assure party members' support of party positions taken with respect to issues before the House.

In the 92d Congress, the following remarks were made with reference to a caucus decision regarding the right of the minority to funds for staffing:[5]

MR. [JAMES C.] CLEVELAND [of New Hampshire]: Mr. Speaker, the act of the Democratic caucus binding Democratic Representatives to vote for repeal of the minority staffing provision which we enacted into law last fall is a shocking breach of faith . . . [U]nder the rules of the Democratic caucus, as they have been explained to me, all Members of the Democratic Party are bound to vote to repeal the minority staffing provisions. Debate cannot change their votes. Neither can their consciences nor senses of fairness change their votes. . . .

Cannon quotes remarks of Speaker Champ Clark, of Missouri,[6] made in 1913 when the caucus rules were substantially as they are now,[7] to the effect that caucus action taken by a two-thirds vote is not binding on constitutional questions or "matters of conscience or where a Member has made promises or pledges in his campaign for election."

The Republicans do not have a formal rule making the decisions of the conference binding on all Republicans, although a consensus developed in the conference is persuasive.[8]

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3. See 8 Cannon's Precedents §§ 3605, 3609. For recent changes in the caucus rules, and the current practice, see supplements to this edition.

4. See discussion in Galloway, George B., *History of the House of Representatives,* Thomas Y. Crowell (New York, 1961), pp. 137, 140.

5. 117 CONG. REC. 44, 92d Cong. 1st Sess., Jan. 21, 1971. For other remarks of a similar nature relating to the unit rule of the caucus, see 117 CONG. REC. 433, 434, 92d Cong. 1st Sess., Jan. 25, 1971 (remarks of Mr. Benjamin B. Blackburn (Ga.), and related materials, including a copy of the Democratic Caucus Rules inserted in the Record).

6. See Cannon's Precedents 3605.

7. See the caucus rules set forth in 8 Cannon's Precedents § 3609.

8. See Riddick, Floyd M., *Congressional Procedure,* Chapman and Grimes

In the course of a debate in the 92d Congress over the election of Democratic Members to committees,[9] the following discussion took place with respect to the existence of a "unit rule" in the Republican Conference and with respect to the views of the Republican Party on the issues before the House:[10]

> MR. [JOHN] CONYERS [Jr., of Michigan]: . . . [T]he question is, do the minority Members intend to simply ratify the decisions from the majority caucus or are they entitled and obligated to make an evaluatory determination as to what they think is correct regarding who should be the chairmen of the various committees in this 92nd Congress? . . .
>
> MR. GERALD R. FORD [of Michigan]: . . . We do not have a unit rule on our side of the aisle. The Republican Conference does not bind its Members to vote as a majority of the conference decides. As Republicans, we do not dictate to our members.
>
> MR. CONYERS: Then who were you speaking for when you said that your party or your membership was going to ratify the Democratic decisions if you do not have the unit rule?
>
> MR. GERALD R. FORD: Mr. Speaker if the gentleman will yield further, our Members will have voted for our nominees for ranking Members on each of the committees . . . we do not think under our political system in America that you, the Democrats, should make decisions for us. We do not think we should become involved in making decisions for your party. . . .
>
> We should not vote against the previous question. That is your decision. We will take care of ourselves when the next resolution is offered.
>
> MR. CONYERS: In other words, the distinguished minority leader leaves to the discretion of every Member on the other side of the aisle the right to review in his own mind the validity of these Democratic Caucus recommendations; is that correct?
>
> MR. GERALD R. FORD: That is correct. Each Member on our side will make up his own mind. As I said a moment ago, we have no unit rule in the Republican Party.

An instance has been cited wherein Republican Members failing to abide by the action of their party caucus were disciplined by removal from committees or reduction in rank.[11] The situation described arose at a time when the power over committee assignments resided in the Speaker, and when the caucus was dominated by Speaker Joseph G. Cannon, of Illinois.[12]

(Boston, 1941), p. 35, to the effect that in some instances the Republicans vote as uniformly in support of party positions as do the Democrats.

9. See § 9.3, supra.

10. 117 CONG. REC. 1712, 92d Cong., 1st Sess., Feb. 4, 1971.

11. See 8 Cannon's Precedents § 3606.

12. See Congressional Quarterly's *Guide to the Congress to the United States,* Congressional Quarterly Service (Washington, D.C., 1971), p. 141.

C. PARTY COMMITTEES AND INFORMAL GROUPS

§ 11. Committee on Committees

Each party has created a committee on committees,[13] whose function is to determine the assignments of the respective party members to positions on standing committees of the House, subject to approval by the party and by the House.[14]

The Democratic Committee on Committees has in past Congresses consisted of the Democratic members of the Committee on Ways and Means, who have been selected by secret ballot in the party caucus.[15] The Republican Committee on Committees consists of one Member from each state having Republican representation in the House, such Member having been chosen by his state delegation and approved by the Republican Conference.[16]

The Democratic committee's recommendations to the caucus regarding committee assignments need not follow seniority, and may under certain circumstances be voted on separately by secret ballot in the caucus.[17] The Republican practice is similar in the case of the selection of the ranking Republican on each committee.[18]

The list of committee assignments as determined by the committee on committees and the caucus or conference is submitted to the House in the form of a resolution. The Democratic resolution has, under the practice in effect in past Congresses, generally been offered by the Chairman of the Committee on Ways and Means,[19] although on at least

13. See § 8, supra. The party committee on committees and its relationship to the caucus or conference, have been discussed extensively elsewhere. See §§ 8 and 9, supra. The discussion here is a brief summary of the committee's composition and functions.

14. See §§ 9.2, 9.3, supra. As to criteria that may affect the determination of committee assignments, see § 9, supra.

15. See § 9.1, supra. For discussion of current practice, in which the function of determining committee assignments has been transferred to a different party committee, see supplements to this edition as they appear.

16. See § 8, supra.

17. See § 9, supra.

18. See §§ 9, 9.2, supra.

19. See, for example, 117 CONG. REC. 1708, 1713, 92d Cong. 1st Sess., Feb. 4, 1971; and 115 CONG. REC. 2083, 91st Cong. 1st Sess., Jan. 29, 1969. The resolution has also been offered on occasion by the Chairman of the Democratic Caucus (see § 3.12, supra).

one occasion, in the absence of the chairman, a resolution electing a new Democratic Member to a committee was offered by the ranking majority member of the Committee on Ways and Means.[20] Resolutions electing Democratic Members to the Committee on Ways and Means itself, of course, have under these procedures been offered by the Chairman of the Democratic Caucus.[1] The resolution assigning Republican Members to House committees is generally offered in the House by the Republican floor leader.[2]

The House has declined to alter the procedure whereby each party, through the action of that party's committee on committees and its caucus or conference, determines the committee assignments for its members.[3]

The Republican Committee on Committees has made recommendations respecting the selection of the Republican whip.[4]

20. See 112 CONG. REC. 15889, 89th Cong. 2d Sess., July 18, 1966.
1. See § 3.11, supra 1.
2. See § 19.7, infra.
3. See § 9.3, supra.
4. See 8 Cannon's Precedents §§ 3616, 3619, 3620, 3621; Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), pp. 36, 37. The Republican floor leader has announced the selection of the party whip, "on behalf of the Committee on Committees" (see § 23.3, infra).

Electing Members From Both Parties

§ 11.1 In unusual circumstances, the Chairman of the Democratic Committee on Committees offered a resolution electing Members from both parties to the newly created Committee on Internal Security.

In the 91st Congress, the House agreed to an amendment to its rules, abolishing the Committee on Un-American Activities and transferring the jurisdiction of that committee to a new standing committee of the House on internal security.[5] A resolution was offered by the Chairman of the Democratic Committee on Committees for the purpose of electing the sitting members of the Committee on Un-American Activities to the newly created Committee on Internal Security.[6] The resolution elected both Democratic and Republican Members to the newly created committee, and referred all bills, resolutions, executive communications, and other papers pending before the Committee on Un-American Activities to the new committee.

Parliamentarian's Note: The resolution was offered by the

5. See 115 CONG. REC. 3723, 3724, 3745–3747, 91st Cong. 1st Sess., Feb. 18, 1969.
6. See 115 CONG. REC. 3747, 91st Cong. 1st Sess., Feb. 18, 1969.

Chairman of the Democratic Committee on Committees after consultation with and approval of the Minority Leader. Both majority and minority party members were elected by name, rather than by the designation, "sitting members of the Committee on Un-American Activities," so that their election could be more easily certified to a court in case of legal proceedings relating to the committee. Such procedure avoided the necessity of having to refer back at some future time to the previous resolutions electing the members to the Committee on Un-American Activities.

Announcement of Meeting

§ 11.2 The Republican floor leader made an announcement in the House concerning a meeting of the party Committee on Committees.

The Minority Leader in the 75th Congress, Bertrand H. Snell, of New York, made the following announcement in the House:[7]

> MR. SNELL: Mr. Speaker, there will be a meeting of the Republican members of the committee on committees at 4 o'clock this afternoon in the rooms of the Interstate and Foreign Commerce Committee, located in the New House Office Building, and there will be a Republican Conference in this Hall at 10 o'clock tomorrow morning.

§ 12. Republican Policy Committee; Research Committee

The Republican Policy Committee studies proposed legislation, takes positions on matters of policy, considers legislative strategy,[8] and serves the Republican Conference and leadership in an advisory capacity. The Policy Committee was formerly known as the Steering Committee until it was renamed in 1949.[9]

The Policy Committee may consist of Republican Members serving on legislative committees responsible for legislation under study by the Policy Committee.

An announcement of the selection of the Chairman of the Policy Committee has frequently been made in the House.[10] By virtue of his status as a party leader, the Chairman of the Policy Committee

7. 81 CONG. REC. 201, 75th Cong. 1st Sess., Jan. 13, 1937.

8. For discussion of a Democratic committee with similar functions see § 13, infra.

9. See Congressional Quarterly's *Guide to the Congress of the United States,* Congressional Quarterly Service (Washington, D. C., 1971) , p. 142.

10. See § 12. 1, infra.

has on occasion assumed the functions of the floor leader, particularly during formal affairs such as the extension of certain courtesies and the fulfillment of ceremonial duties.[11]

The Committee on Research, through the use of task forces, does research in areas relating to particular issues, and presents reports and recommendations to the Republican Conference.

Announcement as to Chairmen

§ 12.1 The conference chairman has on occasion announced in the House the names of the persons selected by the conference as Chairmen of the Policy Committee and the Committee on Research.

In the 90th Congress, following the announcement of the selection of the minority whip, the Chairman of the Republican Conference announced as follows:[12]

> MR. [MELVIN R.] LAIRD [of Wisconsin]: . . . The conference has also directed me to notify the House officially that the Republican Members have selected as Chairman of the Republican Committee on Policy the gentleman from Arizona, the Honorable John J. Rhodes, and has chosen as Chairman of the Republican Committee on Research and Planning the gentleman from New York, the Honorable Charles E. Goodell.

In the 89th Congress, the conference chairman, immediately after announcing his party's selection of a Minority Leader, announced the election by the conference of a Chairman of the Republican Policy Committee.[13] Similarly, in the 88th Congress, an announcement was made respecting the selection of the minority whip and the Chairman of the Policy Committee.[14]

Duties of Chairman

§ 12.2 The Chairman of the Republican Policy Committee, in the stead of the Minority Leader, was appointed to the committee to notify the President of the intention of the House to adjourn.

In the 91st Congress, the Majority Leader and the acting Minority Leader, the Chairman of the Republican Policy Committee, were appointed to the committee to notify the President of the intention of the House to adjourn.

11. See §§ 12.2, 12.3, infra.

12. 113 CONG. REC. 27, 90th Cong. 1st Sess. Jan. 10. 1967.

13. 111 CONG. REC. 20, 89th Cong. 1st Sess., Jan. 4, 1965.

14. 109 CONG. REC. 506, 88th Cong. 1st Sess., Jan. 17, 1963.

The proceedings were as follows:[15]

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I offer a resolution (H. Res. 1338) and ask for its immediate consideration.

[The Clerk read the resolution, which authorized the appointment of a committee to join with a similar committee of the Senate and inform the President of the readiness of Congress to adjourn. The resolution was agreed to.]

THE SPEAKER:[16] The Chair appoints as Members on the part of the House of the committee to notify the President the gentleman from Oklahoma, Mr. Albert, and the gentleman from Arizona, Mr. Rhodes.

§ 12.3 Acting in the stead of the Minority Leader, the Chairman of the Republican Policy Committee offered a resolution expressing the praise of the House for the manner in which the Speaker had performed his duties.

In the 91st Congress, the Chairman of the Republican Policy Committee, John J. Rhodes, of Arizona, acting in the stead of the Minority Leader, offered a resolution thanking Speaker John W. McCormack, of Massachusetts, for the exemplary manner in which the Speaker had performed his duties. The proceedings were as follows:[17]

THE SPEAKER. The gentleman from Virginia (Mr. Poff) will take the Chair.

Mr. Poff assumed the Chair.

THE SPEAKER PRO TEMPORE (Mr. Poff). The Chair recognizes the gentleman from Arizona (Mr. Rhodes).

MR. RHODES of Arizona. Mr. Speaker, I offer a privileged resolution (H. Res. 1340) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1340

Resolved, That the thanks of the House are presented to the Honorable John W. McCormack, Speaker of the House of Representatives, for the able, impartial, and dignified manner in which he has presided over the deliberations and performed the arduous duties of the Chair during the present term of Congress; and be it further

Resolved, That the House of Representatives hereby extends to its be-

15. 116 CONG. REC. 44599, 91st Cong. 2d Sess., Jan. 2, 1971.

16. John W. McCormack (Mass.).

17. 116 CONG. REC. 44600, 44601, 91st Cong. 2d Sess., Jan. 2, 1971.

Parliamentarian's Note: Mr. Gerald R. Ford (Mich.) the Minority Leader and Mr. Leslie C. Arends (Ill.), the minority whip, had left the city and had requested Mr. Rhodes and Mr. Richard H. Poff (Va.) to act in their stead with respect to the proceedings described above.

In the 90th Congress, a similar resolution was offered by the Chairman of the Republican Policy Committee, who was acting for the Minority Leader. 114 CONG. REC. 31371, 90th Cong. 2d Sess., Oct. 14 1968.

loved Speaker, the Honorable John W. McCormack, sincere wishes for a long, pleasant, and well-earned retirement.

THE SPEAKER PRO TEMPORE. The Chair recognizes the gentleman from Arizona.

MR. RHODES. Mr. Speaker, it is a proud duty which I perform in offering this resolution in appreciation to our great Speaker, the Honorable John McCormack of Massachusetts.

[Mr. Rhodes continued his remarks, sharing his personal memories of the Speaker and expressing appreciation of the Speaker's record of service.]

§ 13. Steering Committee

The Republican Conference in 1919 authorized the creation of a steering committee to be nominated by the Committee on Committees and elected by the party conference.[18] The committee created by the Republicans is now known as the Policy Committee.[19]

A Democratic Steering Committee was created in the 73d Congress to consist of 15 Members elected to represent geographical zones.[20] Cannon stated that, "the Steering Committee is not responsible to the caucus, and the election of its members . . . is not subject to caucus ratification or rejection";[1] that, "members of the Steering Committee are directly responsible to the membership of the zone from which elected and are subject to recall at any time";[2] and that, "the Chairman of the Steering Committee is elected by the committee and is ineligible to succeed himself."[3]

The purposes of the Steering Committee as originally created were to consult with the various geographical groups on pending legislation, to promote unity among the groups, and to advise the party leadership as to legislative scheduling and floor strategy.[4]

The Democratic Steering Committee was relatively inactive for many years. But changes in the committee's composition and functions were included in an addendum to the 1973 caucus rules and, more recently, the committee has assumed new importance as the

18. See 8 Cannon's Precedents § 3621.

19. The Policy Committee is discussed in § 12, supra.

20. See 8 Cannon's Precedents § 3622.

1. 8 Cannon's Precedents § 3622.

2. *Id.*

3. *Id.*

4. See Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), pp. 142, 604. See also 8 Cannon's Precedents § 3622, discussing the functions of the steering committee.

Steering and Policy Committee. The current role of the committee, including its role in the determination of standing committee assignments for party members, will be discussed more extensively in supplements to this edition. Briefly, the committee at present is composed of the party leadership in addition to those members elected on a geographical basis or appointed by the Speaker. Its main functions are to make recommendations regarding party policy, legislative priorities, and the scheduling of matters for House or caucus action.

In the 89th Congress, resolutions were adopted authorizing payments from the contingent fund of the House to be applied to salaries for certain employees of the Steering Committee[5] and to expenses of the committee.[6]

Members of the Democratic Steering Committee from its inauguration to Mar. 21, 1945, are listed in an appendix to the *Congressional Record* of the 79th Congress. In that Congress, Mr. William M. Whittington, of Mississippi, asked and was given permission to extend his remarks in the appendix of the Record and to include therein the membership rolls of the Democratic Steering Committee from its inauguration, in addition to a partial list of the Chairmen of the Democratic Caucus.[7] The list includes the ex officio members of the committee in each of the Congresses. In the 73d Congress, the ex officio members were the Speaker, floor leader, caucus chairman, Chairman of the Committee on Rules, and the whip. Beginning with the 76th Congress, the Chairman of the Committee on Ways and Means and the Chairman of the Committee on Appropriations were also designated as ex officio members of the Steering Committee. At present,[8] ex officio members include the Speaker, the floor leader, the whip, the caucus chairman, the secretary of the caucus and the Chairman of the Congressional Campaign Committee.

Compensation for Employees

§ 13.1 The House on occasion has provided by resolution

5. See § 13.1, infra.
6. See § 13.2, infra.
7. The list appears in the appendix to the Record, 91 (part 10) CONG. REC. A1367, A1368, 79th Cong. 1st Sess., Mar. 21, 1945 (extension of remarks of Mr. William M. Whittington).
8. See Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), p. 142; and Ripley, Randall B., *Party Leaders in the House of Representatives*, The Brookings Institution (Washington, D.C., 1967), p. 47.

for compensation to be payable from the contingent fund of the House to employees of the Democratic Steering Committee.

On Aug. 24, 1965,[9] the following resolution was adopted by the House:

H. RES. 543

Resolved, That, effective September 1, 1965, there shall be payable from the contingent fund of the House of Representatives, until otherwise provided by law, compensation at a basic rate per annum not exceeding the maximum rate authorized by the Classification Act of 1949, as amended, to one employee of each of the following:

(1) the House Democratic Steering Committee; and

(2) the House Republican Conference.

Later in the first session of the 89th Congress,[10] compensation for an additional employee of the Steering Committee was authorized by the following resolution:

H. RES. 625

Resolved, That, effective November 1, 1965, there shall be payable from the contingent fund of the House of Representatives, until otherwise provided by law, compensation at a basic rate not exceeding $4,180 per annum to one additional employee of each of the following:

(1) the House Democratic Steering Committee; and

(2) the House Republican Conference.

Expense Allowance

§ 13.2 The House adopted a resolution providing for payment for certain expenses of the Democratic Steering Committee from the contingent fund of the House.

In the second session of the 89th Congress,[11] the following resolution was agreed to by the House:

H. RES. 661

Resolved, That, effective January 3, 1966, there shall be payable from the contingent fund of the House of Representatives, until otherwise provided by law, not to exceed $5,000 annually for necessary expenses, other than salaries, to each of the following:

(1) the House Democratic Steering Committee; and

(2) the House Republican Conference.

§ 14. Patronage Committee

Formerly, the patronage of the House was distributed through a

9. 111 CONG. REC. 21545, 89th Cong. 1st Sess. A resolution authorizing an increase in the compensation of the positions referred to in H. Res. 543, 89th Cong. 1st Sess. (1965), was rejected in the 91st Congress. See 116 CONG. REC. 27449, 27451, 91st Cong. 2d Sess., Aug. 5, 1970.

10. 111 CONG. REC. 28563, Oct. 22, 1965.

11. 112 CONG. REC. 170, Jan. 13, 1966.

patronage committee nominated by the Committee on Committees and elected by the majority caucus. Thus, in 1911, a caucus resolution [12] provided for a committee that would distribute the appointive positions in the House organization among the members of "the various state delegations." And in 1918, the Republicans being in the majority, Republican members received from the temporary Chairman of their Committee on Committees instructions relating to the distribution of patronage.[13]

At the present time, the distribution of jobs through patronage is a very informal process. Many jobs on Capitol Hill, including a number in the offices of the Doorkeeper and the Sergeant at Arms of the House, are awarded through patronage, but no clear criteria exist by which the control of patronage is distributed to Members of the House. State delegations may be assigned quotas of jobs to be awarded under the patronage system.[14]

12. See 8 Cannon's Precedents § 3627.

13. See 8 Cannon's Precedents § 3628.

14. See Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), p. 428. For more detailed discussion of the Patronage Committee, see Ch. 7, infra.

§ 15. Official Objectors' Committees

On the Consent and Private Calendars are placed bills of a noncontroversial nature, susceptible of passage by the House without extensive debate.[15] Objection may be made, however, to consideration of any bill that has been called on either calendar, in which case disposition of the bill proceeds according to the rules of the House. For the purpose of determining whether objection should be made to any bills that have been called up on either calendar, official objectors appointed to act for each party analyze carefully the bills to be considered.[16] Official Objectors' Committees are appointed by each party's floor leader.[17]

Proceedings relating to bills on the Private Calendar are set forth in a House rule providing, in part, that,[18]

> On the first Tuesday of each month . . . the Speaker shall direct the Clerk to call the bills and resolutions on the Private Calendar. Should objection be

15. For general discussion of the Private and Consent Calendars, see Ch. 22, infra.

16. See §§ 15.2, 15.4, infra.

17. See §§ 15.1, 15.3, infra.

18. Rule XXIV clause 6, *House Rules and Manual* § 893 (1973).

made by two or more Members to the consideration of any bill or resolution so called, it shall be recommitted to the committee which reported the bill or resolution, and no reservation of objection shall be entertained by the Speaker. . . .

On the third Tuesday . . . the Speaker may direct the Clerk to call the bills and resolutions on the Private Calendar, preference to be given to omnibus bills containing bills or resolutions which have previously been objected to. . . .

Proceedings relating to bills on the Consent Calendar are also set forth in the rules. Thus, it is provided[19] that,

. . . On the first and third Mondays of each month . . . the Speaker shall direct the Clerk to call the bills in numerical order, which have been for three legislative days upon the "Consent Calendar." Should objection be made to the consideration of any bill so called it shall be carried over on the calendar without prejudice to the next day when the "Consent Calendar" is again called, and if objected to by three or more Members it shall immediately be stricken from the Calendar. . . .

The objectors of both parties for the Consent Calendar may agree on and announce to the House certain rules or criteria by which the objectors will be guided in their consideration of bills on the calendar.[20] Similarly, objectors for the Private Calendar generally annouce agreements they have made respecting their consideration of bills on the Private Calendar.[1]

Objectors for Consent Calendar—Appointment

§ 15.1 Official objectors for the Consent Calendar are appointed by each party's floor leader, who announces such appointments in the House.

In the 91st Congress, Mr. Wayne N. Aspinall, of Colorado, one of the objectors for the Consent Calendar, presented in the House a statement of the rules of operation of the official objectors for the Consent Calendar. Such statement read in part as follows:[2]

On February 18, the majority and minority floor leaders appointed their respective members of the official objectors committees, the gentleman from Oklahoma, Mr. [Carl] Albert, appointed three members of his party and the gentleman from Michigan, Mr. Gerald R. Ford, appointed three members of his party. The objectors committees are unofficial committees of the House of Representatives, existing at the request and at the pleasure of

19. Rule XIII clause 4, *House Rules and Manual* § 746 (1973).

20. See § 15.2, infra.

1. See § 15.5, infra.

2. 115 Cong. Rec. 6543, 91st Cong. 1st Sess., Mar. 17, 1969.

the respective floor leaders of the two parties who, in order to facilitate the proper screening of legislation which may be placed on the Consent Calendar, designate members of each side of the aisle charged with the specific responsibility of seeing to it that legislation passing by such procedure is in the interest of good government.

The floor leaders generally announce to the House their respective appointments of objectors. Sometimes, the floor leader announces his designation of one of the objectors as Chairman of the Official Objectors' Committee. In the 91st Congress, the announcement of the appointment of objectors was as follows: (3)

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, I have asked for this time for the purpose of announcing the official objectors for the Republican Members for the Consent Calendar. They are to be as follows: the gentleman from Washington (Mr. Pelly), the gentleman from Missouri (Mr. Hall), and the gentleman from Pennsylvania (Mr. Johnson).

In the 84th Congress, the announcement of the appointment of Democratic objectors for the Consent Calendar was made as follows: (4)

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I desire to announce to the House the appointment of the official Democratic objectors on the Consent Calendar as follows:

The distinguished gentleman from North Carolina, Mr. Deane, Chairman of the Committee on Consent Calendar Objectors; the gentleman from Colorado, Mr. Aspinall; and the gentleman from Massachusetts, Mr. Boland.

Generally, three members are appointed to the Official Objectors' Committee for the Consent Calendar and three members to the Committee of Official Objectors for the Private Calendar. There have been minor departures from this practice. In the 85th Congress, the appointment of four Republican objectors for the Consent Calendar was announced as follows: (5)

MR. [JOSEPH W.] MARTIN [Jr., of Massachusetts]: I desire to announce the appointment on the Republican side of members on the official objectors committee on the Consent Calendar: the gentleman from Iowa, Mr. Cunningham; the gentleman from Wisconsin, Mr. Byrnes; the gentleman from Michigan, Mr. Ford; and the gentleman from Nebraska, Mr. Weaver.

In the 82d Congress, three Democratic objectors were appointed who served on both the Consent and the Private Calendar. The announcement of the appointments was as follows: (6)

3. 115 CONG. REC. 3721, 91st Cong. 1st Sess., Feb. 18, 1969.

4. 101 CONG. REC. 496, 84th Cong. 1st Sess., Jan. 20, 1955.

5. 103 CONG. REC. 1488, 85th Cong. 1st Sess., Feb. 4, 1957.

6. 97 CONG. REC. 792, 82d Cong. 1st Sess., Jan. 31, 1951. For other in-

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker . . . may I say that the following named Members will be the official objectors on the Democratic side for the 82nd Congress for the Consent Calendar and the Private Calendar: the gentleman from Arkansas [Mr. Trimble], the gentleman from North Carolina [Mr. Deane], and the gentleman from Colorado [Mr. Aspinall.]

Similarly, the announcement of the appointment of Democratic objectors in the 81st Congress was made as follows:[7]

MR. MCCORMACK: Mr. Speaker, I desire to announce the appointment of the Objectors Committee on the Democratic side. The distinguished gentleman from Arkansas [Mr. Trimble], the distinguished gentleman from North Carolina [Mr. Deane], and the distinguished gentleman from Colorado [Mr. Aspinall]. The gentleman from Arkansas [Mr. Trimble], being the ranking Member, is Chairman of the Objectors Committee on the Democratic side.

Agreement by Official Objectors on Rules of Operation

§ 15.2 It has been the practice of the official objectors to agree upon certain rules and principles that will govern their consideration of bills on the Consent Calendar, and to present a statement of such rules and principles to the House.

In the 91st Congress,[8] Mr. Wayne N. Aspinall, of Colorado, one of the official objectors, presented a statement of the rules of operation of the official objectors for the Consent Calendar. The proceedings were as follows:

MR. ASPINALL: Mr. Speaker . . . one of the most important procedures that the House follows in considering legislation is known as the Consent Calendar operation. . . . It is under this procedure that most of the acts of Congress which become public laws are considered by the House of Representatives.

It has been the practice heretofore of the official objectors for Consent Calendar committees—the majority members and the minority members—to agree upon rules of procedure at the beginning of a session. I would suggest, to the new Members especially, that they read the statement regarding these rules of procedure, which has the approval of and bears the initials of all the members of the Consent Calendar committees, three members of the majority and three members of the minority.

The statement is as follows:

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stances in which a Member was appointed to serve as objector for both the Consent and Private Calendar, see 115 CONG. REC. 3721, 91st Cong. 1st Sess., Feb. 18, 1969; and 101 CONG. REC. 496, 84th Cong. 1st Sess., Jan. 20, 1955.

7. 95 CONG. REC. 925, 81st Cong. 1st Sess., Feb. 7, 1949.

8. 115 CONG. REC. 6543, 6544, 91st Cong. 1st Sess., Mar. 17, 1969.

STATEMENT OF RULES OF OPERATION OF THE OFFICIAL OBJECTORS FOR THE CONSENT CALENDAR

. . . For several sessions now objectors on both sides of the aisle have followed certain rules for consideration of Consent Calendar bills which they have made known to the Members at the beginning of a session. These rules are not publicized at this time to establish hard-and-fast procedures but rather to advise the Members of the House as to the manner in which the committee plans to operate throughout the 91st Congress.

The members of the committee feel that generally no legislation should pass by unanimous consent which involves an aggregate expenditure of more than $1 million; second, that no bill which changes national policy or international policy should be permitted to pass on the Consent Calendar but rather should be afforded the opportunity of open and extended debate; third, that any bill which appears on the Consent Calendar, even though it does not change national or international policy, or does not call for an expenditure of more than $1 million, should not be approved without the membership being fully informed of its contents, providing it is a measure that would apply to the districts of a majority of the Members of the House of Representatives . . . fourth, that if a bill has been placed on the Consent Calendar and the members of the committee having jurisdiction over the legislation show that it has not been cleared by the Bureau of the Budget, by the respective Department affected by such legislation, or that such reports from the committee or from the Department show that the legislation is not in accord with the President's program, it should not pass on the Consent Calendar. . . .

Official Objectors for Private Calendar—Appointment

§ 15.3 Each party's official objectors for the Private Calendar are appointed by the party floor leader, who announces in the House the names of those he has appointed.

In the 89th Congress, during the course of describing procedures relating to the Private Calendar, Mr. Edward P. Boland, of Massachusetts, remarked that, "The majority leader and minority leader each appoint three Members to serve as Private Calendar objectors during a Congress." (9)

The following announcements, made in the 91st Congress, (10) represent the usual manner in which the floor leader notifies the House of his appointment of official objectors:

(Mr. Carl Albert, of Oklahoma, asked and was given permission to address the House for one minute and to revise and extend his remarks.)

MR. ALBERT [after announcing appointment of Consent Calendar objectors]:

I have also designated as official objectors for the majority for the Private Calendar the following Members: the

9. 111 CONG. REC. 3914, 89th Cong. 1st Sess., Mar. 2, 1965.

10. 115 CONG. REC. 3721, 91st Cong. 1st Sess., Feb. 18, 1969.

gentleman from Massachusetts (Mr. Boland), the gentleman from Georgia (Mr. Davis), and the gentleman from Oklahoma (Mr. Edmondson). . . .

MR. GERALD R. FORD [of Michigan] [after announcing appointment of Consent Calendar objectors]:

Also, Mr. Speaker, the official objectors for the Republican Members for the Private Calendar are to be as follows: the gentleman from Tennessee (Mr. Duncan), the gentleman from Ohio (Mr. Clarence J. Brown), and the gentleman from New Jersey (Mr. Hunt).

In the 91st Congress, when Mr. Garry E. Brown, of Michigan, was appointed to replace a member of the Republican Objectors Committee for the Private Calendar, the following announcement was made by the Minority Leader:[11]

MR. GERALD R. FORD: Mr. Speaker, I announce that the Republican Members of the Private Calendar objectors committee for the remainder of the 2nd session of the 91st Congress will be: the gentleman from Tennessee (Mr. Duncan), the gentleman from Ohio (Mr. Brown), and the gentleman from Michigan (Mr. Brown).

Similarly, in the 84th Congress, on Apr. 26, 1955,[12] the Minority Leader announced as follows:

MR. [JOSEPH W.] MARTIN [Jr., of Massachusetts]: Mr. Speaker, I desire to announce that Mr. William K. Van Pelt has been placed upon the list of objectors on the Private Calendar, representing the minority, to take the place of the gentleman from Ohio [Mr. Ayres].

As in the case of appointments to the Official Objectors Committee for the Consent Calendar,[13] announcements of appointments to the Official Objectors Committee for the Private Calendar have sometimes included the designation of a chairman.[14]

As noted above,[15] a Member has sometimes been appointed to serve on both the Official Objectors Committee for the Private Calendar and the Official Objectors Committee for the Consent Calendar.

Functions of Official Objectors

§ 15.4 The Official Objectors Committees for the Private Calendar study all bills placed on that calendar, and may make objection to any private bill when the calendar is called.

In the 89th Congress, Mr. Edward P. Boland, of Massachusetts,

11. 116 CONG. REC. 7677, 91st Cong. 2d Sess., Mar. 17, 1970.

12. 101 CONG. REC. 5120, 84th Cong. 1st Sess.

13. See § 15.1, supra.

14. See 101 CONG. REC. 496, 84th Cong. 1st Sess., Jan. 20, 1955 (announcement by Mr. John W. McCormack [Mass.]).

15. See § 15.1, supra.

in the course of discussing procedures relating to the Private Calendar, remarked as follows:[16]

> The objectors have the responsibility of carefully studying all bills which are placed on the Private Calendar. When the Private Calendar is called, the objectors are on the floor ready to object to any private bill which they feel is objectionable for any reason. Seated near them to provide technical assistance are the majority and minority legislative clerks.
>
> Should any Member have a doubt or question about a particular private bill, he can get assistance from the objectors, their clerks, or from the Member who introduced the bill.

Agreement as to Bills to be Considered

§ 15.5 The official majority and minority objectors for the Private Calendar agree upon rules governing their consideration of private bills, and announce such rules in the House. The official objectors usually agree that they will consider only those bills which have been on the Private Calendar for a period of seven calendar days.

In the 89th Congress, Mr. Edward P. Boland, of Massachusetts, in the course of describing procedures relating to the Private Calendar, announced as follows:[17]

> The great volume of private bills and the desire to have an opportunity to study them carefully before they are called on the Private Calendar has caused the six objectors to agree upon certain ground rules. Those rules limit consideration of bills placed on the Private Calendar only shortly before the Calendar is called. The agreement is as follows:
>
> > Reaffirming the policy initially adopted on June 3, 1958, the members of the majority and minority Private Calendar objectors committees have today agreed that during the 89th Congress they will consider only those bills which have been on the Private Calendar for a period of seven calendar days, excluding the day the bills are reported and the day the Private Calendar is called.
> >
> > It is agreed that the majority and minority legislative clerks will not submit to the objectors any bills which do not meet this requirement.
> >
> > This policy will be strictly observed except during the closing days of each session when House rules are suspended.

§ 16. Campaign Committees; Informal Party Groups

Party campaign committees exist for the purpose of aiding in

16. 111 Cong. Rec. 3914, 89th Cong. 1st Sess., Mar. 2, 1965.

17. 111 Cong. Rec. 3914, 3915, 89th Cong. 1st Sess., Mar. 2, 1965. Similar announcements have been made in other Congresses; see, for example, 115 Cong. Rec. 6656, 91st Cong. 1st Sess., Mar. 18, 1969.

the election of party members to the House.[18] The campaign committees raise and distribute campaign funds for use in the general elections in order to effectuate such purpose.[19] The Chairman of the Democratic Congressional Campaign Committee in past Congresses has been an ex officio member of the Steering Committee.[20]

In addition to the formal party structure with which this chapter is primarily concerned, there exist a number of informal party groups. For example, the Democratic Study Group[1] conducts research and prepares reports with respect to issues relating to proposed legislation, and has been influential in promoting certain party reforms, such as procedures in the caucus for voting on nominations for standing committee chairmen. The Democratic Study Group maintains a "whip" system for purposes of ensuring its members' attendance in the House when matters of interest to the group are under consideration.

The Republican Wednesday Club also conducts research and furnishes information to its members with respect to issues that are of interest to the club. The status of pending legislation is discussed at meetings of the club.[2]

The above groups are discussed merely by way of example, there being a number of informal groups of a political or social nature among the membership of the House. The membership of some of the informal groups is bipartisan.

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18. See the discussion of party campaign committees in Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), p. 606.

19. Certain provisions of Rule XLIII of the House rules are of interest on the subject of campaign funds generally. See Rule XLIII clauses 6, 7 (*House Rules and Manual* § 939, 1973).

20. See § 13, supra.

1. For further discussion of the Democratic Study Group, see Ripley, Randall B., *Party Leaders in the House of Representatives*, The Brookings Institution (Washington, D.C., 1967), pp. 38 (note), 124, 176.

2. For further discussion of the Wednesday Club and other Republican clubs, see Ripley, Randall B., *Party Leaders in the House of Representatives*, The Brookings Institution (Washington, D.C., 1967), pp. 178 and 179 (note).

D. FLOOR LEADERS

§ 17. In General

[Note: The following is descriptive of practices in effect in some Congresses. For discussion of any current modification of the office or role of floor leader, consult supplements to this edition as they appear.]

Each party's caucus or conference elects a floor leader;[3] the chairman of the caucus or conference announces the selection of his party's floor leader to the House.[4] At times in the past, a third party has organized in the House and elected a floor leader in a party caucus or conference.[5] If a vacancy exists in the post of floor leader, as where a party's floor leader has been elevated to the Speakership,[6] a new floor leader is elected by the caucus or conference in the usual manner.[7] If a floor leader intends to be temporarily absent from the House, he may designate a person to act for him, and may announce such designation to the House.[8]

A party's floor leader, in conjunction with other party leaders, plays an influential role in the formulation of party policy and programs. He is instrumental in guiding legislation favored by his party through the House, or in resisting those programs of the other party that are considered undesirable by his own party. He is instrumental in devising and implementing his party's strategy on the floor with respect to promoting or opposing legislation.[9]

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3. § 17.1, infra. The minority party's candidate for Speaker normally becomes that party's floor leader. See Riddick, Floyd M., *Congressional Procedure*, Chapman and Grimes (Boston, 1941), p. 34.

Collateral reference: Ripley, Randall B., *Party Leaders in the House of Representatives*, The Brookings Institution (Washington, D.C., 1967), pp. 24–28 (development of office of Majority Leader); 28–32 (development of office of Minority Leader); 57, 58, 61–63, 66, 67, 74, 75 (functions of party floor leaders).

4. § 17.1, infra.

5. See § 17.3, infra.

6. Majority Leaders have frequently succeeded to the Speakership. See Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), p. 141.

7. See § 17.2, infra.

8. § 17.4, infra.

9. For general discussion of the functions and duties of the floor leader, see, in addition to ensuing sections in this chapter, 8 Cannon's Precedents § 3614.

So that the floor leaders may fulfill their floor duties more easily and be available or visible to members of

He is kept constantly informed as to the status of legislative business and as to the sentiment of his party respecting particular legislation under consideration. Such information is derived in part from the floor leader's contacts with his party's members serving on House committees, and with the members of the party's whip organization.[10]

In his role as party leader, he protects the interests of individual members of his party whenever possible,[11] and exercises leadership with respect to legislative proceedings that concern the party as a whole. He appoints party members to certain positions that are of importance in the legislative process; thus, he appoints the official objectors for the Private and Consent Calendars[12] and, in the case of the Democratic floor leader, appoints the party whip.[13]

But the floor leader is more than a partisan leader. He is an integral, though to some extent, unofficial,[14] part of the legislative machinery of the House itself. The floor leader, particularly the Majority Leader, exercises considerable authority with respect to legislative scheduling, or the order of business.[15] Thus, the floor leader assumes a large measure of responsibility for the procedural aspects of transacting legislative business; his knowledge of House procedures is employed to expedite the consideration of legislative proposals.

In addition to playing a key role in the procedural aspects of House business, the floor leader may assume responsibilities relating to resolutions of a more substantive nature, particularly resolutions that concern the operations of the House itself or the government as a whole. Thus, a floor leader

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their parties, aisle seats at tables on the floor of the House are reserved for their use except in the Committee of the Whole. See *Cannon's Procedure in the House of Representatives*, H. Doc. No. 122, 86th Cong. 1st Sess. (1959), p. 221.

10. See § 23, infra.

11. See, for example, § 19.4, infra.

12. See §§ 15.1, 15.3, supra, and 20.1, infra.

13. See § 20.3, infra.

On occasion, the House has provided by simple resolution for appointments to certain positions to be filled by the Minority Leader, subject to the approval of the Speaker. See 95 CONG. REC. 640, 641, 81st Cong. 1st Sess., Jan. 24, 1949 (H. Res. 62, pertaining in part to certain assistant clerkships).

14. See 8 Cannon's Precedents § 3614, particularly Cannon's comment that, "The Rules contain no provision relating to the selection or duties of the party floor leaders. . . ."

15. See § 18, infra.

might offer resolutions concerning the adoption of rules for the Congress;[16] the appointment of a committee to notify the President of the assembly of Congress;[17] the authorization of additional memberships on a committee;[18] the assignment of party members to House committees;[19] the consideration of action to be taken by the House against a Member charged with misconduct;[20] and an increase in the salary of the President.[1] Frequently, resolutions introduced in the House, whether by the floor leader or by others, are the culmination of agreements reached by the leadership, particularly the floor leaders, of both parties.[2]

The floor leaders may be consulted, or assume some responsibilities, with respect to the regulation of the use of physical facilities of the House, or the protection of privileges relating to such use.[3] Moreover, the floor leaders may be asked to serve on commissions concerned with physical improvements to be made at the Capitol. Thus, in the 91st Congress, the House approved a Senate bill whereby the membership on the Commission on the Extension of the Capitol, which originally consisted of the Speaker, the President of the Senate, the Minority Leaders of the two Houses, and the Architect of the Capitol, was enlarged to include the Majority Leaders of the House and the Senate.[4]

One Majority Leader remarked,[5] with reference to duties of the office that transcend those of partisan leadership:

> One of the primary duties of the majority leader . . . I consider to be that of protecting the rights of the individual Member, to see that the rights of the individual Member, particularly

16. See § 17.7, infra.

17. § 21.3, infra.

18. § 17.8, infra.

19. See § 19.7, infra. See § 17.12, infra, for discussion of a resolution electing a committee chairman to certain joint committees.

20. § 17.11, infra.

1. § 17.13, infra.

2. See, for example, § 17.8, infra.

3. See §§ 17.16, 17.17, infra.

4. See 115 CONG. REC. 26568, 26569, 91st Cong. 1st Sess., Sept. 23, 1969. See also 40 USCA § 166 (note referring to § 101 of Act of Aug. 5, 1955, Ch. 568, 69 Statutes 515, as amended by Pub. L. 91–77, Sept. 29, 1969, 83 Statutes 124). The change noted above was for purposes of ensuring equal representation of the two parties on the commission.

5. 106 CONG. REC. 19161, 86th Cong. 2d Sess., Sept. 1, 1960. The remarks were those of Mr. John W. McCormack (Mass.), who later as Speaker expressed the similar concern of a Speaker for the rights of all Members of the House (see § 1, supra).

of the minority party, are not trespassed upon.

The Majority Leader frequently acts as Speaker pro tempore;[6] the Minority Leader has also served in this capacity during proceedings of a ceremonial nature.[7]

It is frequently the province of the floor leader to perform certain ceremonial duties; to make announcements concerning formal events; to extend certain courtesies; or to give expression to the gratitude, good wishes, and the like, of Members of his party or the House.[8]

On occasion, a floor leader has been assigned a position on a standing committee of the House in the same manner as other members of his party.[9] Ordinarily, however, floor leaders are not assigned to standing committees.

It may be mentioned that, in addition to serving on those committees or commissions already mentioned above and in ensuing sections, the Minority Leader is among those who serve on an advisory committee to the Secretary of the Treasury, who consults with such committee in determining who are major Presidential or Vice Presidential candidates entitled to receive secret service protection.[10]

Election of Floor Leader; Announcement

§ 17.1 Each party's caucus or conference elects a party floor leader, and the caucus or conference chairman announces the name of his party's floor leader to the House.

In the 92d Congress, following the administration of the oath of office to the Members of the House, the announcements respecting the election of party floor leaders were made as follows:[11]

> MR. [OLIN E.] TEAGUE of Texas: Mr. Speaker, as chairman of the Democratic caucus, I have been directed to report to the House that the Democratic Members have selected unanimously as majority leader the gentleman from Louisiana, the Honorable Hale Boggs.
>
> MR. [JOHN B.] ANDERSON of Illinois: Mr. Speaker, as chairman of the Republican conference, I am directed by

6. § 17.5, infra. See also Ch. 6, infra.
7. See § 21.10, infra.
8. See § 21, infra.
9. See § 17.18, infra.
10. Pub. L. No. 90–331, June 6, 1968, 82 Stat. 170, referred to in 18 USC § 3056 and note thereto.
11. 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971. For examples of similar proceedings, see 115 CONG. REC. 34, 91st Cong. 1st Sess., Jan. 3, 1969; and 113 CONG. REC. 27, 90th Cong. 1st Sess., Jan. 10, 1967.

that conference to officially notify the House that the gentleman from Michigan, the Honorable Gerald R. Ford, has been unanimously selected as the minority leader of the House.

Election to Fill Unexpected Vacancy

§ 17.2 When a vacancy exists in the office of floor leader, as by reason of the floor leader's elevation to the Speakership, the election of a new floor leader and the announcement respecting such election take place in the usual manner.

Parliamentarian's Note: When the second session of the 87th Congress met on Jan. 10, 1962, a vacancy existed in the Speakership due to the death of Speaker Sam Rayburn, of Texas, on Nov. 16, 1961. The Chairman of the Democratic Caucus, Francis E. Walter, of Pennsylvania, called a meeting of the caucus for Jan. 9 for the purpose of selecting a candidate for Speaker. No other business was scheduled for this meeting. Before the 9th, however, it became apparent that Mr. John W. McCormack, of Massachusetts, would be unopposed in the caucus as the candidate for Speaker. His selection would create a vacancy in the office of the Majority Leader, a position held by Mr. McCormack during the first session. During the caucus, Mr. Richard Bolling, of Missouri, who had withdrawn as a candidate for Majority Leader before the caucus, asked unanimous consent that the caucus proceed to the selection of a new Majority Leader to serve when Mr. McCormack was elevated to the Speakership. There being no objection to this request, the caucus then chose Mr. Carl Albert, of Oklahoma, as Majority Leader. The announcement of such selection was made in the House as follows:[12]

> MR. WALTER: Mr. Speaker, as chairman of the Democratic caucus I am directed to report to the House that the Democratic Members have selected as majority leader the gentleman from Oklahoma, the Honorable Carl Albert.

Election of Floor Leader by Third Party

§ 17.3 On occasion, a third party in the House has organized as a caucus or conference and elected a floor leader, whose name has been announced to the House in the usual manner.

The following announcement was made in the 75th Congress:[13]

---

12. 108 CONG. REC. 7, 87th Cong. 2d Sess., Jan. 10, 1962.

13. 81 CONG. REC. 15, 75th Cong. 1st Sess., Jan. 5, 1937.

MR. [GARDNER R.] WITHROW [of Wisconsin]: Mr. Speaker, I announce to the House that the Farmer-Labor-Progressive Party's conference by unanimous consent selected Hon. Gerald J. Boileau, of Wisconsin, as floor leader for the Seventy-fifth Congress. [Applause.]

Announcement as to Acting Majority Leader

§ 17.4 On occasion, a Majority Leader expecting to be absent has announced in the House the name of one to serve as acting Majority Leader.

In the 77th Congress, the Majority Leader announced as follows:[14]

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I desire to announce that during my absence the gentleman from Missouri [Mr. John J. Cochran] will act as majority leader.

Selection of Floor Leader as Speaker Pro Tempore

§ 17.5 Frequently, the Majority Leader is designated or elected Speaker pro tempore.

The following excerpt from the Record of the 91st Congress[15] exemplifies the manner in which the Majority Leader or others have assumed the chair when designated Speaker pro tempore. The proceedings, which took place immediately before the offering of the prayer, and after the Majority Leader called the House to order, were as follows:

The Speaker pro tempore laid before the House the following communication from the Speaker:

JANUARY 16, 1969.

I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.

JOHN W. MCCORMACK,
Speaker of the House of Representatives.

Similar proceedings occur regularly.[16]

In the 89th Congress, Majority Leader Carl Albert, of Oklahoma, Speaker pro tempore by designation, left the chair pending the offering of a resolution electing him as Speaker pro tempore during the absence of Speaker John W. McCormack, of Massachusetts. The proceedings and the resolution, which was offered by the Chairman of the Democratic Caucus, were as follows:[17]

The Speaker pro tempore (Mr. Albert) laid before the House the following communication:

---

14. 88 CONG. REC. 6668, 77th Cong. 2d Sess., July 27, 1942.

15. 115 CONG. REC. 1075, 91st Cong. 1st Sess., Jan. 16, 1969.

16. See, for example, 114 CONG. REC. 3908, 90th Cong. 2d Sess., Feb. 22, 1968; and 113 CONG. REC. 28948, 90th Cong. 1st Sess., Oct. 16, 1967. See also Ch. 6, infra.

17. 112 CONG. REC. 5, 6, 89th Cong. 2d Sess., Jan. 10, 1966.

. . . I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.

JOHN W. MCCORMACK,
Speaker of the House of Representatives.

Following the prayer, certain other business, and the call of the House, the proceedings were as follows:

THE SPEAKER PRO TEMPORE: The Chair requests the gentleman from Louisiana [Mr. Boggs] to assume the chair.

Mr. [Hale] Boggs assumed the chair as Speaker pro tempore.

THE SPEAKER PRO TEMPORE (Mr. Boggs): The Chair recognizes the gentleman from New York [Mr. Keogh].

MR. [EUGENE J.] KEOGH: Mr. Speaker, on account of the unavoidable absence of the Speaker due to the death of his beloved brother, and at his request, I offer a resolution and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 627

Resolved, That Hon. Carl Albert, a Representative from the State of Oklahoma, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President of the Senate be notified by the Clerk of the election of the Honorable Carl Albert as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. Albert assumed the chair as Speaker pro tempore and Mr. Celler administered the oath of office.

Parliamentarian's Note: Speaker John W. McCormack whose brother died on Jan. 7, was not in Washington for the convening of the second session of the 89th Congress. Since the duration of the Speaker's absence was uncertain, and since there were new Members present to be sworn as well as business requiring signature, the election of a Speaker pro tempore was considered essential.

Similar proceedings had taken place in the 88th Congress.[18]

Responsibilities as to Recommittal Motion

§ 17.6 A floor leader on occasion has assumed certain responsibilities for the form, content, and introduction of a recommittal motion, although in favor of the bill that was to be the subject of such motion.

In the 91st Congress, during a debate on the deployment of an anti-ballistic missile system, considerable discussion centered on a prospective motion to recommit the bill containing provisions relating to the system. In the course of that discussion, some of which appears below, Minority Leader Gerald R. Ford, of Michigan, made

18. See 109 CONG. REC. 22015, 88th Cong. 1st Sess., Nov. 18, 1963.

certain comments relating to his responsibilities with respect to the motion to recommit, and with respect to the manner in which the issues surrounding the anti-ballistic missile system should be presented to the House. The proceedings in part were as follows:[19]

MR. [JONATHAN B.] BINGHAM [of New York]: . . . Turning to the motion to recommit which I understand will be offered, to strike not only the funds for deployment of ABM but also the funds for continuing research and development, I consider the decision of the minority leader that this should be the form of the motion an outrageous example of the use of arbitrary power. The position stated in the motion to recommit is not a position that has been advocated by any Member of the House during the course of debate. To word the motion to recommit in this way represents a crude effort to reduce the number of votes on record against the Safeguard system.

. . . Should the "previous question" fail to pass, I would welcome the chance to vote for the 10-percent across-the-board cut in this authorization several Members hope to offer as an alternative recommittal motion. . . .

MR. [SILVIO O.] CONTE [of Massachusetts]: . . . The issue . . . is whether to deploy the ABM. This specific question was defeated by a very close vote of 50 to 50 in the Senate. And it is that specific question to which we must now direct our attention.

Since that is the real issue . . . we must have it presented . . . in a clear and precise way. . . .

For this reason, the motion to recommit should contain instructions to merely stop the deployment of the ABM. It should not . . . contain instructions to stop research and development on the ABM because this is not the question and because this would give a highly inaccurate and unfair picture of what we in this body sincerely feel.

. . . I also understand that the gentleman who will offer the motion on the ABM, the gentleman from Wisconsin (Mr. O'Konski), which motion will cover both research and development and deployment of the system, voted for the bill by proxy. In other words, he voted for the ABM' but he is now introducing a motion against the ABM. . . .

Now the only one present on the minority side, the gentleman from Ohio (Mr. Whalen), voted against the bill in committee. Therefore, and this seems clear to me, he should be the one offering the motion with his instructions attached to it. . . .

The only way the motion to recommit can be amended is when the previous question is ordered, defeat it. . . . This defeat will then open up the motion to recommit to amendment. I would hope that in these new amendments, after the previous question is out of the picture, we could face deployment of the ABM squarely for all the people to see. . . .

MR. GERALD R. FORD: . . . Mr. Chairman, at a later time I had planned to announce what the motion to recommit would be . . . [but] I believe it is appropriate. I do it now.

19. 115 CONG. REC. 28451–28453, 91st Cong. 1st Sess., Oct. 3, 1969.

First let me say the motion to recommit will be to strike all of the ABM authorizations, $746.4 million. It will not be the amendment offered by the gentleman from California (Mr. Charles H. Wilson) which was defeated yesterday by a vote of 219 to 105.

Let me speak, if I may, to the gentleman from Ohio. About last Tuesday, I went over to the gentleman from Ohio and said we wanted to vote on the ABM on the motion to recommit. I offered to him the motion to recommit on the ABM. I said he had 24 hours to discuss it, to think about it, but I would appreciate within 24 hours his answer. The next day the gentleman from Ohio came back and said that he did not want the motion to recommit on those terms, he wanted to offer a motion to cut dollars out of the authorization bill.

Am I correct or incorrect?

MR. [CHARLES W.] WHALEN [Jr., of Ohio]: The gentleman is exactly correct. I would hasten to add one other comment he made. The gentleman indicated to me . . . [that] if I did not offer this recommittal motion he would get someone who would.

MR. GERALD R. FORD: That is perfectly true. That is my responsibility, and I intend to carry it out, and we are going to carry it out this way, subject, of course, to the will of the House.

Now, may I proceed.

The defeat yesterday by a vote of 219 to 105 I believe laid to rest the denial of the deployment of the ABM. A rollcall on that issue in motion to recommit at this time would be totally repetitious. Therefore, I believe the time has come that we actually have a vote on the basic issue, which is whether or not we are going to have an ABM system.

We have been appropriating for research, development, test, and engineering for some 15 to 16 years, and now the time has come to lay the matter to rest, to fish or cut bait.

So far as I am concerned, the vote today will be on that basis.

Under the parliamentary situation, of course, Members can try to get a vote on the previous question, open it up, and then we will see what happens, but from my point of view a 1-year delay in the authorization will bring about dire results the committee points out. . . .

Let me say right here and now that the time has come where the issue ought to be settled fundamentally. I believe I exercised good sense and good judgment in offering to the gentleman from Ohio (Mr. Whalen) an opportunity. He did not accept it. We have made other plans, and I hope that the House as a whole backs up this decision to make the basic decision one way or the other on the ABM.

Later in the proceedings, the following motion to recommit was offered by Mr. Alvin E. O'Konski, of Wisconsin:[20]

Mr. O'Konski moves to recommit the bill H.R. 14000 to the Committee on Armed Services with instructions to report it back forthwith with the following amendments:

On page 2, line 6, delete the figure "$780,460,000" and substitute "$434,960,000"; . . .

20. 115 CONG. REC. 28487, 91st Cong. 1st Sess., Oct. 3, 1969.

A point of order was made, based on the principle that a Member opposed to the bill as a whole is entitled to prior recognition, for purposes of offering a motion to recommit, over a Member opposed to a portion of the bill; it was contended that Mr. O'Konski, as one opposed to the bill "only in its present form," should yield to one who voted against the entire bill. The point of order was overruled,[1] however, and, after the previous question was ordered, the motion to recommit was rejected.[2]

Resolutions as to Adoption of Rules

§ 17.7 On occasion, the Majority Leader has offered the resolution calling for adoption of House rules.

Although the resolution pertaining to adoption of the rules at the beginning of a Congress is usually offered by the former Chairman of the Committee on Rules for that Congress,[3] the resolution on occasion has been offered by the Majority Leader. Thus, in the 88th Congress,[4] Majority Leader Carl Albert, of Oklahoma, offered a resolution calling for adoption of the rules of the 87th Congress, together with applicable provisions of the Legislative Reorganization Act of 1946, as amended, and with an amendment calling for an increase in the membership of the Committee on Rules.

In the 89th Congress,[5] the Majority Leader also offered the resolution relating to adoption of rules. The resolution again called for a controversial amendment affecting the Committee on Rules, in this instance the incorporation of the "21-day rule."[6] It is worth noting that the Majority Leader, in offering and participating in debate on the resolution, was acting under instructions of the Democratic Caucus, as the Majority Leader indicated in the following exchange:[7]

> MR. [CLARENCE J.] BROWN of Ohio: . . . Will the gentleman yield for me to offer a perfecting amendment? . . .
>
> MR. [CARL] ALBERT [of Oklahoma]: May I say to the gentleman that this resolution is being offered under instructions of the Democratic caucus. I am the agent of the caucus for that

1. *Id.*
2. 115 CONG. REC. 28488, 91st Cong. 1st Sess., Oct. 3, 1969.
3. See Ch. 1, supra.
4. 109 CONG. REC. 14, 88th Cong. 1st Sess., Jan. 9, 1963.
5. 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965.
6. See 111 CONG. REC. 21, 89th Cong. 1st Sess., Jan. 4, 1965.
7. 111 CONG. REC. 23, 89th Cong. 1st Sess., Jan. 4, 1965.

purpose. I have no authority to yield for amendment or to yield for any purpose in order to allow the bill to be divided.

In the 90th Congress,[8] Majority Leader Albert offered a resolution calling for adoption of House rules, including the 21-day rule which had been adopted in the 89th Congress. Following discussion of the 21-day rule and other matters, a motion to order the previous question with respect to the resolution was rejected.[9] An amendment repealing the 21-day rule was then adopted.[10]

Resolutions as to Size of Committees

§ 17.8 A resolution increasing the size of the Committee on Government Operations was offered by the Majority Leader, the minority party leadership having been consulted with respect to issues relating to the resolution.

In the 89th Congress, Majority Leader Carl Albert, of Oklahoma, offered a resolution increasing the size of the Committee on Government Operations. As indicated in the remarks of Mr. Albert, the minority party leadership had been consulted with respect to issues relating to the resolution. The resolution offered by Mr. Albert was as follows:[11]

H. RES. 114

Resolved, That during the Eighty-ninth Congress, the Committee on Government Operations shall be Composed of thirty-four members.

After the resolution was read, Gerald R. Ford, of Michigan, the Minority Leader, asked that the Majority Leader indicate the distribution of the additional members of the Committee. Mr. Albert's reply was as follows:[12]

This is an addition of three memberships to the Committee on Government Operations two of which will be assigned to the majority and one of which will be assigned to the minority.

This is a matter which has been worked out, as a few other matters have been, between the leadership on both sides for the convenience of the House.

§ 17.9 The Majority Leader offered a resolution stating the size of certain standing committees.

On Jan. 16, 1967,[13] Majority Leader Carl Albert, of Oklahoma,

8. 113 CONG. REC. 28, 90th Cong. 1st Sess., Jan. 10, 1967.
9. 113 CONG. REC. 31, 90th Cong. 1st Sess., Jan. 10, 1967.
10. 113 CONG. REC. 33, 90th Cong. 1st Sess., Jan. 10, 1967.
11. 111 CONG. REC. 660, 89th Cong. 1st Sess., Jan. 14, 1965.
12. 111 CONG. REC. 661, 89th Cong. 1st Sess., Jan. 14, 1965.
13. 113 CONG. REC. 445, 90th Cong. 1st Sess.

offered the following resolution (H. Res. 128):

> *Resolved,* That during the Ninetieth Congress the Committee on Agriculture shall be composed of thirty-five members;
>
> The Committee on Appropriations shall be composed of fifty-one members . . .

Resolutions as to Minority Employees

§ 17.10 The floor leader has offered resolutions relating to the positions of certain minority employees in the House.

On Jan. 27, 1949,[14] the Majority Leader, John W. McCormack, of Massachusetts, offered a resolution having reference to the appointment of certain minority employees of the House. The proceedings, including Mr. McCormack's remarks in explanation of the purposes of the resolution, were as follows:

> MR. MCCORMACK: Mr. Speaker, I offer resolution (H. Res. 62) and ask for its immediate consideration.
>
> The Clerk read the resolution, as follows:
>
> *Resolved,*
>
> Sec. 2. That effective January 4, 1949, the compensation of the Deputy Sergeant at Arms in Charge of Pairs, Office of the Sergeant at Arms, and the compensation of the special employee, Office of the Doorkeeper, shall be at the basic rate of $4,000 per annum, respectively. . . .
>
> Sec. 4. There shall be paid out of the contingent fund of the House, until otherwise provided by law, compensation at the basic rate of $5,000 per annum for the services of an assistant Journal clerk; compensation at the basic rate of $5,000 per annum for the services of an assistant tally clerk; compensation at the basic rate of $3,900 per annum for the services of an assistant enrolling clerk; compensation at the basic rate of $3,000 per annum for the services of an assistant bill clerk; all of whom shall be designated by the minority leader subject to the approval of the Speaker. . . .
>
> MR. MCCORMACK. Mr. Speaker, it has long been recognized by the leadership of the House that it was desirous to have a corps of trained personnel to function in the various key positions under the service of the House. In order to accomplish that, the resolution creates four assistant clerkships which shall be taken out of patronage and filled by competent men who have proved their worth. . . .
>
> If this resolution is not adopted at this time the men who held the jobs as head of these various departments will leave the service of the House and their experience and efficiency will be lost. It is desirable that they not only assist in training the top men of the various departments who will shortly be appointed but will aid appreciably in ameliorating the work of these departments.
>
> It was contemplated in the Legislative Reorganization Act that career employees should be provided for in the staffing of committees but nothing

14. 95 CONG. REC. 640, 641, 81st Cong. 1st Sess.

tangible was done concerning the employees of the House directly. This resolution will take care of that need by providing a career service for the employees who have proved their worth.

In the unhappy event that the present majority of the House should become the minority in the Eighty-second Congress then the top men in the departments in this Congress would be designated by the next minority leader to fill the clerkships that this resolution provides, so that in the future there will always be majority and minority employees who are experienced and trustworthy.

On June 17, 1969,[15] Minority Leader Gerald R. Ford, of Michigan, offered a resolution relating to the positions of certain minority employees in the House of Representatives. The resolution provided that certain designated employees be given the titles of "Floor Assistant to the Minority," "Pair Clerk to the Minority," and "Staff Director to the Minority," and contained further provisions relating to compensation of such employees.

Right of Member-elect to be Sworn

§ 17.11 In the 90th Congress, the Minority Leader offered, as a substitute for a resolution previously introduced, an amendment deferring administration of the oath to a Member-elect and providing that a select committee consider the right of such Member-elect to be sworn.

In the 90th Congress, objection was made to the administration of the oath to Adam Clayton Powell, Jr., of New York, and a resolution was thereafter offered directing the Speaker[16] to administer the oath to Mr. Powell, but referring the question of Mr. Powell's final right to be sworn to a select committee.[17]

Following some debate, the Member who had offered the resolution moved the previous question, and the motion was rejected. Immediately thereafter,[18] the Minority Leader offered a substitute amendment deferring the administration of the oath to Mr. Powell until the House had considered a report from a special committee on Mr. Powell's rights. The substitute amendment was agreed to, and the resolution then adopted.[19]

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15. 115 CONG. REC. 16196, 91st Cong. 1st Sess.

For general discussion of employees of the House, see Ch. 6, infra.

16. John W. McCormack (Mass.).

17. 113 CONG. REC. 14, 15, 90th Cong. 1st Sess., Jan. 10, 1967. For general discussion of the rights of the House with respect to determining the qualifications of its Members, see Chs. 7, 12, infra.

18. 113 CONG. REC. 24, 90th Cong. 1st Sess., Jan. 10, 1967.

19. 113 CONG. REC. 26, 27, 90th Cong. 1st Sess., Jan. 10, 1967.

Resolutions as to Election of Member to Joint Committee

§ 17.12 The Majority Leader offered a resolution electing a Member to joint committees.

In the 90th Congress, Majority Leader Carl Albert, of Oklahoma, offered a resolution electing the Chairman of the Committee on House Administration to certain joint committees, as follows:[20]

H. RES. 1278

Resolved, That the gentleman from Maryland, Mr. Friedel be, and he is hereby elected a member of the Joint Committee on Printing, and a member of the Joint Committee of Congress on the Library.

The resolution was agreed to.

Resolutions Acting Salaries

§ 17.13 In the 91st Congress, the Majority Leader moved to suspend the rules and pass a bill increasing the President's salary; the resolution was jointly offered by the Majority and Minority Leader and others.

On Jan. 6, 1969, Majority Leader Carl Albert, of Oklahoma, moved to suspend the rules and pass a bill increasing the compensation of the President. The proceedings were as follows:[1]

MR. ALBERT: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 10) to increase the per annum rate of compensation for the President of the United States.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 102 of title 3, United States Code, is amended by striking out "$100,000" and inserting in lieu thereof "$200,000".

Sec. 2. The amendment made by this Act shall take effect at noon on January 20, 1969.

THE SPEAKER:[2] Is a second demanded

MR. [H.R.] GROSS [of Iowa]: Mr. Speaker, I demand a second.

THE SPEAKER: Without objection, a second will be considered as ordered.

There was no objection. . . .

MR. ALBERT: . . . Mr. Speaker, as Members all know, this is the first suspension bill of the 91st Congress. Normally, the Speaker would not recognize Members to call up bills under suspension of the rules this early in the term and without committee consideration. The only reason that this method has been used on this occasion is that it presents to the House the opportunity to consider this legislation before the new President takes office. Members know that under article II, section 1, clause 7, of the Constitution the salary of the President of the United States cannot be increased during his term of office. Therefore, if the matter is to be handled at all, it must be passed by both Houses of the Congress and signed by the President before noon on

20. 114 CONG. REC. 24368, 90th Cong. 2d Sess., July 31, 1968.

1. 115 CONG. REC. 172, 91st Cong. 1st Sess.

2. John W. McCormack (Mass.).

January 20. Members further know, Mr. Speaker, that committee assignments have not been made and will not be made in time for normal hearings and proceedings to be had in order to consider this bill by the deadline.

In view of these circumstances, the distinguished minority leader and the distinguished Chairman and ranking member of the Committee on Post Office and Civil Service and myself have jointly offered this resolution for the consideration of the Members of the House. . . .

In the ensuing debate, the following remarks were made by the Minority Leader:[3]

MR. GERALD R. FORD [of Michigan]: . . . I compliment [the Majority Leader] for taking the initiative in advocating this legislation for a President not of his own party. . . .

After some debate, the question was taken, and, two-thirds having voted in favor thereof, the rules were suspended and the bill was passed.[4]

§ 17.14 The Majority Leader offered a resolution relating to the appointment and salaries of certain House employees.[5]

Responsibilities Relating to Capitol Facilities

§ 17.15 The Majority and Minority Leaders of the House were included in the membership of the Commission on the Extension of the Capitol.

The membership on the Commission on the Extension of the Capitol, which originally consisted of the Speaker, the President of the Senate, the Minority Leaders of the two Houses, and the Architect of the Capitol, was enlarged in the 91st Congress to include the Majority Leaders of the House and Senate.[6]

§ 17.16 On certain occasions, the Speaker has consulted with the floor leaders of both parties with respect to the regulation of floor privileges.

In the 87th Congress, the Speaker made an announcement[7] concerning floor privileges and related matters, which he indicated to have been the subject of

3. 115 CONG. REC. 174, 91st Cong. 1st Sess., Jan. 6, 1969.
4. 115 CONG. REC. 176, 91st Cong. 1st Sess., Jan. 6, 1969.
5. See § 17.10, supra, for discussion of the resolution.
6. 115 CONG. REC. 26568, 26569, 91st Cong. 1st Sess., Sept. 23, 1969.
7. 107 CONG. REC. 1340, 87th Cong. 1st Sess., Jan. 26, 1961 (Speaker Sam Rayburn [Tex.]). The announcement related to a joint session to hear an address by the President.

consultation between the Speaker and the floor leaders.

§ 17.17 Regulations governing the use of the House office buildings, the House garages, and the Capitol power plant were inserted in the Record by the Majority Leader.

On Sept. 15, 1965, the Majority Leader asked that there be printed in the Record and the Journal certain regulations adopted by the House Office Building Commission governing the House office buildings and garages and the Capitol power plant.[8]

Election of Floor Leader to Standing Committee

§ 17.18 On occasion, a floor leader has been elected to a standing committee of the House.

In the 87th Congress, immediately after the House adopted a resolution increasing the membership of the Committee on Science and Astronautics, a resolution was offered electing the Majority Leader, John W. McCormack, of Massachusetts, to the committee. The proceedings were as follows:[9]

> MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I offer a privileged resolution and ask for its immediate consideration.
>
> The Clerk read the resolution as follows:
>
> H. RES. 290
>
> *Resolved,* That the following-named Members be, and they are hereby, elected members of the following standing committees of the House of Representatives:
>
> Committee on Science and Astronautics: John W. McCormack, Massachusetts. . . .

In the 90th Congress, the Majority Leader, Carl Albert, of Oklahoma, resigned his position on the Committee on Science and Astronautics[10] and was elected to fill a vacancy on the Committee on Education and Labor.[11]

Parliamentarian's Note: Although the ratio on the Committee on Education and Labor had been fixed at nineteen to fourteen, only eighteen Democrats had been elected to membership thereon. The existence of the vacancy effectively changed the ratio on the committee and on all subcommittees established under the full committee. The election of the

8. 111 CONG. REC. 23926, 23927, 89th Cong. 1st Sess.

9. 107 CONG. REC. 7965, 87th Cong. 1st Sess., May 15, 1961.

10. Mr. Albert had been named to this committee in the resolution electing Democratic Members to standing committees (113 CONG. REC. 1086, 90th Cong. 1st Sess., Jan. 23, 1967).

11. See 113 CONG. REC. 6901, 6902, 90th Cong. 1st Sess., Mar. 16, 1967.

Majority Leader reinforced the Democratic advantage on the full committee and relieved the pressure from the minority for a larger proportion of minority Members on the subcommittees. His election also removed the impression that the vacancy had been left to exist pending disposition of the controversy over whether the former chairman of the committee, Adam Clayton Powell, Jr., of New York, was to be seated in the House.

Generally, floor leaders are not appointed to and do not serve on standing committees.[12]

Service of Summons on Floor Leader

§ 17.19 The floor leaders, having been summoned to appear in Federal Court, submitted the matter of such summons for the consideration of the House.

On July 8, 1965, the following proceedings took place:[13]

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I rise to a question of the privilege of the House.

THE SPEAKER:[14] The gentleman will state the question of privilege.

MR. ALBERT: Mr. Speaker, in my official capacity as a Representative and as majority leader of this House, I have been served with a summons issued by the U.S. District Court for the District of Columbia to appear in connection with the case of the All-American Protectorate, Inc. against Lyndon B. Johnson, and others.

Under the precedents of the House, I am unable to comply with this summons without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

I send to the desk the summons.

THE SPEAKER: The Clerk will read the subpena. . . .

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, I rise for the same purpose as the distinguished majority leader and I would like to read a statement.

Mr. Speaker, in my official capacity as a Representative and as minority leader of this House, I have been served with a summons issued by the U.S. District Court for the District of Columbia to appear in connection with the case of the All-American Protectorate, Incorporated, against Lyndon B. Johnson et al.

Under the precedents of the House, I am unable to comply with this summons without the consent of the House, the privileges of the House

12. In the 87th Congress, Mr. Carl Albert (Okla.) resigned from the Committee on Agriculture after his selection as Majority Leader. 108 CONG. REC. 470, 87th Cong. 2d Sess., Jan. 18, 1962.

13. 111 CONG. REC. 15978, 89th Cong. 1st Sess.

For a discussion of privileges of the House generally, see Ch. 11, infra.

14. John W. McCormack (Mass.).

being involved. I therefore submit the matter for the consideration of this body.

Parliamentarian's Note: In the 90th Congress, the Majority and Minority Leaders, and others, were summoned in a civil action brought by Adam Clayton Powell, Jr., of New York, who was contesting his exclusion from the House. The Speaker[15] submitted the matter to the House on behalf of all those served with summonses. The majority whip offered a resolution authorizing the Speaker to appoint counsel to represent the Members;[6] the resolution was agreed to.[17]

§ 18. Duties as to Legislative Schedule

The floor leaders, particularly the Majority Leader, exercise considerable initiative with respect to the legislative schedule, including the order of business and the time of recess or adjournment.

In the course of promoting legislative business deemed of interest to their respective parties, the floor leaders maintain contact with their parties' members on committees and encourage action on particular bills. As a result of planning by the Majority Leader and other leaders of his party, and as a result of cooperation between the leadership of both parties, the consideration of legislation in the House generally proceeds on an orderly basis. It has been stated[18] that it is customary to notify the Majority and Minority Leaders as well as the Speaker of proposed requests for deviations from the authorized order of business. Members have been advised by the Speaker to consult with Majority and Minority Leaders with respect to unanimous consent requests for the consideration of bills;[19] moreover, it has been stated that the Speaker declines to entertain motions to suspend the rules on "suspension days" unless such motions have the approval of the Majority Leader.[20]

The Minority Leader customarily, on the floor of the House, addresses an inquiry to the Majority Leader concerning the schedule of legislative business for the following week.[1] In addition to announcing the legislative busi-

15. John W. McCormack (Mass.).

16. 113 Cong. Rec. 6040, 6041, 90th Cong. 1st Sess., Mar. 9, 1967.

17. 113 Cong. Rec. 6049, 90th Cong 1st Sess., Mar. 9, 1967.

18. 6 Cannon's Precedents § 708.

19. § 18.1, infra.

20. § 18.2, infra.

1. § 18.6, infra.

ness to be taken up by the House, the Majority Leader frequently makes announcements concerning times of recess, adjournment, or reassembly.[2] Such announcements are generally made following consultation between the leadership of the parties.[3]

Unanimous-Consent Requests to Consider Bills

§ 18.1 It has been stated that Members should consult with the Majority and Minority Leaders prior to seeking unanimous consent to call up bills.

The following remarks were made in the 77th Congress:[4]

> THE SPEAKER:[5] . . . Permit the Chair to make a statement. When Members come to the Chair and say they would like unanimous consent to call up a bill, the Chair has stated several times in the presence of Members that the better way to do it would be to consult with the ranking minority member and also the majority and minority leaders. I think that would expedite the matter. . . .
>
> MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I wish to say to the House that as far as any unanimous-consent requests are concerned, I naturally advise Members on this side seeking to bring up bills that they should consult with their minority Members and also with the leadership on the minority side. I say this not for the purpose of having it relate to anything that has happened, but so that the House will know as a policy, that as majority leader I have always followed, and always will follow, such procedure, and in that the Speaker concurs. The minority leadership also knows that that has been the policy and will be the policy.

Recognition for Motions to Suspend Rules

§ 18.2 It has been stated that the Speaker declines to entertain motions to suspend the rules on "suspension days" unless such motions have the approval of the Majority Leader.

The following proceedings took place on Aug. 2, 1948:[6]

> MRS. [HELEN G.] DOUGLAS [of California]: Mr. Speaker, I move to suspend the rules and discharge the Committee on Banking and Currency from further consideration of S. 866.

2. § 18.6, infra.
3. § 18.7, infra.
4. 88 CONG. REC. 7438, 77th Cong. 2d Sess., Sept. 24, 1942.
   See also § 18.2, infra, discussing the Speaker's refusal in one instance to recognize a Member who sought consideration of a bill by suspension of the rules and by unanimous consent.
5. Sam Rayburn (Tex.).
6. 94 CONG. REC. 9639, 80th Cong. 2d Sess. (Speaker Joseph W. Martin, Jr., Mass.).

THE SPEAKER: The Chair does not recognize the gentlewoman for that purpose. The majority leader has already stated that there will be no suspensions today; and, under the practice of the House, suspensions must be cleared through the majority leader. The gentlewoman is not recognized for that purpose.

MRS. DOUGLAS: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentlewoman will state it.

MRS. DOUGLAS: Under paragraph 1 of Rule XXVII it is in order, is it not, for the Speaker to entertain a motion to suspend the rules?

THE SPEAKER: Yes, it is within the discretion of the Speaker, and the Speaker states that he will not recognize any Member for that purpose without clearing it through the majority leader, and using that discretion merely refuses to recognize the gentlewoman from California.

MRS. DOUGLAS: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentlewoman will state it.

MRS. DOUGLAS: Today is the first Monday in August, and under the aforementioned rule individual Members may move to suspend the rules and pass important legislation. Do I understand clearly then that the Chair is exercising his discretion in denying the House to vote on the so-called Taft-Ellender-Wagner bill, even under the procedure requiring a two-thirds vote of the Members present?

THE SPEAKER: The Chair will state that the rule has existed for more than 50 years, and in accordance with the procedure which has been followed by not only the present Speaker but every other Speaker, the Chair does not recognize the gentlewoman from California for that purpose.

MRS. DOUGLAS: Mr. Speaker, I ask unanimous consent for the present consideration of S. 866.

THE SPEAKER: The Chair does not recognize the gentlewoman for that purpose.

Unanimous-Consent Requests by Floor Leader

§ 18.3 The Majority Leader frequently makes unanimous-consent requests for purposes of controlling the legislative schedule and expediting legislative business.

An illustrative unanimous-consent request made by the Majority Leader was that made on Feb. 19, 1970,[7] in the course of announcing the schedule of business, as follows:

> MR. [CARL] ALBERT [of Oklahoma]: . . . Monday is also District-Day, but in view of the fact that Monday is a holiday and we have no additional business for Tuesday, and in order that I may make the announcement of the complete program now, I ask unanimous consent that it may be in order to put District Day over until Tuesday, and I would be glad to announce to Members that there are nine bills, and to advise Members what those bills are. . . .

7. 116 CONG. REC. 4039, 91st Cong. 2d Sess.

Similarly, on Feb. 21, 1967,[8] the Majority Leader requested as follow

> MR. ALBERT: Mr. Speaker, I note that the gentleman from California [Mr. Hosmer] has a special order for 10 minutes tomorrow, and the gentleman from Minnesota [Mr. Fraser] for 60 minutes tomorrow, which is George Washington's Birthday. I have not been able to contact the gentlemen, but I ask unanimous consent that these special orders go over until the following day when they shall be called before special orders previously granted for that day.

In anticipation of the same Washington's birthday, the acting Majority Leader, Hale Boggs, of Louisiana, had in the preceding week asked unanimous consent, "that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next."[9]

On Mar. 30, 1966,[10] the Majority Leader made the following request:

> MR. ALBERT: Mr. Speaker, I ask unanimous consent that any rollcall votes, except on rules, which may be requested on Monday or Tuesday of next week be put over until Wednesday next. . . .
>
> The purpose of the request is to enable us to proceed with business on Monday and Tuesday, which are Jewish holy days. We do this only on rare occasions. It is only for that reason that we are asking to put over to Wednesday any votes which may be requested on Monday or Tuesday, except on rules.

§ 18.4 The Majority Leader, on behalf of the Committee on Rules, asked unanimous consent to call up a House resolution providing for the consideration of a particular bill.

In the 80th Congress, the Majority Leader, Charles A. Halleck, of Indiana, made a unanimous consent request as follows:[11]

> MR. HALLECK: Mr. Speaker, on behalf of the Committee on Rules, I ask unanimous consent to call up House Resolution 621, providing for the consideration of the bill (H. R. 6228) to provide for the construction of shore protective works at the town of Nome, Alaska.

[There being no objection, the Majority Leader called up the resolution, which read in part as follows:]

> *Resolved*, That immediately upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union

8. 113 CONG. REC. 4135, 90th Cong. 1st Sess.
9. 113 CONG. REC. 3509, 90th Cong. 1st Sess., Feb. 16, 1967.
10. 112 CONG. REC. 7220, 89th Cong. 2d Sess.
11. 94 CONG. REC. 7108, 80th Cong. 2d Sess., June 3, 1948.

for the consideration of the bill (H.R. 6228) to provide for the construction of shore protective works at the town of Nome, Alaska. . . .

Motion by Majority Leader to Suspend Rules

§ 18.5 The Majority Leader on occasion has moved to suspend the rules and pass a particular bill.

In the 91st Congress, the Majority Leader moved to suspend the rules and pass a bill increasing the President's salary. The proceedings were as follows:[12]

MR. [CARL] ALBERT [OF OKLAHOMA]: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 10) to increase the per annum rate of compensation of the President of the United States. . . .

Mr. Speaker, as Members all know, this is the first suspension bill of the 91st Congress. Normally the Speaker would not recognize Members to call up bills under suspension of the rules this early in the term and without committee consideration. The only reason that this method has been used on this occasion is that it presents to the House the opportunity to consider this legislation before the new President takes office. Members know that under article II, section 1, clause 7, of the Constitution the salary of the President of the United States cannot be increased during his term of office. . . . Members further know . . . that committee assignments have not been made and will not be made in time for normal hearings and proceedings to be had in order to consider this bill by the deadline.

Announcement of Schedule by Majority Leader

§ 18.6 The Majority Leader makes announcements concerning the legislative schedule, including prospects for recess or adjournment; frequently, the Majority Leader makes such announcements in response to inquiries by the Minority Leader.

The following exchange[13] illustrates a common procedure:

MR. [GERALD R.] FORD [of Michigan]: Mr. Speaker, I take this time for the purpose of asking the distinguished majority leader the program for the rest of this week and for next week.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, will the distinguished gentleman yield? . . .

Mr. Speaker, in response to the inquiry of the distinguished minority leader, we have finished the program for this week. . . .

Monday is also District Day, but in view of the fact that Monday is a holiday . . . I ask unanimous consent that it may be in order to put District Day over until Tuesday, and I would be glad to announce to Members that

12. 115 CONG. REC. 172, 91st Cong. 1st Sess., Jan. 6, 1969.

13. 116 CONG. REC. 4039, 4040, 91st Cong. 2d Sess., Feb. 19, 1970.

there are nine bills, and to advise Members what those bills are. As I understand it, they are all noncontroversial. . . .

MR. ALBERT: I did announce that I would read the list before I asked that my request be acted upon. The list is as follows:

H.R. 10335, to revise District of Columbia laws relating to the civil liability of hotels. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

MR. ALBERT: Mr. Speaker, in view of the order which has been granted, Tuesday will be District Day, and the nine bills already indicated will be called.

For Wednesday, there will be a joint meeting to receive the President of the Republic of France. . . .

For Thursday and the balance of the week, we will have H.R. 12025, National Forest Timber Conservation and Management Act of 1969, under an open rule with 2 hours of debate, and S. 2910, to authorize additional funds for the Library of Congress James Madison Memorial Building, which is subject to a rule being granted.

This announcement is made subject to the usual reservation that conference reports may be brought up at any time and that any further program may be announced later. I understand there will be a conference report from the Committee on Banking and Currency on Tuesday. . . .

Mr. Speaker, if the gentleman will yield further, I would like at this time to advise the House that the Easter recess will extend from the close of business on Thursday, March 26, 1970, to noon Monday, April 6, 1970, which is precisely in accordance with the custom of recent years in the House.

MR. FORD: Mr. Speaker, would the gentleman agree with me that in the light of this announcement, that the recess will be from the conclusion of business Thursday, March 26 to Monday noon, April 6, all Members ought to be forewarned, there is no mistake that there is a likelihood we will have important business on Thursday and important business on Monday?

MR. ALBERT: Mr. Speaker, the gentleman is correct. We must get our business done, and we cannot do it if we extend the length of these recesses.

Similarly, on Feb. 16, 1967, the following exchange took place between the Minority Leader and the acting Majority Leader: (14)

MR. GERALD R. FORD: Mr. Speaker, I take this time for the purpose of asking the distinguished acting majority leader, the gentleman from Louisiana, the program for next week. . . .

MR. [HALE] BOGGS [of Louisiana]: In response to the request of the distinguished gentleman from Michigan, the minority leader, the program for next week is as follows:

On Monday, the Consent Calendar, followed by H.R. 2, which is commonly known as the Reserve bill of rights, and which will be called up under suspension of the rules. It is probable that there will be a rollcall vote on that bill.

Tuesday the Private Calendar, but so far there are no bills scheduled.

14. 113 CONG. REC. 3509, 90th Cong. 1st Sess.

Wednesday is a holiday, which will be observed by the usual reading of George Washington's Farewell Address.

Any further legislative business will be announced later. It is my intention that when the House adjourns today, it adjourn to meet on Monday.

As a further example, the acting Majority Leader in similar fashion responded to inquiry made by the acting Minority Leader on Feb. 22, 1968.[15]

On another occasion, where legislative business was anticipated late in the afternoon, after special orders, the Majority Leader announced such fact to the House before the commencement of special orders.[16]

Consultation Between Leadership

§ 18.7 Matters relating to the legislative schedule, including prospective recess or adjournment, are frequently settled through consultation between the leadership of both parties.

The following illustrates the manner in which an announcement is frequently made by the Majority Leader respecting agreements among the leadership of the parties:[17]

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, in response to the inquiry of the distinguished minority leader-and this announcement, of course, is made after conferences between the Speaker and the minority leader and other members of the leadership and myself—I am pleased to announce to the membership of the House the following schedule of recesses heretofore agreed to . . . .

Similarly, the following remarks were made by the Majority Leader in the course of discussing anticipated legislative business:[18]

MR. ALBERT: Mr. Speaker, I ask unanimous consent that any roll call votes, except on rules, which may be requested on Monday or Tuesday of next week be put over until Wednesday next. . . .

I have discussed this with the distinguished minority leader. The purpose of the request is to enable us to proceed with business on Monday and Tuesday, which are Jewish holy days.

On Mar. 2, 1961,[19] in the course of a discussion of the prospective Easter recess, the Majority Leader remarked, "I will say it depends on what the legislative

15. 114 CONG. REC. 3912, 90th Cong. 2d Sess.

16. See 114 CONG. REC. 430, 90th Cong. 2d Sess., Jan. 22, 1968 (remarks of Mr. Albert).

17. 115 CONG. REC. 368, 369, 91st Cong. 1st Sess., Jan.. 9, 1969.

18. 112 CONG. REC. 7220, 89th Cong. 2d Sess., Mar. 30, 1966.

19. 107 CONG. REC. 3114, 87th Cong. 1st Sess.

situation might be as Easter approaches. . . ." The Minority Leader then remarked as follows:

> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, if the gentleman will yield, in fairness I ought to state that the majority leader and the Speaker have conferred with me about the matter of the Easter recess, and it is under very active consideration. As the majority leader has pointed out, the determination will be made, I am quite sure, in plenty of time for Members to adjust themselves accordingly.

As a further illustration, the following announcements were made on Oct. 6, 1970,[20] by the Majority Leader and the Speaker:

> MR. ALBERT:: Mr. Speaker, I take this time to advise the House of recommendations that have been made by the leadership in joint conference on both sides of the Capitol and on both sides of the aisle.
>
> It is our plan to offer a resolution within the next few days to provide for a House recess from the close of business on Wednesday, October 14, until noon, Monday, November 16.
>
> MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, will the gentleman yield?
>
> MR. ALBERT: I yield to the distinguished Speaker of the House.
>
> MR. MCCORMACK: I might say that this is the unanimous opinion of the leadership on both sides, both parties in the House and both parties in the Senate, recognizing that it would be impossible by either October 16 or October 23 to get through with the business that we have to dispose of before this particular session is over.

The Majority Leader and Minority Leader, of course, frequently cooperate in bringing specific items of legislative business to the attention of the House. As an example, the following remarks were made by the Majority Leader in the course of discussing his motion to suspend the rules and pass a bill increasing the President's salary:[1]

> MR. ALBERT: . . . The only reason that this method has been used on this occasion is that it presents to the House the opportunity to consider this legislation before the new President takes office. . . .
>
> In view of these circumstances, the distinguished minority leader and the distinguished chairman and ranking member on Post Office and Civil Service and myself have jointly offered this resolution for the consideration of the Members of the House.

Notification by Leaders as to Reassembly of Congress

§ 18.8 Congressional leaders, including the floor leaders of the House, having been au-

20. 116 CONG. REC. 35217, 35218, 91st Cong. 2d Sess.

1. 115 CONG. REC. 172, 91st Cong. 1st Sess., Jan. 6, 1969. For further discussion of the proceedings relating to the Majority Leader's motion to suspend the rules in this case, see § 17.13, supra.

thorized by concurrent resolution, formally called for a reassembly of Congress at an earlier date than that to which it had adjourned.

The 79th Congress, having by concurrent resolution adjourned to a day certain, was reassembled before that day in accordance with a provision in such resolution for reassembly before the day fixed in the event that certain congressional leaders, including the floor leaders, decided that legislative expediency warranted reassembly.(2)

§ 19. Role as Party Leader

In his capacity as a leader of his party, the floor leader plays a key role in the formation and promotion of his party's policies. Wherever possible, he protects the interests of his party and individual members thereof.

The Republican floor leader generally introduces the resolution assigning members of his party to House committees,(3) and undertakes other responsibilities respecting such committee assignments.(4)

The floor leader may be consulted with respect to changes in committee size or composition that might affect his party's representation on the committee.(5)

The floor leader protects the interests of individual members of his party, as by ensuring that the Record or Journal accurately reflects the votes of Members,(6) the presence of Members,(7) or the legitimate reasons for a Members absence.(8) Where requested to make objection to certain unanimous-consent requests, the floor leader has done so.(9)

On occasion, the floor leader has addressed remarks directly to members of his party on the floor of the House, for purposes of ascertaining(10) or influencing(11) the sentiments of his party with respect to particular issues.

Announcements of Party Meetings

§ 19.1 On occasion, the floor leader has made announce-

2. 91 Cong. Rec. 8320, 79th Cong. 1st Sess., Sept. 5, 1946. See also Ch. 1, § 3, supra.
3. § 19.7, infra.
4. § 19.8, infra.
5. § 19.9, infra.
6. § 19.5, infra.
7. § 19.5, infra.
8. See the remarks of Minority Leader Gerald R. Ford (Mich.) at 111 Cong. Rec. 20362, 89th Cong. 1st Sess., Aug. 12, 1965.
9. § 19.6, infra.
10. § 19.2, infra.
11. § 19.3, infra.

ments concerning meetings of the caucus, conference, or other party group.

On July 30, 1968,[12] the Majority Leader, Carl Albert, of Oklahoma, announced as follows:

> MR. ALBERT: Mr. Speaker, I take this time to advise the Democratic Members that a caucus of the Democratic Members of the House is called to meet in the Hall of the House of Representatives on Thursday, August 1, 1968, at 10 a.m., for the purpose of electing Members to the Ways and Means Committee.

On January 13, 1937,[13] the Republican floor leader, Bertrand H. Snell, of New York, announced as follows:

> MR. SNELL: Mr. Speaker, there will be a meeting of the Republican members of the committee on committees at 4 o'clock this afternoon in the rooms of the Interstate and Foreign Commerce Committee, located in the New House Office Building, and there will be a Republican Conference in this hall at 10 o'clock tomorrow morning.

12. 114 CONG. REC. 24269, 90th Cong. 2d Sess. For discussion of recent practice with respect to calling organizational meetings of the caucus prior to the convening of a new Congress, see supplements to this edition as they appear.

13. 81 CONG. REC. 201, 75th Cong. 1st Sess.

Request for Indication of Sentiment

§ 19.2 The Minority Leader, during a debate in the Committee of the Whole, requested Members of his party to informally indicate their support for a certain proposition by a show of hands.

On Aug. 6, 1963,[14] Minority Leader Charles A. Halleck, of Indiana. made the following request:

> MR. HALLECK: Mr. Chairman, I do not know whether it would be parliamentary or not, but I would like to have the Republicans who are here—and we are in goodly number—raise their hands to indicate whether they will vote for this bill with or without the amendment.

Expression of Viewpoint on Committee Assignments

§ 19.3 The Republican floor leader, during debate in the House, indicated the position that he thought the Republicans should adopt with respect to the issue to be voted on.

In the 92d Congress, a debate took place on whether the resolution assigning Democratic Members to the House committees

14. 109 CONG. REC. 14289, 88th Cong. 1st Sess.

should be open to amendment and any such amendment be voted on by the House.[15] In the course of the debate, the Republican floor leader, Gerald R. Ford, of Michigan, remarked as follows:[16]

> . . . I cannot help but make this observation. The gentleman from California was unable to persuade a majority of the Democrats to his point of view. I do not think that we on the Republican side ought to succumb to his arguments of this occasion. Therefore, Mr. Speaker, I would certainly hope and trust that the Republicans on this issue, on a Democratic resolution expressing the views of the Democratic Party, should not under any circumstances vote "nay" on the motion to order the previous question. As Republicans we should exercise our option to vote "yea" or "present" on the previous question, because the matter is one for the Democrats to decide and not for us.

Official Objectors

§ 19.4 The floor leader appoints his party's official objectors for the Private and Consent Calendars.[17]

Correction of Roll Call

§ 19.5 The floor leader, acting on behalf of a Member, may ask for correction of a roll call.

Parliamentarian's Note: The floor leader, acting on behalf of Members of his party, may ask that corrections be made with respect to roll calls so that the Record and Journal accurately reflect the votes, or presence or absence, of Members. Thus, the Journal of the 88th Congress[18] reflects the following correction:

> ROLL CALL CORRECTIONS
>
> On motion of Mr. Albert, on behalf of Mr. Holland, by unanimous consent,
>
> *Ordered*, That roll call No. 55 be corrected to show Mr. Holland present and answering to his name.

Objection to Unanimous-Consent Request

§ 19.6 Where the Minority Leader did not hear the unanimous consent request, the order of the House entered pursuant thereto was vacated; the request was again made, and the Minority Leader, having been requested to do so, made objection to the request.

On May 18, 1965,[19] the following proceedings took place:

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15. See § 9.3, supra, for further discussion of the proceedings.

16. 117 CONG. REC. 1711, 92d Cong. 1st Sess., Feb. 4, 1971.

17. See § 20.1, infra.

18. H. Jour. 455, 88th Cong. 1st Sess. (1963).

19. 111 CONG. REC. 10871, 89th Cong. 1st Sess.

MR. [HAROLD T.] JOHNSON of California: Mr. Speaker, I ask unanimous consent that the Committee on Public Works have permission to sit during general debate this afternoon.

THE SPEAKER:[20] Is there objection to the request of the gentleman from California?

There was no objection.

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, I have not been able to hear some of these requests. I have been told indirectly that a request was just made and permission was granted for the Committee on Public Works to meet this afternoon. I had talked with the majority leader and indicated we had some people who were in opposition to it. I did not hear the request, and I am a little disappointed that it was not made so that I could hear it.

THE SPEAKER: Without objection, the order concerning permission for the Committee on Public Works to sit this afternoon will be vacated.

There was no objection.

MR. JOHNSON of California: Mr. Speaker, I ask unanimous consent that the Committee on Public Works have permission to sit during general debate this afternoon.

THE SPEAKER: Is there objection to the request of the gentleman from California?

MR. GERALD R. FORD: Mr. Speaker, I have been requested to make an objection, and I do make it.

Resolution Assigning Members to Committees

§ 19.7 The Republican floor leader introduces resolutions assigning members of his party to standing committees of the House.

As a matter of long-standing practice, the Republican[1] floor leader introduces the resolution assigning members of his party to standing committees of the House. In the 91st Congress,[2] for example, the resolution was introduced by Minority Leader Gerald R. Ford, of Michigan.

Resolutions such as the following,[3] relating to the committee assignment of an individual Republican Member, have been offered by the Republican floor leader, in this case Majority Leader Charles A. Halleck, of Indiana:

MR. HALLECK: Mr. Speaker, I offer a resolution and ask for its immediate consideration.

The Clerk read the resolution (H. Res. 62), as follows:

Resolved, That Walter H. Judd, of Minnesota, be, and he is hereby, elected a member of the standing committee of the House of Representatives on Expenditures in the Executive Departments and to rank No. 3 thereon.

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20. John W. McCormack (Mass.).

1. The resolution assigning Democratic Members to House committees is usually introduced by the Chairman of the Democratic Committee on Committees. See Ch. 17, infra.

2. 115 CONG. REC. 2084, 2085, 91st Cong. 1st Sess., Jan. 29, 1969.

3. 93 CONG. REC. 536, 80th Cong. 1st Sess., Jan. 23, 1947.

Parliamentarian's Note: In the 91st Congress, a resolution electing both Democratic and Republican Members to the newly created Committee on Internal Security was presented to the House by the Chairman of the Democratic Committee on Committees after consultation with, and with the approval of, the Minority Leader.[4]

Amendment to Resolution

§ 19.8 The Republican floor leader asked unanimous consent to vacate the proceedings wherein the House had agreed to the resolution electing minority members to standing committees, and offered an amendment changing the order of certain names in the resolution.

The following proceedings took place in the 91st Congress:[5]

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, I ask unanimous consent to vacate the proceedings whereby the House agreed to House Resolution 176 on January 29, and ask for its immediate consideration with an amendment which I send to the desk.

THE SPEAKER:[6] Is there objection to the request of the gentleman from Michigan?

There was no objection.

The Clerk read the resolution, as follows: . . .

Amendment offered by Mr. Gerald R. Ford: On page 7, lines 5 and 6, strike out "E. Ross Adair, Indiana; William H. Ayres, Ohio;" and insert: "William H. Ayres, Ohio; E. Ross Adair, Indiana;"

MR. FORD: Mr. Speaker, my amendment, which has just been read by the Clerk, will correct the seniority standing of the gentleman from Ohio (Mr. Ayres) on the Committee on Veterans' Affairs.

The amendment was agreed to.

Resolution Relating to Composition of Committee

§ 19.9 A resolution adding three memberships to the Committee on Government Operations, two to be assigned to the majority and one to the minority, was offered by the Majority Leader, pursuant to agreement between the leadership of both parties.

The following proceedings took place on Jan. 14, 1965:[7]

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I offer a resolution, House Resolution 114, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

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4. See § 11.1, supra. The resolution appears at 115 CONG. REC. 3747, 91st Cong. 1st Sess., Feb. 18, 1969.

5. 115 CONG. REC. 2433, 2434, 91st Cong. 1st Sess., Feb. 3, 1969.

6. John W. McCormack (Mass.).

7. 111 CONG. REC. 660, 661, 89th Cong. 1st Sess.

H. RES. 114

Resolved, That during the Eighty-ninth Congress, the Committee on Government Operations shall be composed of thirty-four members.

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, will the gentleman yield?

MR. ALBERT: I yield to the gentleman.

MR. FORD: Would the gentleman from Oklahoma indicate the distribution of the three additional Members?

MR. ALBERT: This is an addition of three memberships to the Committee on Government Operations, two of which will be assigned to the majority and one of which will be assigned to the minority.

This is a matter which has been worked out, as a few other matters have been, between the leadership on both sides for the convenience of the House.

§ 20. Appointments

The floor leaders designate members of their respective parties to serve as official objectors for the Private and Consent Calendars. The names of the persons so designated are announced in the House by the floor leaders soon after a new Congress convenes.(8)

The Democratic floor leader with the approval of the Speaker appoints the Democratic Whip, and makes an announcement in the House respecting such appointment.(9)

Appointment of Official Objectors

§ 20.1 The floor leader appoints his party's official objectors for the Private and Consent Calendars, and announces in the House the names of those persons so appointed.

Thus, in the 91st Congress, announcements respecting the appointment of official objectors for the Private and Consent Calendars were made by Carl Albert, of Oklahoma, the Majority Leader, and Gerald R. Ford, of Michigan, the Minority Leader.(10)

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8. See the illustrative announcements as to the appointment of official objectors' committees in §§ 15.1, 15.3, supra. For general discussion of the composition and functions of the official objectors' committees, see §§ 15.1–15.5, supra.

9. § 20.3, infra. The Republican whip is selected by the conference (see § 23.3, infra). For general discussion of the party whips, see §§ 23–25, infra.

10. 115 CONG. REC. 3721, 91st Cong. 1st Sess. Feb. 18, 1969. Substantially similar announcements are made in every Congress. See, for example, 105 CONG. REC. 2580, 86th Cong. 1st Sess., Feb. 18, 1959. See also the examples cited in §§ 15.1 and 15.3, supra.

Replacement of Objector

§ 20.2 Following the request of an objector to be relieved of his duties, the Minority Leader designated another to replace such objector on the Objector's Committee for the Private Calendar.

In the 89th Congress, an objector who had been appointed to the Subcommittee on Private Claims of the Committee on the Judiciary was relieved of his assignment on the Official Objectors' Committee for the Private Calendar. On Feb. 10, 1965, the Minority Leader made the following announcement:[11]

> MR. GERALD R. FORD [of Michigan]: Mr. Speaker, the gentleman from Michigan [Mr. Hutchinson] is a member of the subcommittee of the Judiciary Committee which handles private claims, and that seems to be incompatible with his service on the Private Calendar objectors' committee.
>
> At his request, he is being relieved of his assignment on the Private Calendar objectors' committee, and I have designated the gentleman from California [Mr. Talcott] to take his place.

11. 111 CONG. REC. 2468, 89th Cong. 1st Sess. For another instance in which the Minority Leader announced the replacement of a minority objector for the Private Calendar, see 116 CONG. REC. 7677, 91st Cong. 2d Sess., Mar. 17, 1970.

Appointment of Democratic Whip

§ 20.3 The Democratic floor leader with the approval of the Speaker appoints his party's whip, and announces such appointment in the House.

The following announcement, made in the 83d Congress by Sam Rayburn, of Texas, then Minority Leader, illustrates the announcement customarily made by the Democratic floor leader with respect to the appointment of the Democratic whip:[12]

> MR. RAYBURN: Mr. Speaker, I desire to announce to the House that I have appointed as minority whip of the House of Representatives the Honorable John W. McCormack. I feel sure that will be pleasing to both the minority and majority.

In the 84th Congress, the Democratic floor leader, in announcing the selection of a majority whip to replace one resigning from that position, indicated that the Speaker and floor leader, in conference, made the selection. The proceedings were as follows:[13]

12. See 99 CONG. REC. 134, 83d Cong. 1st Sess., Jan. 6, 1953. The Republican whip is selected by the conference. See § 23.3, infra. For further discussion of the party whips, see §§ 23–25, infra.

13. 101 CONG. REC. 191, 84th Cong. 1st Sess., Jan. 10, 1955.

MR. [JOHN W.] MCCORMACK [of Massachusetts]:

Mr. Speaker, I desire to make an announcement. Those Members who served in . . . past Congresses know that the distinguished gentleman from Tennessee, Mr. Priest, has been the Democratic whip.

Mr. Priest now assumes the very responsible position of chairman of the very important Committee on Interstate and Foreign Commerce. He has himself made the decision that the duties of that chairmanship are such that he feels constrained to confine his activities to that position.

As a result of that it became necessary to select a majority whip. I am very pleased to announce to my colleagues today that the Speaker and I, in conference, have designated and selected the distinguished gentleman from Oklahoma, Mr. Carl Albert, to be the majority whip during this Congress.

§ 21. Duties; Ceremonial Functions

The floor leaders perform various functions of a ceremonial nature.

Thus, following the election of a Speaker, the floor leaders customarily form part of the committee that escorts the Speaker to the chair.(14) It is also customary at such time for the Minority Leader to address the House for purposes of introducing the Speaker and wishing him well.(15) Similarly, early in a session, the Majority Leader frequently offers a resolution appointing a committee to notify the President of the assembly of Congress,(16) and both floor leaders are appointed to such committee.(17) At the end of a session, the floor leaders are again appointed to a committee to notify the President of the adjournment of Congress.(18) When the President visits the House, the floor leaders may be designated to escort the President into the House.(19)

Many duties or actions of the floor leaders relate to honors or tributes accorded to the Speaker of the House. Thus it is traditional for the Minority Leader, at the end of a Congress, to introduce a resolution thanking the Speaker for the manner in which the Speaker discharged the duties of the Chair.(20) More informally, the floor leaders have made announcements or led in paying tribute to the Speaker wherever appropriate to recognition of particular milestones, such as the an-

14. § 21.1, infra.

15. § 21.2, infra.

16. § 21.3, infra.

17. § 21.4, infra.

18. § 21.6, infra.

19. § 21.7, infra.

20. § 21.9, infra.

niversary of the election of the Speaker or the announcement by the Speaker of his intended retirement.[1]

With respect to other expressions of courtesy, gratitude, praise, and the like, the floor leader exercises his initiative as appropriate, frequently undertaking to express the sentiments of the House. Such expressions, generally concurred in by other Members of the House, range from praise of officers or Members for accomplishments in the House, felicitations on birthdays, and good wishes in case of an individual's illness, to resolutions offering sympathy upon the death of certain persons.[2]

The floor leader, usually the Majority Leader, also from time to time makes announcements or undertakes duties with respect to various ceremonial or formal occasions, ranging from the inaugural ceremonies to the reception of foreign visitors.[3]

Committee of Escort for Speaker-elect

§ 21.1 Following the election of a Speaker, the Clerk customarily appoints the Majority and Minority Leaders to the committee that escorts the Speaker-elect to the Chair.

The proceedings in the 90th Congress, wherein floor leaders Carl Albert, of Oklahoma, and Gerald R. Ford, of Michigan, were among those appointed to the Committee of Escort, are typical of those in which the Clerk appoints the committee to escort the Speaker-elect to the Chair. After announcing that John W. McCormack, of Massachusetts, had been elected Speaker, the Clerk announced as follows:[4]

> The Clerk appoints the following committee to escort the Speaker-elect to the chair: the gentleman from Michigan [Mr. Gerald R. Ford], the gentleman from Wisconsin [Mr. Laird], the gentleman from Oklahoma [Mr. Albert], the gentleman from New York [Mr. Celler], the gentleman from Texas [Mr. Mahon], the gentleman from Illinois [Mr. Rostenkowski], and the gentleman from Louisiana [Mr. Boggs.]

In the 89th Congress, the Majority Leader and Minority Leader comprised the entire Committee of Escort.[5]

There have been departures from the above custom. For example, in the 75th Congress, neither

1. § 21.10, infra.
2. §§ 21.11–21.17, infra.
3. See §§ 21.18–21.22, infra.
4. 113 CONG. REC. 13, 90th Cong. 1st Sess., Jan. 10, 1967.
5. See 111 CONG. REC. 17, 89th Cong. 1st Sess., Jan. 4, 1965.

Majority Leader Sam Rayburn, of Texas, nor the Farmer-Labor-Progressive party floor leader Gerald J. Boileau, of Wisconsin, was named to the Committee of Escort.[6]

Introduction of Speaker-elect

§ 21.2 The Minority Leader, generally the minority party's candidate for Speaker, addresses the House for purposes of introducing the Speaker-elect.

The remarks of Minority Leader Gerald R. Ford, of Michigan, on the occasion of presenting the Speaker-elect to the House in the 89th Congress are illustrative of those customarily made following the election of the Speaker. After escorting Speaker-elect John W. McCormack, of Massachusetts, to the Chair, Mr. Ford addressed the House as follows:[7]

> Mr. Speaker and my colleagues of the 89th Congress, in the 16 years that I have been privileged to be a Member of the House of Representatives and on the eight occasions when I have seen the Congress convene and the gavel pass from the individual who lost to the individual selected as Speaker, the gavel has gone from a Republican to a Democrat seven times. . . .
>
> I can say to you Mr. Speaker, that it is a privilege for me on this occasion to pass the gavel to you. However, I might add, in a somewhat lighter vein, that I hope this is an experience which will not be duplicated too frequently in the future. . . .
>
> May I say in conclusion that we in the minority have in the past supported you and the administration when we believed it was for the best interest of the United States. .

As a further example, Minority Leader Ford in the 91st Congress made the following remarks in the course of introducing Speaker-elect McCormack to the House:[8]

> Mr. Speaker, and old friends and new friends on both sides of the aisle' I stand before you today as the acknowledged champion among those who have tried to unseat the gentleman from Massachusetts from the Speaker's chair. . . .
>
> My congratulations to all of my colleagues who have successfully submitted their record of service to their constituents, and a very special welcome to the new Members of the 91st Congress on both sides of the aisle.

Committees to Notify President

§ 21.3 The Majority Leader customarily offers a resolu-

6. See 81 CONG. REC. 11, 75th Cong. 1st Sess., Jan. 5, 1937. Appointed were the defeated candidates for the office of Speaker, Bertrand H. Snell, of New York (the Republican floor leader) and George J. Schneider from Wisconsin, of the Farmer-Labor-Progressive Party. Also appointed were John J. O'Connor (N.Y.) and Henry B. Steagall (Ala.).

7. 111 CONG. REC. 17, 18, 89th Cong. 1st Sess., Jan. 4, 1965.

8. 115 CONG. REC. 14, 91st Cong. 1st Sess., Jan. 3, 1969.

tion that a committee be appointed by the Speaker to notify the President of the assembly of Congress.

The resolution offered by the Majority Leader, Carl Albert, of Oklahoma, in the 90th Congress illustrates the form of the resolution customarily offered for purposes of forming the committee to notify the President of the assembly of Congress. The proceedings were as follows:[9]

> MR. ALBERT: Mr. Speaker, I offer a resolution (H. Res. 5) and ask for its immediate consideration. The Clerk read the resolution, as follows:
>
> H. RES. 5
>
> *Resolved*, That a committee of three Members be appointed by the Speaker on the part of the House of Representatives to join with a committee on the part of the Senate to notify the President of the United States that a quorum of each House has been assembled, and that Congress is ready to receive any communication that he may be pleased to make.

Proceedings virtually identical to those above take place upon the assembly of every Congress.

§ 21.4 The Majority and Minority Leaders are customarily among those appointed to the committee to notify the President of the assembly of Congress; the Majority Leader may report on the performance of the committee's duty.

The appointments to the committee in the 90th Congress were made by Speaker John W. McCormack, of Massachusetts, as follows:[10]

> THE SPEAKER: The Chair appoints as members of the committee to notify the President of the United States that a quorum of each House has been assembled, and that Congress is ready to receive any communication that he may be pleased to make, the gentleman from Oklahoma [Mr. Albert], the gentleman from Louisiana [Mr. Boggs], and the gentleman from Michigan [Mr. Gerald R. Ford].

In the 92d Congress, the Majority Leader reported on the performance of the committee's duty, as follows:[11]

> MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, your committee on the part of the House to join a like committee on the part of the Senate to notify the President of the United States that a quorum of each House has been assembled and is ready to receive any communication that he may be pleased

9. 113 CONG. REC. 27, 90th Cong. 1st Sess., Jan. 10, 1967.

10. 113 CONG. REC. 28, 90th Cong. 1st Sess., Jan. 10, 1967. Substantially the same proceedings take place in every Congress; see, for example, 115 CONG. REC. 35, 91st Cong. 1st Sess., Jan. 3, 1969.

11. 117 CONG. REC. 15, 92d Cong. 1st Sess., Jan. 21, 1971.

to make, has performed that duty. The President asked us to report that he will be pleased to deliver his message at 9 p.m., January 22, 1971, to a joint session of the two Houses.

§ 21.5 The Majority Leader offers a resolution authorizing the appointment of a committee to notify the President as to the intended adjournment of Congress.

The following proceedings took place in the 91st Congress:[12]

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I offer a resolution (H. Res. 1338) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1338

Resolved, That a committee of two Members be appointed by the House to join a similar committee appointed by the Senate, to wait upon the President of the United States and inform him that the two Houses have completed their business of the session and are ready to adjourn, unless the President has some other communication to make to them.

The resolution was agreed to.

§ 21.6 The Speaker appointed the Majority Leader and the acting Minority Leader to the committee to notify the President as to the intention of Congress to adjourn; the Majority Leader subsequently reported to the House the performance of the committee's duty.

In the 91st Congress, following the adoption of a resolution authorizing appointment of the committee to notify the President of the intended adjournment of Congress, the Speaker appointed the Majority Leader, Carl Albert, of Oklahoma, and the acting Minority Leader, John J. Rhodes, of Arizona, as the members of the committee.[13] Subsequently, Mr. Albert made the following report in the House:[14]

MR. ALBERT: Mr. Speaker, your committee appointed to join a committee of the Senate to inform the President that the Congress is ready to adjourn, and to ask him if he has any further communications to make to the Congress, has performed that duty. The President has directed us to say that he has no further communication to make to the Congress.

Committee of Escort Upon Presidential Visit

§ 21.7 Upon a visit by the President of the United States, the floor leaders may be appointed as a committee

12. 116 CONG. REC. 44599, 91st Cong. 2d Sess., Jan. 2, 1971.

13. See 116 CONG. REC. 44599, 91st Cong. 2d Sess., Jan. 2, 1971.

14. 116 CONG. REC. 44621, 91st Cong. 2d Sess., Jan. 2, 1971.

to escort the President into the Chamber.

On Nov. 13, 1969, President Richard M. Nixon visited the House for the purpose of expressing his appreciation for the support shown by Members for certain of his policies; prior to the President's visit, Speaker John W. McCormack, of Massachusetts, announced as follows:[15]

> THE SPEAKER: The Chair appoints the gentleman from Oklahoma (Mr. Albert) and the gentleman from Michigan (Mr. Gerald R. Ford) to escort the President of the United States into the Chamber.

The committee so comprised of the Majority and Minority Leaders accompanied the President into the Hall of the House of Representatives,[16] and, following the remarks of the President to the House, accompanied him as he retired from the Hall of the House.[17]

Committee of Escort

§ 21.8 The floor leaders may be appointed to a committee of escort upon a visit by a Prime Minister.

In the 85th Congress, prior to a recess during which the Members received the Prime Minister of Italy, Speaker Sam Rayburn, of Texas, appointed the Majority Leader, John W. McCormack, of Massachusetts, and the Minority Leader Joseph W. Martin. Jr., of Massachusetts, and others, to a committee of escort for the Prime Minister.[18]

Resolution Thanking Speaker

§ 21.9 It is customary toward the end of a Congress for the Minority Leader or someone acting in his behalf to offer a resolution expressing the thanks of the House for the manner in which the Speaker discharged the duties of the Chair.

The following proceedings in the 86th Congress[19] are illustrative of those honoring the Speaker at the conclusion of a Congress:

> THE SPEAKER PRO TEMPORE:[20] The Chair recognizes the gentleman from Indiana, the minority leader, Mr. Halleck.
>
> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I offer a resolution (H. Res. 647) and ask for its immediate consideration.
>
> The Clerk read the resolution as follows:

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15. 115 CONG. REC. 34080, 91st Cong. 1st Sess., Nov. 13, 1969.

16. *Id.*

17. 115 CONG. REC. 34081, 91st Cong. 1st Sess., Nov. 13, 1969.

18. See 104 CONG. REC. 15434, 85th Cong. 2d Sess., July 29, 1958.

19. 106 CONG. REC. 19162, 86th Cong. 2d Sess., Sept. 1, 1960.

20. Leslie C. Arends (Ill.).

Resolved, That the thanks of the House are presented to the Honorable Sam Rayburn, Speaker of the House of Representatives, for the able, impartial, and dignified manner in which he has presided over the deliberations and performed the arduous duties of the Chair during the present term of Congress.

Following the reading of the resolution, Mr. Halleck addressed the House in support of the resolution and in praise of Speaker Rayburn.

Proceedings such as those above take place toward the end of every Congress, the Chair usually being assumed for purposes of the proceedings by the minority whip [1] or by someone, such as the conference chairman,[2] acting for the whip.

On occasion, the Minority Leader, in anticipation of his absence, has designated someone, such as the Chairman of the Republican Policy Committee,[3] to act for him in offering the resolution.

1. See, for example, 102 CONG. REC. 15282, 84th Cong. 2d Sess., July 27, 1956.
2. See, for example, 110 CONG. REC. 24058! 88th Cong. 2d Sess., Oct. 3, 1964.
3. See, for example, 116 CONG. REC. 44601, 91st Cong. 2d Sess., Jan. 2, 1971; and 114 CONG REC. 31371, 90th Cong. 2d Sess., Oct. 14, 1968. (In both instances, John J. Rhodes [Ariz.], the Chairman of the Republican Policy Committee, offered the resolution; in the 91st Congress, Speaker John W. McCormack [Mass.], having announced his plans to retire, the resolution expressed not only the customary thanks of the House but also the good wishes of the House upon the Speaker's anticipated retirement.)

Tributes to Speaker

§ 21.10 Where it has been appropriate to accord honors to the Speaker, as in recognition of length of service or on the occasion of the Speaker's intended retirement, the floor leaders have led the House in paying tribute to the Speaker or remarking on his accomplishments. On occasion, the Minority Leader has acted as Speaker pro tempore when the proceedings in the House and the remarks of Members have been in honor of the Speaker.

In the 87th Congress, the Minority Leader assumed the Chair as Speaker pro tempore and recognized the Majority Leader, who offered a resolution extending congratulations to Speaker Sam Rayburn, of Texas, on his length of service. The proceedings were. in part as follows: [4]

THE SPEAKER: Will the gentleman from Indiana [Mr. Halleck] kindly take the chair?

4. 107 CONG. REC. 10035, 87th Cong. 1st Sess., June 12, 1961.

(Mr. Charles A. Halleck, of Indiana, assumed the chair as Speaker pro tempore.)

THE SPEAKER PRO TEMPORE (Mr. Halleck): The Chair recognizes the gentleman from Massachusetts [Mr. McCormack].

MR. [JOHN W.] MCCORMACK [of Massachusetts]: With great personal satisfaction and pleasure I offer a resolution and ask for its immediate consideration.

The Clerk read as follows:

H. RES. 333

Resolved, That the House of Representatives hereby extends its heartiest congratulations to its beloved Speaker, the Honorable Sam Rayburn, who, today, has served in the high office of Speaker of the House of Representatives for 16 years, 273 days-more than twice as long as any other Speaker in the history of the United States; and be it further

Resolved, That the House of Representatives hereby expresses its deep appreciation to the Honorable Sam Rayburn for his impartiality, integrity, and outstanding parliamentary skill in presiding over this House; for enhancing the dignity and traditions of the Speakership; and for his continuing devotion to legislative duty in this House for more than 48 years.

Similar proceedings took place in the 91st Congress in honor of Speaker John W. McCormack, of Massachusetts. Gerald R. Ford, of Michigan, Minority Leader, assumed the Chair as Speaker pro tempore, and Majority Leader Carl Albert, of Oklahoma, offered a resolution reading in part as follows:[5]

H. RES. 1044

Resolved, That the House of Representatives hereby extends congratulations to the Honorable John W. McCormack who has served continuously as Speaker of the House longer than any previous occupant of that high office and whose cumulative service in that position now surpasses that of all but one of his predecessors. . . .

Following the reading of the resolution, the Majority Leader delivered remarks in honor of Speaker McCormack, and yielded to other Members, including the Minority Leader,[6] who also paid tribute to the Speaker.

Speaker McCormack having announced his intended retirement, various proceedings and announcements of a nature honoring the Speaker were recorded in the 91st Congress. Thus, on May 20, 1970,[7] the Majority Leader remarked as follows:

MR. ALBERT: Mr. Speaker, I was saddened to hear my dear friend Speaker John W. McCormack, will tell the press today of his intention to retire. It is difficult for me to contemplate the House of Representatives functioning

5. 116 CONG. REC. 17020, 91st Cong. 2d Sess., May 26, 1970.

6. 116 CONG. REC. 17021, 91st Cong. 2d Sess., May 26, 1970.

7. 116 CONG. REC. 16284, 91st Cong. 2d Sess.

without his wise counsel and outstanding leadership. . . .

Mr. Albert's remarks were followed by other tributes to Speaker McCormack.

On June 24, 1970,[8] the Minority Leader inserted in the Record the transcript of proceedings held at the White House on May 27, honoring Speaker McCormack for his service to the nation. Similarly, on Dec. 17, 1970,[9] the Majority Leader announced to the House that Speaker McCormack in certain ceremonies had been given a book signed by all House employees, and that an "Annual Award of Excellence" had been established in the Speaker's name to be presented to the employee performing the most valuable service to the House. Following the remarks of the Majority Leader, Minority Leader Gerald R. Ford spoke briefly to congratulate the employees on their recognition of the Speaker's accomplishments.

Significant anniversary dates in the careers of past distinguished Speakers have also been noted by the floor leader. Thus, on Sept. 16, 1969,[10] the Majority Leader paid tribute to the late Sam Rayburn, as follows:

> MR. ALBERT: Mr. Speaker, 29 years ago today, on September 16, 1940, the late Honorable Sam Rayburn was elected Speaker of the House of Representatives for the first time. This is an important anniversary although one which might have been overlooked in the rush of business. . . .
>
> The judgment of history will confirm . . . that the principles of liberal democracy which Sam Rayburn held dear beyond price, were expanded and preserved by his great legislative genius. . . .

Expressions of Praise or Recognition

§ 21.11 The Majority Leader expressed thanks to the members of the official objectors' committees for the manner in which they performed their duties

On July 30, 1955,[11] the Majority Leader expressed his gratitude to the objectors, among others, for work done during the session.

§ 21.12 The Majority Leader praised the work done in the session by the Speaker, the majority whip, the Minority Leader, and the officers and employees of the House. His comments were followed by

8. 116 CONG. REC. 21304-21306, 91st Cong. 2d Sess.
9. 116 CONG. REC. 42190, 42191, 91st Cong. 2d Sess.
10. 115 CONG. REC. 25611, 91st Cong. 1st Sess.
11. See 101 CONG. REC. 12380, 12381, 84th Cong. 1st Sess.

remarks of a similar nature by the Minority Leader.

The remarks of the Majority Leader, Carl Albert, of Oklahoma, and the Minority Leader, Gerald R. Ford, of Michigan, on Dec. 15, 1967,[12] were in part as follows:

MR. ALBERT: Mr. Speaker, we are about to come to the end of the first session of the 90th Congress. It has been a long and arduous session, but it is a session which has had many rewards. . . .

I congratulated all who have helped to write this record. Particularly do I congratulate and applaud our distinguished and beloved Speaker, the Honorable John W. McCormack. . . .

I also salute my close friend and coworker, our Majority Whip Hale Boggs.

I also want to express my gratitude to the distinguished minority leader of the House. . . .

I congratulate and thank also the distinguished minority whip and other members of the Republican leadership.

I must also express my gratitude for the work of the Parliamentarian without whose efforts I could not have done my job. I am grateful to the Clerk, the Sergeant at Arms, the Doorkeeper, the Postmaster and all the officers and employees of the House. . . .

MR. GERALD R. FORD [of Michigan]: . . . Mr. Speaker, each of us on both sides of the aisle is most appreciative of the help and assistance of the employees of the House. I would like to reiterate what the distinguished majority leader has said about the Parliamentarian . . . but there are many others who help us on a day-to-day basis.

§ 21.13 The floor leaders and others praised the record of service of one who was terminating his employment as legislative assistant to the Speaker

The remarks of the Majority Leader, Carl Albert, of Oklahoma, and the Minority Leader, Charles A. Halleck, of Indiana, on Oct. 5, 1962,[13] were in part as follows:

MR. ALBERT: Mr. Speaker, every Member will agree with me, I am sure, that the fine work of staff members here in the House of Representatives, in its committees, and in the offices of its Members is an indispensable element of the legislative process. . . .

12. 113 CONG. REC. 37382, 37383, 90th Cong. 1st Sess.

The proceedings described are illustrative of those customarily taking place at the end of a session. As a further example, see 112 CONG. REC. 28866–28868, 89th Cong. 2d Sess., Oct. 22, 1966, in which the acting Majority Leader and the Minority Leader spoke in praise of those, such as the assistant Parliamentarian acting in the Parliamentarian's absence, who had contributed to the accomplishments of the session. (The remarks of the Majority Leader, who was absent because of illness, were printed in the Record at the request of the acting Majority Leader.

13. 108 CONG. REC. 22565, 87th Cong. 2d Sess.

I take this time to advise the House that one of the finest and most capable persons ever to serve the House or any of its Members, John Holton, legislative assistant to the Speaker, is leaving the House of Representatives. . . .

MR. HALLECK: Mr. Speaker, will the gentleman yield? . . .

Mr. Speaker, I am sure I speak for my colleagues on this side of the aisle—and certainly for myself—when I say I want to join in this expression of appreciation to John Holton for his services to the House of Representatives these many years. . . .

§ 21.14 The floor leaders and others frequently exchange birthday felicitations during proceedings in the House.

The proceedings in the 89th Congress are illustrative of the exchange of courtesies between the floor leaders. Following the announcement of the Majority Leader's birthday by Mr. Thomas J. Steed, of Oklahoma, the Minority Leader remarked as follows:[14]

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, may I join the distinguished gentleman from Oklahoma in wishing our distinguished majority leader, Carl Albert, our very best wishes on this birthday anniversary. We, on our side of the aisle, are proud to work with him. . . . Carl Albert is a real gentleman, an outstanding leader of the Democratic Party, and I am very proud and honored to call him a friend. . . .

Similar felicitations have been extended by the Majority Leader on the occasion of the Minority Leader's birthday.[5] The birthdays of other individuals have been recognized in similar fashion. For example, on Mar. 3, 1970, birthday greetings were extended by the Speaker,[16] the floor leaders, and others to the Parliamentarian of the House.[17]

Remarks Upon Hospitalization of President

§ 21.15 The Speaker and the Minority Leader took the floor, during debate in the Committee of the Whole, to express wishes for the President's recovery from illness.

On Oct. 7, 1965, Speaker John W. McCormack, of Massachusetts, and Minority Leader Gerald R. Ford, of Michigan, addressed remarks to the House concerning the hospitalization of President Lyndon B. Johnson for surgery.[18]

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14. 111 CONG. REC. 9953, 89th Cong. 1st Sess., May 10, 1965.

15. See, for example, 112 CONG. REC. 15706, 89th Cong. 2d Sess., July 14. 1966.

16. John W. McCormack (Mass.).

17. 116 CONG. REC. 5709–5711, 91st Cong. 2d Sess. For similar proceedings on the occasion of the Parliamentarian's birthday, see 115 CONG. REC. 4989, 4990, 91st Cong. 1st Sess., Mar. 3, 1969.

18. See 111 CONG. REC. 26320, 89th Cong. 1st Sess.

Resolution Upon Death of World Leader

§ 21.16 The floor leaders and others, pursuant to a special order obtained by the Majority Leader, addressed the House after the death of a world leader and honorary American citizen, Sir Winston Churchill; the Majority Leader then offered a resolution of sympathy.

On Jan. 25, 1965, the Majority Leader made the following request:[19]

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that at the close of business and all special orders heretofore entered into for today, I may address the House for 1 hour, in order that I may yield to Members on the subject of the life and service of Sir Winston Churchill.

Subsequently, the following proceedings took place:[20]

> THE SPEAKER:[1] Under previous order of the House, the gentleman from Oklahoma [Mr. Albert] is recognized for 60 minutes.
>
> MR. ALBERT: Mr. Speaker, I ask unanimous consent to revise and extend my remarks, and further ask unanimous consent that all Members speaking on this subject today may revise and extend their remarks, and I also ask unanimous consent that all Members who desire to do so may have 5 legislative days in which to extend their remarks at this point in the Record.

Following remarks by the Majority Leader, the Minority Leader,[2] and others in honor of Churchill, the Majority Leader offered the following resolution:[3]

> H. RES. 136
>
> *Resolved,* That the House of Representatives has learned with profound sorrow of the death of Sir Winston Churchill, former Prime Minister of the United Kingdom, honorary citizen of the United States, beloved elder statesman of the world. . . .
>
> *Resolved,* That as a further mark of respect to the memory of the late Sir Winston Churchill the House do now adjourn.

Remarks on Death of Minority Employee

§ 21.17 The Minority Leader announced the death of a minority employee, who had been Clerk of the House, and,

19. 111 CONG. REC. 1079, 89th Cong. 1st Sess.
20. 111 CONG. REC. 1154–1163, 89th Cong. 1st Sess., Jan. 25, 1965. Similar proceedings have taken place upon the death of other leaders; see, generally, Ch. 38, infra.
1. John W. McCormack (Mass.).
2. 111 CONG. REC. 1155, 89th Cong. 1st Sess., Jan. 25, 1965.
3. 111 CONG. REC. 1162, 1163, 89TH CONG. 1ST SESS., JAN. 25, 1965.

following the remarks of the Majority Leader and others, offered a resolution providing for the appointment of a committee to attend the funeral services.

In the 81st Congress, the proceedings relating to the death of John Andrews, a minority employee and former Clerk of the House, were as follows:[4]

> MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, it is with a heavy heart that I announce the death of a beloved friend, the former Clerk of the House of Representatives, presently a minority employee, John Andrews.

Following remarks by Majority Leader John W. McCormack, of Massachusetts,[5] and others, the Minority Leader offered the following resolution:[6]

> *Resolved*, That the House has heard with profound sorrow of the death of Hon. John Andrews, an employee and officer of the House for more than 30 years.
>
> *Resolved*, That as a mark of respect to his memory the Speaker appoint a committee of 10 Members to attend the funeral services. . . .

4. 96 CONG. REC. 7514–7517, 81st Cong. 2d Sess., May 23, 1950.
5. 96 CONG. REC. 7514, 81st Cong. 2d Sess., May 23, 1950.
6. 96 CONG. REC. 7517, 81st Cong. 2d Sess., May 23, 1950.

Announcements Respecting Ceremonial or Social Occasions—Inaugural Ceremonies

§ 21.18 The floor leaders have made announcements in the House, for the information and guidance of Members, relating to the inaugural ceremonies.

Announcements like the following, which was made on Jan. 17, 1969, by Majority Leader Carl Albert, of Oklahoma,[7] are frequently made by the floor leaders in preparation for the inaugural ceremonies:

> MR. ALBERT: . . . Mr. Speaker, I desire to alert my colleagues that when we adjourn today, we will meet on Monday at 10:30 o'clock. I urge all the Members to be here promptly because the procession for Members of the House will leave in a body promptly at 10:35 a.m., so that the inaugural exercises on the platform at the east front might start precisely at 11 o'clock. . . .

Immediately prior to the announcement, the Majority Leader had offered a resolution as to the convening of the House for the inaugural ceremonies.[8]

7. 115 CONG. REC. 1184, 91st Cong. 1st Sess., Jan. 17, 1969. For a further example of such announcements by the Majority Leader, see 111 CONG. REC. 951, 89th Cong. 1st Sess., Jan. 19, 1965. For examples of announcements made by the Minority Leader, see 115 CONG. REC. 1076, 1090, 91st Cong. 1st Sess., Jan. 16, 1969.
8. 115 CONG. REC. 1184, 91st Cong. 1st Sess., Jan. 17, 1969.

Cornerstone Ceremonies

§ 21.19 The Majority Leader made an announcement with regard to ceremonies in which the cornerstone of a new House office building would be laid.

In the 87th Congress, the Majority Leader, Carl Albert, of Oklahoma, made an announcement respecting ceremonies in which the cornerstone of the Rayburn House Office Building would be laid.[9]

Ceremonies Relating to Signing of Bill

§ 21.20 The Majority Leader announced an invitation to Members to attend ceremonies in which the President would sign a bill in the rotunda of the Capitol.

The following announcement was made by the Majority Leader, Carl Albert, of Oklahoma, on Aug. 5, 1965:[10]:

> MR. ALBERT: Mr. Speaker, I take this time to advise Members of the House upon the invitation of the Speaker and the majority leader of the Senate the President will sign the voting rights bill tomorrow at noon in the rotunda of the Capitol. All Members of the House are invited by the President and the Speaker to be present at this ceremony.

Announcement As to Visit of Prime Minister

§ 21.21 The Majority Leader made an announcement relating to the anticipated visit of a foreign Prime Minister.

On Feb. 27, 1957,[11] the Majority Leader, John W. McCormack, of Massachusetts, made the following announcement:

> MR. MCCORMACK: Mr. Speaker, as the Members are aware, we are going to be honored this afternoon at about 3 o'clock by the presence in the Chamber of one of the world's outstanding statesmen, the Prime Minister of France, his Excellency Guy Mollet. I want to announce that about 2:20 or 2:25 there will be a quorum call so that the Members will be advised and govern themselves accordingly.

Unanimous-Consent Request Relating to Visitor

§ 21.22 The Majority Leader has on occasion asked unanimous consent that the Speaker be authorized to declare a recess for the purpose of receiving a visiting Prime Minister or foreign President.

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9. 108 CONG. REC. 8468, 87th Cong. 2d Sess., May 16, 1962.

10. 111 CONG. REC. 19483, 89th Cong. 1st Sess.

11. 103 CONG. REC. 2720, 85th Cong. 1st Sess.

On several occasions, the Majority Leader has made unanimous-consent requests such as the following, which was made on Feb. 19, 1957,[12] by the Majority Leader, John W. McCormack, of Massachusetts:

> MR. MCCORMACK: Mr. Speaker, I ask unanimous consent that it may be in order at any time on Wednesday, February 27, 1957, for the Speaker to declare a recess for the purpose of receiving the Prime Minister of the Republic of France.

As a further example, the Majority Leader made the following request on May 28, 1958:[13]

> MR. MCCORMACK: Mr. Speaker, I ask unanimous consent that it may be in order at any time on Thursday, June 5, 1958, for the Speaker to declare a recess for the purpose of receiving in joint meeting the President of the Federal Republic of Germany.

§ 22. Salary and Perquisites, Honors on Death

Recognition of the status of the floor leaders is reflected in provisions of law regarding the salaries[14] and allowances[15] of the floor leaders and in certain provisions prescribing the honors to be accorded upon the death of a floor leader.[16]

Assistants to Floor Leaders

§ 22.1 The House has authorized the creation of new positions in the office of floor leader, or the payment from the contingent fund of the House of additional compensation to assistants of the floor leader.

In the 89th Congress, the Majority Leader offered a resolution creating an additional position of clerk in the offices of the Speaker and the Minority Leader, and providing for the payment of the salaries of such clerks from the contingent fund of the House. The resolution, which was agreed to by the House, was as follows:[17]

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12. 103 CONG. REC. 2251, 85th Cong. 1st Sess.

13. 104 CONG. REC. 9743, 85th Cong. 2d Sess.

14. See 2 USC § 31.

15. An allowance for office personnel in the office of floor leader is prescribed by 2 USC § 333; such allowance is in addition to the clerk-hire allowance prescribed for each Member by 2 USC § 332. A provision pertaining to allowances for airmail and special delivery stamps for the floor leaders is contained in 2 USC § 42d(1).

16. A proclamation specifies the length of time that designated flags will be flown at half-staff upon the death of a Majority Leader or Minority Leader of the House. See 36 USC § 175, note, Proclamation No. 3044 (flag to be flown at half-staff from day of death until interment).

17. 112 CONG. REC. 573, 89th Cong. 2d Sess., Jan. 19, 1966.

H. RES. 669

. . . (b) There is hereby created in the office of the minority leader an additional position the basic compensation of which shall be at a rate not to exceed $3,000 per annum.

(c) There shall be paid out of the contingent fund of the House of Representatives, until otherwise provided by law, such sums as may be necessary to carry out this resolution. . . .

On Mar. 9, 1965, the Majority Leader offered a resolution raising the gross salary of, among others, the administrative assistants to the floor leaders. The resolution, which was agreed to by the House, was as follows:[18]

H. RES. 258

Resolved, That, effective March 1, 1965, there shall be payable from the contingent fund of the House of Representatives, until otherwise provided by law, an amount which will permit the payment of basic compensation per annum, at a rate not in excess of the highest amount which, together with additional compensation authorized by law, will not exceed the maximum rate authorized by the Classification Act of 1949, as amended, to the administrative assistant of each of the following: . . .

(2) the majority leader of the House;

(3) the minority leader of the House . . .

(7) each Member of the House who has served as majority leader, and as minority leader[19] of the House.

On Jan. 26, 1966, the Speaker took the floor to offer a resolution providing additional clerk-hire allowance for the office of the Majority Leader, and authorizing additional positions in the offices of the Minority Leader and others. The resolution was as follows:[20]

H. RES. 690

Resolved, That effective February 1, 1966, there shall be paid out of the contingent fund of the House of Representatives, until otherwise provided by law, such sums as may be necessary for:

1. Additional clerical help in the Office of the Majority Leader, not to exceed $3,000 (basic) per annum.

2. (a) An additional position in the Office of the Minority Leader, the basic compensation of which shall be at a rate not to exceed $2,500 per annum. . . .

The resolution was agreed to.

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18. 111 CONG. REC. 4405, 89th Cong. 1st Sess.

19. See also H. Res. 127, 89th Cong. 1st Sess. (1965), providing for an administrative assistant for any Member who has served both as Majority and as Minority Leader of the House.

20. 112 CONG. REC. 1125, 89th Cong. 2d Sess.

E. PARTY WHIPS

§ 23. In General

[Note: The following is descriptive of practices in effect in some Congresses. For discussion of any current modification of the functions or composition of the office of the whip, consult supplements to this edition as they appear.]

Each party maintains a whip organization, presided over by the party whip. The Democratic floor leader with the approval of the Speaker appoints the Democratic whip and announces in the House the name of the person he has appointed to that position.[1] The Republican Conference chooses that party's whip, and an announcement concerning such selection is made in the House by the Republican floor leader or, on occasion, by the chairman of the conference.[2] A number of assistant Democratic whips representing various regions of the country are chosen by the Democratic state delegations.[3]

The Democratic organization formerly included a post of "deputy whip," but the Majority Leader in the 92d Congress announced that that position had been abolished and replaced by the positions of "floor whips."[4]

In the Record of the 82d Congress,[5] the Republican whip set forth a description of the Republican whip organization, consisting of the Republican whip, a deputy whip, an Eastern regional whip, an East Central regional whip, a Midwest regional whip, a Western regional whip; and various area whips.

The functions of the party whips are to maintain close contact with party members; ascertain the sentiments of party members with respect to legislative issues; ensure the presence of party members on the floor when matters of interest to the party

1. § 23.1, infra.
2. § 23.3, infra.
3. Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), p. 141.

   Collateral references: Ripley, Randall B., *Party Leaders in the House of Representatives*, The Brookings Institution (Washington, D.C., 1967), pp. 33–41 (development of whip organizations); 64, 65, 67–72, 75, 76 (functions of whips); "The Party Whip Organization in the United States House of Representatives," American Political Science Review, vol. 58 (Sept., 1964), pp. 561–576.
4. § 23.2, infra.
5. 97 CONG. REC. 992, 82d Cong. 1st Sess., Feb. 5, 1951.

are to be voted upon; assist the floor leader in fulfilling the duties of party leadership; and promote party positions with respect to issues before the House.[6] For purposes of keeping party members informed of matters pending in the House, the whip sends periodic notices containing a description of such matters to party members.

The office was described in these terms by Mr. Charles A. Halleck, of Indiana:[7]

> . . . In many ways, the job of whip is a thankless assignment that involves a lot more than just taking polls, calling Members to the floor, and putting out notices of the program for the following week. And I must say, the title "whip" is really a misnomer. You just do not line up Members—especially if you are in the minority—by applying the lash. . . .
>
> [Success] in the office of whip [requires] a personal facility for conciliation, for bringing together divergent views through reason and . . . an ability to persuade. . . .

The whip has sometimes been designated Speaker pro tempore,[8] or has assumed the Chair for particular purposes, as where the majority whip has presided over the election of the Majority Leader as Speaker pro tempore,[9] or where the minority whip has presided over proceedings honoring the Speaker of the House.[10] Similarly, the whip frequently acts as his party's floor leader when the floor leader is absent.[11]

Party whips have sometimes served in that capacity for a considerable length of time. Thus, as an example, many tributes were paid in the 91st Congress to one who had served as Republican whip for many years.[12]

Selection of Whip; Announcement

§ 23.1 The Democratic floor leader with the approval of the Speaker appoints his party's whip, and announces such appointment in the House.

The following announcement by the Majority Leader in the 82d Congress is illustrative of announcements made by the Demo-

6. See 8 Cannon's Precedents § 3615.

7. 114 Cong. Rec. 19074, 90th Cong. 2d Sess., June 27, 1968.

8. § 23.5, infra.

9. § 23.6, infra.

10. § 24.1, infra.

11. See Congressional Quarterly's *Guide to the Congress of the United States*, Congressional Quarterly Service (Washington, D.C., 1971), p. 141.

12. See 116 Cong. Rec. 17878, 17879, 91st Cong. 2d Sess., June 2, 1970.

cratic floor leader with respect to his appointment of a party whip:[13]

> MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I desire to announce to the House that I have reappointed as the majority whip the distinguished gentleman from Tennessee, Mr. Priest.

In the 84th Congress, upon the occurrence of a vacancy in the office of majority whip, the Majority Leader announced the selection of a new whip pursuant to a conference between the Speaker and the Majority Leader.[14]

Floor Whips

§ 23.2 The Majority Leader announced the abolition of the post of deputy whip, and the creation of the positions of floor whips.

In the 92d Congress, the Majority Leader made the following announcement, which was concerned in part with certain changes in the structure of the Democratic whip organization:[15]

> MR. [HALE] BOGGS [of Louisiana]: . . . Mr. Speaker, it is my pleasure to announce that we have named the distinguished gentleman from Massachusetts (Mr. O'Neill) as the majority whip of the Democratic Party.
>
> Mr. Speaker, I would like to conclude the announcement by saying that in consultation with the distinguished Speaker, the position of deputy whip has been abolished and in place thereof we have created the position of two floor whips which will be held by the gentleman from California (Mr. McFall), who will fill one spot, and the gentleman from Indiana (Mr. Brademas), who will fill the other spot.

Election of Republican Whip

§ 23.3 The Republican Conference selects the Republican whip, and an announcement concerning such selection is made in the House by the Republican floor leader or the conference chairman.

On Jan. 22, 1971, the following announcement was made by the Minority Leader, Gerald R. Ford, of Michigan:[16]

> Mr. Speaker, it is my privilege to announce for the benefit of the membership as a whole, the election of the Honorable Leslie Arends, of Illinois, to

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13. 97 CONG. REC. 40, 82d Cong. 1st Sess., Jan. 4, 1951. For further examples, see 115 CONG. REC. 34, 91st Cong. 1st Sess., Jan. 3, 1969; and 99 CONG. REC. 134, 83d Cong. 1st Sess., Jan. 6, 1953.

14. 101 CONG. REC. 191, 84th Cong. 1st Sess., Jan. 10, 1955.

15. See 117 CONG. REC. 131, 92d Cong. 1st Sess., Jan. 22, 1971. For more recent changes in the composition of the Democratic Whip organization, see supplements to this edition as they appear.

16. 117 CONG. REC. 131, 92d Cong. 1st Sess.

be the Republican whip for the ninth consecutive Congress.

Similarly, in the 82d Congress, the floor leader made the following announcement:[17]

> MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, I would like to announce to the House that the gentleman from Illinois, Mr. Leslie C. Arends, has been elected Republican whip.

In the 83d Congress, the Republican Majority Leader, Charles A. Halleck, of Indiana, announced:[18]

> Mr. Speaker, on behalf of the Committee on Committees, I hereby wish to announce the selection of Hon. Leslie C. Arends, of Illinois, as majority whip.

In the 91st Congress, the conference chairman, John B. Anderson, of Illinois, made the announcement concerning the selection of the minority whip, as follows:[19]

> Mr. Speaker, as chairman of the Republican Conference, I am directed by that conference to notify the House officially that the Republican Members have selected as minority whip the gentleman from Illinois, the Honorable Leslie C. Arends.

Republican Whip Organization

§ 23.4 The Republican whip extended his remarks in the Record to include a description of the Republican whip organization.

On Feb. 5, 1951, Mr. Leslie C. Arends, of Illinois, was permitted to extend his remarks in the Record to include the following description of the Republican whip organization.[20]

> Republican whip, Leslie C. Arends, Illinois; deputy whip, Ralph A. Gamble, New York.
>
> Eastern Regional whip, W. Sterling Cole, New York—8 states, 50 members: Maine (3), New Hampshire (2), Vermont (1), Connecticut (4), Delaware (1), A. N. Sadlak; Massachusetts (8), W. H. Bates; New York (22), Katherine St. George; New Jersey (9), T. Millet Hand. . . .

In similar fashion, Mr. Arends named the East Central regional

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17. 97 CONG. REC. 40, 82d Cong. 1st Sess., Jan. 4, 1951.

18. 99 CONG. REC. 134, 83d Cong. 1st Sess., Jan. 6, 1953. The Republican whip was formerly selected by the party committee on committees (see Congressional Quarterly's *Guide to the Congress of the United States,* Congressional Quarterly Service [Washington, D.C., 1971], p. 141).

19. 115 CONG. REC. 34, 91st Cong. 1st Sess., Jan 3, 1969. For other examples of occasions on which the selection of the Republican whip has been announced by the conference chairman, see § 3.7, supra.

20. 97 CONG. REC. 992, 82d Cong. 1st Sess.

whip, the Midwest regional whip, and the Western regional whip; indicated the state delegations represented by such whips; and named those persons in the whip organization who represented particular states or groups of states within a region.

Designation of Majority Whip as Speaker Pro Tempore

§ 23.5 The majority whip has been designated Speaker pro tempore.

On May 29, 1958, Carl Albert, of Oklahoma, the majority whip, assumed the Chair. The proceedings were as follows:[1]

> THE SPEAKER PRO TEMPORE: The Chair lays before the House the following communication from the Speaker:
>
> MAY 29, 1958
>
> I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.
>
> SAM RAYBURN,
> *Speaker of the House of Representatives.*

1. 104 CONG. REC. 9854, 85th Cong. 2d Sess.

For instances in which the minority whip has assumed the Chair to preside over proceedings relating to the customary resolution expressing the gratitude of the House for the manner in which the Speaker performed his duties, see § 24.1, infra.

Election of Speaker Pro Tempore Presided Over by Whip

§ 23.6 The majority whip on occasion has assumed the Chair for purposes of presiding over the election of the Majority Leader as Speaker pro tempore.

On Nov. 18, 1963, the Majority Leader, Carl Albert, of Oklahoma, called the House to order and laid before the House a communication from the Speaker designating Mr. Albert as Speaker pro tempore. Subsequently, the majority whip, Hale Boggs, of Illinois, assumed the Chair and presided over proceedings in which Mr. Albert was elected Speaker pro tempore. The proceedings were as follows:[2]

> Mr. Boggs assumed the Chair.
>
> MR. [CARL] VINSON [of Georgia]: Mr. Speaker, I send to the desk a privileged resolution and ask for its immediate consideration.
>
> The Clerk read the resolution as follows:
>
> H. RES. 567
>
> *Resolved*, That Honorable Carl Albert . . . is hereby elected Speaker pro tempore during the absence of the Speaker. . . .
>
> The resolution was agreed to.

Similar proceedings have taken place in other Congresses. Thus,

2. 109 CONG. REC. 22015, 88th Cong. 1st Sess., Nov. 18, 1963.

in the 85th Congress, on Apr. 15, 1958, Majority Leader John W. McCormack, of Massachusetts, Speaker pro tempore by designation, requested the majority whip, Carl Albert, of Oklahoma, to assume the Chair.[3] After Mr. Albert assumed the Chair, a resolution was agreed to electing the Majority Leader Speaker pro tempore during the absence of the Speaker.

Request for Division of Question

§ 23.7 The minority whip requested a division of the question on the resolution electing House officers.

On Jan. 10, 1967, following the introduction of the resolution relating to the election of House officers, the Republican Conference Chairman announced that he intended to offer a substitute for the resolution. In response to an inquiry from the Chair as to whether a division of the question was desired, Mr. Leslie C. Arends, of Illinois, the Republican whip, made the request as follows:[4]

MR. ARENDS: Mr. Speaker, I request that there be a division of the question on the resolution so that we may have a separate vote on the Office of the Chaplain.

§ 24. Duties and Functions

It is frequently the province of the whip, as it is that of other leaders in the House, to perform duties of a ceremonial nature, make announcements respecting ceremonial or formal occasions, and extend various courtesies.

Resolution Thanking Speaker

§ 24.1 The minority whip, or someone acting for him, has customarily assumed the Chair to preside over the consideration of a resolution, offered at the end of a Congress, expressing the gratitude of the House for the manner in which the Speaker has performed the duties of the Chair.

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3. 104 CONG. REC. 6436, 85th Cong. 2d Sess. As to illustrative instances in which the minority whip has assumed the Chair to preside over proceedings of a ceremonial nature, see § 24.1, infra.

4. 113 CONG. REC. 27, 90th Cong. 1st Sess. The resolution naming the majority party's candidates for the offices of Clerk, Sergeant At Arms, Doorkeeper, Postmaster, and Chaplain is generally offered by the chairman of the majority caucus (see § 3.9, supra). Frequently, the chairman of the minority caucus or conference has offered a substitute for the resolution and at the same time requested a division of the question to allow a separate vote on the office of Chaplain (see § 3.9, supra).

The proceedings of Sept. 1, 1960, illustrative of honors accorded the Speaker at the end of a Congress, were as follows:[5]

> THE SPEAKER:[6] Will the gentleman from Illinois [Mr. Arends][7] kindly take the chair?
>
> Mr. Arends assumed the Chair as Speaker pro tempore. . . .
>
> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I offer a resolution (H. Res. 647) and ask for its immediate consideration.
>
> The Clerk read the resolution, as follows:
>
> > *Resolved*, That the thanks of the House are presented to the Honorable Sam Rayburn, Speaker of the House of Representatives, for the able, impartial, and dignified manner in which he has presided over the deliberations and performed the arduous duties of the Chair during the present term of Congress.

Similarly proceedings have taken place in other Congresses,[8] although on occasion another Member has been designated to act for the whip in presiding over the resolution.[9]

Committee to Notify President

§ 24.2 The majority whip has frequently been appointed to the committee to notify the President that Congress has assembled.

In the 90th[10] and 91st[11] Congresses, for example, the Speaker on each occasion appointed a committee comprised of the majority and minority floor leaders and the majority whip, to join with a similar committee from the Senate, to notify the President that a quorum of each House had assembled and the Congress was ready to receive any communication that the President might be pleased to make.[12]

Announcements or Requests Relating to Formal Occasions

§ 24.3 The party whips have on occasion made announcements or requests relating to formal occasions, visits by dignitaries, and the like.

The whips have made announcements respecting formal occasions. As an example, the minority whip, a member of the Joint Inaugural Committee, made an announcement on Jan. 16,

5. 106 CONG. REC. 19161, 19162, 86th Cong. 2d Sess.
6. Sam Rayburn (Tex.).
7. Mr. Leslie C. Arends (Ill.) was the minority whip.
8. See §§ 12.3, 21.9, supra.
9. See § 12.3, supra.
10. See 113 CONG. REC. 327, 328, 90th Cong. 1st Sess., Jan. 10, 1967.
11. See 115 CONG. REC. 35, 91st Cong. 1st Sess., Jan. 3, 1969.
12. See, for further discussion of the selection of the committee to notify the President, §§ 3.15, 21.4, supra.

1953,[13] respecting transportation arrangements on the occasion of the inauguration ceremonies.

On Apr. 29, 1957, the majority whip, Carl Albert, of Oklahoma, made a unanimous-consent request that it should be in order on a designated day for the Speaker to declare a recess for the purpose of receiving the President of the Republic of Viet Nam.[14]

Expressions of Courtesy

§ 24.4 The party whips have frequently made remarks in the House in recognition of particular events, or extended courtesies as appropriate.

Illustrative of the remarks made by the party whips in recognition of particular events were those made by the majority whip, Hale Boggs, of Louisiana, on the occasion of a visit by members of the Indian Parliament. The remarks in part were as follows:[15]

> MR. BOGGS: Mr. Speaker, one of the significant events of recent years has been the exchange of visits by the members of the free parliaments of the world. We are very fortunate today to have in our midst a distinguished delegation of parliamentarians from the great country of India. . . .

By way of further illustration, party whips have made appropriate remarks in the House on the occasion of consideration of a resolution commending John W. McCormack, of Massachusetts, on his length of service as Speaker,[16] on the occasion of the Parliamentarian's birthday,[17] and the like.

On the last day of the 89th Congress, the majority whip, Mr. Boggs, acting for the Majority Leader, praised the work of the Congress and its Members and employees;[18] yielded to others for similar remarks; and asked unanimous consent that the Majority Leader be permitted to extend his remarks, of a similar nature, in the Record.[19]

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13. 99 CONG. REC. 421, 83d Cong. 1st Sess.

14. 103 CONG. REC. 6127, 85th Cong. 1st Sess. For similar requests made by the Majority Leader, see § 21.22, supra.

15. 109 CONG. REC. 11746, 11747, 88th Cong. 1st Sess., June 26, 1963.

16. 116 CONG. REC. 17022, 17023, 91st Cong. 2d Sess., May 26, 1970.

17. 116 CONG. REC. 5710, 91st Cong. 2d Sess., Mar. 3, 1970 (remarks of Mr. Leslie C. Arends [Ill.]).

18. 112 CONG. REC. 28866–28868, 89th Cong. 2d Sess., Oct. 22, 1966.

19. 112 CONG. REC. 28867, 89th Cong. 2d Sess., Oct. 22, 1966.

§ 25. Allowances—Clerk-Hire Allowance

By statute,[20] a specified allowance is given for office personnel in the offices of the majority and minority whips, in addition to the clerk-hire allowances given to Members generally. Similarly, a statute[1] contains specific provisions relating to allowances for airmail and special delivery stamps in the offices of the majority and minority whips.

Allowances

§ 25.1 On occasion, the clerk-hire allowance of the whips has been increased, or new positions created in the offices of the whips, and payments authorized from the contingent fund of the House.

In the 83d Congress, a resolution was offered relating to the employment of administrative assistants in the offices of the majority and minority whips; the proceedings were as follows:[2]

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I offer a privileged resolution (H. Res. 147) and ask for its immediate consideration.

The Clerk read as follows:

Resolved, That in order to enable the majority whip and the minority whip each to employ an administrative assistant at a rate of basic compensation not to exceed $8,000 per annum, there shall be paid out of the contingent fund of the House, until otherwise provided by law, compensation for the employment of such administrative assistants.

The resolution was agreed to.

Similarly, on Mar. 9, 1965,[3] the following resolution relating in part to the compensation of administrative assistants to the party whips, was adopted:

H. RES. 258

Resolved, That, effective March 1, 1965, there shall be payable from the contingent fund of the House of Representatives, until otherwise provided by law, an amount which will permit the payment of basic compensation per annum, at a rate not in excess of the highest amount which, together with additional compensation authorized by law, will not exceed the maximum rate authorized by the Classification Act of 1949, as amended, to the administrative assistant of each of the following: . . .

(4) the majority whip of the House;

(5) the minority whip of the House . . .

As a further illustration, a resolution adopted on Jan. 26, 1966,[4]

20. 2 USC § 333.
1. 1. 2 USC § 42d.
2. 99 CONG. REC. 1219, 83d Cong. 1st Sess., Feb. 18, 1953.
3. 111 CONG. REC. 4405, 89th Cong. 1st Sess.
4. 112 CONG. REC. 1125, 89th Cong. 2d Sess.

authorized additional clerical help in the offices of, among others, the majority and minority whips, as follows.

H. RES. 690

Resolved, That effective February 1, 1966, there shall be paid out of the contingent fund of the House of Representatives, until otherwise provided by law, such sums as may be necessary for: . . .

(b) An additional position in the Office of the Majority Whip, the basic compensation of which shall be at a rate not to exceed $2,500 per annum.

(c) An additional position in the Office of the Minority Whip, the basic compensation of which shall be at a rate not to exceed $2,500 per annum.

CHAPTER 4

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Office suites, assignment of, § 6.1
Protection of Capitol by federal troops, § 1.2
Select committees, operation of House facility by, § 1.1
Speaker's lobby, use of, § 4.1
Visitors, Speaker's control over, § 5.1
Visitors in galleries, making reference to, §§ 5.3–5.5
Visitors in House office buildings, § 6.2

House Facilities and Capitol Grounds

A. INTRODUCTORY

§ 1. In General; Care, Protection and Use

The manner in which a particular facility of the House may be used is frequently regulated by a federal statute, federal judicial decision, House rule, or precedent of the House. The discussion in this chapter emphasizes those facilities that are regulated by one or more of the above. While the creation of several special select committees to oversee the management of certain designated House facilities is described below,[1] standing committee jurisdiction over the various House facilities is discussed elsewhere.[2]

Numerous statutory enactments[3] provide for the care, protection, and use of the Capitol building and grounds. The Architect of the Capitol[4] supervises the care and superintendence of the Capitol Building,[5] including care of the exterior,[6] repairs,[7] and in the House side of the Capitol the lighting, heating, and ventilating.[8] He also carries into effect the provision prohibiting the use of the Capitol rooms for private studios or works of art, without permission from the Joint Committee on the Library.[9]

Privately-owned works of art may not be exhibited in Statuary Hall, the Rotunda, nor in the corridors of the Capitol. 40 USC § 189 (1970). National Statuary Hall, however, may be used for ceremonies when special permission is given by the Speaker. See Ch. 36, infra.

The responsibility for policing the Capitol buildings and grounds is vested in the Capitol Police, under the direction of the Capitol Police Board.[10] On several ex-

1. See § 1.1, infra.
2. See Ch. 17, infra.
3. See 40 USC §§ 161–217a.
4. For a description of the powers and duties of the Architect of the Capitol see 40 USC § 162 (1970).
5. 40 USC § 163 (1970).
6. 40 USC § 163a (1970).
7. 40 USC § 166 (1970).
8. 40 USC § 167 (1970).
9. 40 USC § 190 (1970).
10. 40 USC § 212a (1970). The Capitol Police Board consists of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol. 40 USC § 212a (1970).

traordinary occasions, however, Federal troops have been called to protect the Capitol.[11]

The protection of the Capitol building and grounds[12] is regulated by statutory provisions[13] that limit the conduct and activities which are permitted to occur there. Public use of the Capitol grounds is generally confined to paved areas,[14] and the roads on the grounds may not be occupied in such manner as to obstruct or hinder their proper use.[15] Sales and solicitations are forbidden, as are advertising displays.[16] A provision also makes punishable climbing upon, removing or damaging any property or plant life on the Capitol grounds.[17] The unauthorized presence upon the floor of either House, in the gallery of either House, or in any room within any of the Capitol buildings designated for the use of any Member, committee, subcommittee, or employee of either House of Congress is statutorily prohibited.[18]

11. See § 1.2, infra.
12. The area comprising the Capitol grounds is described at 40 USC § 193a (1970).
13. 40 USC §§ 193a–193m (1970).
14. 40 USC § 193b (1970).
15. 40 USC § 193c (1970).
16. 40 USC § 193d (1970).
17. 40 USC § 193e (1970).
18. 40 USC § 193f(b)(1)–(3) (1970).

Creation of Select Committees

§ 1.1 The House sometimes creates a special select committee to manage or oversee the operation of a designated House facility.

On Dec. 6, 1967,[19] the House adopted a resolution creating a select committee to manage the House Beauty Shop. The resolution vested complete managerial authority in the three-member committee, which was to be appointed by the Speaker. The select committee was made permanent by Pub. L. No. 91–145 (83 Stat. 347).

The House has adopted similar resolutions on several other occasions. In the 90th Congress[20] the House adopted a resolution creating a select committee to regulate parking on the House side of the Capitol. In the 91st Congress[1] the House established a select committee to oversee the management of the House Restaurant.[2]

19. 113 Cong Rec. 35143, 90th Cong. 1st Sess.
20. 113 Cong. Rec. 17791, 17792, 90th Cong. 1st Sess., June 28, 1967.
1. 115 Cong. Rec. 19080, 19081, 91st Cong. 1st Sess., July 10, 1969.
2. The responsibility for the management of the House Restaurant is, by statute, vested in the Architect of the Capitol. 40 USC § 174k (1970).

Protection of Capitol by Federal Troops

§ 1.2 Federal troops have been called upon to guard the Capitol and its facilities on several extraordinary occasions.

On Apr. 5, 1968, in response to the widespread civil disorder that arose in the District of Columbia following the assassination of Dr. Martin Luther King in Memphis, Tennessee, the preceding day, President Lyndon B. Johnson issued an executive order[3] authorizing the Secretary of Defense to mobilize National Guard Troops and to order regular armed forces into the District of Columbia to restore law and order, protect government property and prevent interference with governmental activities. The Capitol was one of the first areas secured when the troops arrived on Friday, Apr. 5. Troops remained on duty at the Capitol until Friday, Apr. 12, when they were withdrawn on order of the Secretary of Defense.

The deployment of troops was in accordance with the Emergency Plan for Protection of the Capitol, which had been previously approved by the Speaker of the House and the Vice President of the United States. Specific authority was neither requested by nor received from the Speaker or other Capitol officials prior to the assignment of troops to guard the Capitol.

On Feb. 25, 1943,[4] Speaker Sam Rayburn, of Texas, from the floor of the House, defended his policy of having the Capitol protected by federal soldiers for a time during World War II:

> Mr. Speaker, I am utterly amazed at my colleague from Minnesota, a man usually of splendid judgment and absolute fairness.
>
> We have on this hill $180,000,000 worth of property. . . .
>
> . . . It happens to be the business of the Speaker of the House of Representatives to protect the property on this hill, and it cannot be protected by a few Metropolitan Police. . . . [S]ome day or some night somebody may come into this building and destroy a million dollars worth of property. As long as I have the responsibility, I am going to keep somebody here to protect these buildings.

The Committee on House Administration has jurisdiction of measures relating to the House Restaurant. Rule XI clause 9(1), *House Rules and Manual* § 693 (1973). The Select Committee on the House Restaurant, which supervises the operation of the restaurant, now operates under the authority of the Committee on House Administration. *House Rules and Manual* § 695 (1973).

3. Executive Order No. 11403, 33 Fed. Reg. (1968).

4. 89 CONG. REC. 1324, 78th Cong. 1st Sess.

§ 2. Demonstrations and Disturbances

Federal statutory provisions[5] make violent, disorderly or disruptive acts in the Capitol building or on the Capitol grounds unlawful, as well as prohibiting all unauthorized demonstrations. The unauthorized possession or use on the Capitol grounds of any firearm, dangerous weapon, explosive, or incendiary device is unlawful.[6] The unauthorized presence of any person or any group of persons upon the floor or in the gallery of either House of Congress is a violation of federal statutory law, as is unauthorized presence in any room within any of the Capitol buildings set aside or designated for the use of either House of Congress or any Member, committee, subcommittee, officer, or employee of either House of Congress, with the intent to disrupt the orderly conduct of official business.[7] It is also unlawful to willfully and knowingly utter abusive language at any place upon the Capitol grounds with the intent to disturb the orderly conduct of any session of either House of Congress, including committee or subcommittee hearings; to impede passage through or within the Capitol grounds or Capitol buildings; to engage in any act of physical violence upon the Capitol grounds or within any of the Capitol buildings; or to parade, demonstrate, or picket within any of the Capitol buildings.[8]

On Nov. 6, 1972,[9] the Supreme Court ruled that section 193g of title 40 unconstitutionally abridges the first amendment right to assemble and petition the government. Section 193g provides:

> It is forbidden to parade, stand, or move in processions or assemblages in said United States Capitol Grounds, or to display therein any flag, banner, or device designed or adapted to bring into public notice any party, organization, or movement, except as hereinafter provided in sections 193j and 193k of this title.

Sections 193j and 193k provide that on "proper occasions" the prohibitions contained in sections 193b-193g may be suspended by the President of the Senate and the Speaker of the House, or in their absence by the Capitol Police Board.

The Jeannette Rankin Brigade, a coalition of women against the

5. 40 USC §§ 193f and 193g (1970).

6. 40 USC § 193f(a)(1) (1970).

7. 40 USC § 193f(b)(1)–(3) (1970).

8. 40 USC § 193f(b)(4)–(7) (1970).

9. *Chief of Capitol Police* v *Jeannette Rankin Brigade,* 409 U.S. 972 (Nov. 6, 1972).

war in Vietnam, and 58 individual women filed a complaint in the United States District Court for the District of Columbia on Jan. 8, 1968, following the refusal by the Capitol Police Board to permit them to carry out a planned march on the Capitol grounds to protest the war. The three-judge court balanced the plaintiffs' right to assemble and petition the government under the First Amendment against the interests of maintaining the serenity of the Capitol grounds and concluded:

> While some substantial governmental interests in the Capitol Grounds may warrant protection, none have been alleged which are sufficiently substantial to override the fundamental right to petition "in its classic form" and to justify a blanket prohibition of all assemblies, no matter how peaceful and orderly, anywhere on the Capitol Grounds.[10]

The court refused to rewrite the provision to make it consistent with the First Amendment rights of the plaintiffs, stating that under the concepts embodied in the separation of powers doctrine, such a function is more appropriately to be performed by Congress.[11]

The defendants took a direct appeal from the decision of the District Court to the Supreme Court. The Supreme Court, acting without a hearing and with no written opinion, affirmed the decision of the District Court holding section 193g to be unconstitutional.[12]

On Mar. 1, 1954,[13] an extraordinary incident occurred in the House Chamber. A discharge of firearms from the House Gallery interrupted the counting of a division vote on a resolution relating to the supplying of agricultural workers from Mexico. Four Puerto Rican terrorists in Gallery Eleven fired an estimated 20 to 30 pistol shots downward into the crowd of Members on the floor. Five Members were wounded. All five of the wounded Members were discharged from the hospitals by the end of May, 1954.

The four assailants were identified by police as belonging to the Puerto Rican Nationalist Party. They were brought to trial in the U.S. District Court for the District of Columbia. Three of the four were sentenced to serve a total of from 25 to 75 years in prison, while the fourth was sentenced to serve from 16 years and months to 50 Years.

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10. *Jeannette Rankin Brigade* v *Chief of Capitol Police, 342 F Supp 575, 585 (D.D.C. 1972).*

11. 342 F SUPP at 587.

12. *Chief of Capitol Police* v *Jeannette Rankin Brigade,* 409 U.S. 972 (Nov. 6, 1972).

13. 100 CONG. REC. 2434, 83d Cong. 2d Sess.

§ 3. Hall of the House

Under House Rule I clause 3, the Speaker has "general control . . . of the Hall of the House."[14] A more specific provision dealing with the use of the House Chamber, however, is Rule XXXI:

> The Hall of the House shall be used only for the legislative business of the House and for the caucus meetings of its Members, except upon occasions where the House by resolution agrees to take a part in any ceremonies to be observed therein; and the Speaker shall not entertain a motion for the suspension of this Rule.[15]

The House has been very reluctant to permit the Chamber to be used for other than legislative purposes. An occasion on which the House permitted the Chairman of the Isthmian Canal Commission to address the House, relative to the construction of the Panama Canal, was characterized as "[a]n exceptional instance in which the Hall of the House was used for other than legislative business." 8 Cannon's Precedents § 3632.

Members may not entertain guests in the Hall,[16] but caucus meetings of Members are sometimes held in the Chamber, as Rule XXXI specifically authorizes them.[17] Occasionally the House votes to participate in ceremonies to be held in the Hall.[18]

It is in violation of the common law of the House for a visitor, without authorization, to photograph the House Chamber.[19] However, the House, by resolution, sometimes permits special groups, such as historical societies, to photograph the House in session,[20] and the Speaker usually permits a photograph of the House in session to be taken on the first day of each Congress.[1]

Use of House Chamber

§ 3.1 The House Chamber is occasionally used for certain meetings of Members.

On Jan. 10, 1947,[2] an announcement was made in the House concerning a meeting to be

14. *House Rules and Manual* § 623 (1973).

15. *House Rules and Manual* § 918 (1973).

16. § 3.2, infra.

17. § 3.1, infra.

18. See Ch. 36, infra.

19. See § 3.5, infra.

It is not necessary, however, to clear the gallery when one visitor is violating the rules by taking pictures. The Speaker may order the offending party to leave the gallery. See § 5.7, infra.

20. See § 3.5, infra.

1. See § 3.5, infra.

2. 93 Cong. Rec. 255, 80th Cong. 1st Sess.

held in the House Chamber for the veterans of all wars who were Members of the House at that time. The stated purpose of the meeting was the reorganization of a veterans' group, and this meeting, as well as all future ones, was to be nonpolitical, social, and educational in character.

§ 3.2 Permission to use the Hall of the House for purposes of entertainment will ordinarily be refused.

On Feb. 14, 1955,[3] Speaker Sam Rayburn, of Texas, after reading the text of Rule XXXI, made the following remarks concerning the use of the Hall of the House:

> A great many Members have asked the Parliamentarian and the present occupant of the chair about the use of the Hall of the House of Representatives. At any time in the future when any Member desires to entertain a group except Members of the House of Representatives it will be held that the caucus room is open for that purpose, but not the Hall of the House of Representatives.

On June 18, 1934,[4] the House adopted a resolution forbidding certain entertainment, which was to be broadcast over radio, to be held in the House Chamber immediately after the adjournment of Congress.

§ 3.3 The House controls the use of its Chamber even after it adjourns for a session.

On June 18, 1934,[5] a resolution was introduced to prevent the use of the House Chamber after the adjournment of Congress for certain entertainment which was to be broadcast over radio. A Member then raised the point of order that the resolution was not privileged, because it was contemplated that the entertainment would be held after the adjournment of the House. The Speaker[6] rendered the following ruling on the point of order:

> The object of the resolution is to reach something which might occur after the adjournment of the House, but the Chair thinks it is a close question. The House controls the use of its own Chamber even after it adjourns; therefore the Chair prefers to submit the question to the House.

The previous question was then ordered, and the resolution was agreed to.

§ 3.4 On one occasion the House authorized a special group to use the House Chamber when the House was not in session.

3. 101 Cong. Rec. 1512, 84th Cong. 1st Sess.

4. 78 Cong. Rec. 12567, 73d Cong. 2d Sess.

5. *Id.*

6. Henry T. Rainey (Ill.).

On Aug. 1, 1953,[7] the House by unanimous consent considered and adopted the following resolution:

> *Resolved*, That the consent of the House is hereby granted for the use by the Interparliamentary Union of the Hall of the House of Representatives, and such committee rooms in the Capitol and the House Office Buildings as the Speaker may direct, for its session in the year 1953, during the month of October: *Provided, however,* That this consent shall not be binding if the Congress shall be in session when the said Interparliamentary Union shall convene: *And provided further,* That such use shall be subject to the control and management of the officers of the House.

Photographing the House Chamber

§ 3.5 Visitors may not, without authorization, photograph the House Chamber.

Parliamentarian's Note: Under the practice of the House, permission must be obtained before photographs may be taken inside the House Chamber. Permission may take the form of a House resolution similar to the one which permitted the United States Capitol Historical Society to photograph the House in session.[8]

The Speaker traditionally permits certain photographers to take photographs at the opening session of each new Congress, provided that they do so in accordance with carefully drawn guidelines. Occasionally members of the news media have violated these guidelines. At the opening session of the 91st Congress, members of the news media violated the restrictions by taking pictures during the period when the kleig lights were turned out. Speaker McCormack called this matter to the attention of the news media galleries and requested a report from each on the action taken by them with respect to the violations of the regulations as well as the provisions they were making to prevent such violations in the future.[9]

On Jan. 14, 1946, photographers violated the guidelines by taking a picture of the House in session before the initial quorum call. The photograph, showing approximately 60 Members present in the Chamber, was published in newspapers throughout the country, along with a caption berating Congress for not attending to duties at the beginning of the ses-

7. 99 Cong. Rec. 10917, 83d Cong. 1st Sess.

8. See 110 Cong. Rec. 3224, 88th Cong. 2d Sess., Feb. 20, 1964.

9. See the statement by Speaker John W. McCormack (Mass.) at 115 Cong. Rec. 145, 91st Cong. 1st Sess., Jan. 6, 1969.

sion. See the statement by Speaker pro tempore John W. McCormack, of Massachusetts, at 92 CONG. REC. 20, 79th Cong. 2d Sess., Jan. 14, 1946.

§ 4. Admission to House Floor

House Rule XXXII clause 1[10] enumerates those persons entitled to be admitted to the floor or rooms leading thereto,[11] while the House is in session:

> 1. The persons hereinafter named, and none other, shall be admitted to the Hall of the House or rooms leading thereto, viz: The President and Vice President of the United States and their private secretaries, judges of the Supreme Court, Members of Congress and Members-elect, contestants in election cases during the pendency of their cases in the House, the Secretary and Sergeant-at-Arms of the Senate, heads of departments, foreign ministers, governors of States, the Architect of the Capitol, the Librarian of Congress and his assistant in charge of the Law Library, the Resident Commissioner to the United States from Puerto Rico, each Delegate to the House, such persons as have, by name, received the thanks of Congress, ex-Members of the House of Representatives who are not interested in any claim or directly in any bill pending before Congress, elected officers and elected minority employees of the House (other than Members), the Parliamentarian and former Parliamentarians of the House, former elected officers and former elected minority employees of the House (other than ex-Members) who are not interested in any claim or directly in any bill pending before Congress, and clerks of committees when business from their committee is under consideration; and it shall not be in order for the Speaker to entertain a request for the suspension of this rule or to present from the chair the request of any Member for unanimous consent.

Rule XXXII clause 2 sets forth the conditions under which persons may be admitted to the floor when the House is not in session:

> There shall be excluded at all times from the Hall of the House of Representatives and the cloakrooms all persons not entitled to the privilege of the floor during the session, except that until fifteen minutes of the hour of the meeting of the House persons employed in its service, accredited members of the press entitled to admission to the press gallery, and other persons on request of Members, by card or in writing, may be admitted.

The provision that prohibits the Speaker[12] from entertaining a request for the suspension of Rule XXXII has been rigidly enforced during regular sessions.[13]

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10. *House Rules and Manual* § 919 (1973).

11. See § 4.1, infra.

12. This provision in Rule XXXII clause 1 is equally applicable to the Chairman of the Committee of the Whole. 5 Hinds' Precedents § 7285.

13. See § 4.2, infra; 5 Hinds' Precedents § 7284.

On the occasion of ceremonies, however, the provision is construed more broadly.[14]

At joint meetings of Congress, although Rule XXXII is observed, it is recognized under the customs and practices of the House that one of the purposes of a joint meeting is to permit selected people who do not have floor privileges to come upon the floor.[15]

Several of the classes of persons entitled to floor privileges under Rule XXXII have been further defined in rulings by the Chair. "Contestants" in election contests have been granted the privilege of the House floor even though they were not themselves candidates in the general election.[16] A concurrent resolution expressing the thanks of Congress does not entitle the recipient to floor privileges under Rule XXXII. The expression of thanks must be in the form of an act of Congress,[17] and the recipient must be named.[18] The type of interest in the legislation under consideration that is sufficient to disqualify an ex-Member from the privilege of the floor has been interpreted on several occasions.[19]

The rule has been interpreted so as to exclude from the privilege of the floor clerks other than those employed by the committee in charge of the bill under consideration.[20] Similarly, floor privileges are not extended to employees of

14. Illustrative of this point is an occurrence described in 5 Hinds' Precedents § 7290. On Dec. 19, 1894, Speaker Charles F. Crisp (Ga.) submitted a unanimous-consent request that a State Governor and his staff be admitted to the floor during a ceremony the following day, despite the provision in Rule XXXII that prohibits submission of such requests. The Speaker considered the rule to apply only when the House was engaged in the transaction of ordinary business.

15. See § 4.4, infra. But see 5 Hinds' Precedents § 9272, which states that the rule relating to admission to the floor does not apply to joint sessions of the two Houses.

16. See § 4.5, infra.

17. See § 4.6, infra.

18. 8 Cannon's Precedents § 3638.

19. Speaker Sam Rayburn (Tex.) held that employment by an organization with a direct interest in the legislation under consideration was sufficient. For an interpretation of this provision by a committee of Congress, see 5 Hinds' Precedents § 7289.

20. 8 Cannon's Precedents § 3636.

Rule XXXII, which permits clerks of committees access to the floor during the consideration of business from their committee, has been interpreted by the Speaker to allow only a limited number of clerks on the floor at one time. 118 CONG. REC. 20318, 92d Cong. 2d Sess., June 8, 1972.

an executive department who have assisted the committee in the preparation of the bill under consideration.[1] United States Senators have been held not to possess the privilege of addressing the House, although they may be present on the House floor.[2]

In addition to the floor privileges granted under Rule XXXII, certain representatives of the press and broadcast media may be admitted to the floor under House Rule XXXIV:

> 2. . . . [A]nd the Speaker may assign one seat on the floor to Associated Press reporters and one to United Press International, and regulate the occupation of the same. And the Speaker may admit to the floor, under such regulations as he may prescribe, one additional representative of each press association.[3]
>
> 3. . . . [A]nd the Speaker may admit to the floor, under such regulations as he may prescribe, one representative of the National Broadcasting Company, one of the Columbia Broadcasting System, one of the Mutual Broadcasting System, and one of the American Broadcasting Company.[4]

The House may grant to someone not entitled to floor privileges under the House rules the rare honor of special admission to the privileges of the floor for a regular session of the House. This has been done, however, only on several early occasions.[5]

The Doorkeeper, as part of his general duties,[6] enforces strictly the rules relating to the privileges of the Hall of the House[7] and allows no person to enter the room over the Hall while the House is in session.[8]

He also sees that the floor is cleared of all persons without floor privileges 15 minutes before each meeting of the House and for 10 minutes after adjournment.[9]

An alleged violation of the rules relating to admission to the floor presents a question of privilege.[10]

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1. 6 Cannon's Precedents § 579.

2. See § 4.8, infra.

3. *House Rules and Manual* § 930a (1973).

4. *Id.*

5. On Feb. 10, 1870, the privileges of the floor for a day were extended to John Kitts, a Revolutionary War soldier, who had seen the surrender of Cornwallis. 5 Hinds' Precedents § 7293. On Jan. 8, 1844, the House extended the privileges of the floor to the widow of President Madison. 5 Hinds' Precedents § 7081.

6. For a more detailed discussion of the duties of the Doorkeeper, see Ch. 6, infra.

7. Rule V clause 1, *House Rules and Manual* § 651 (1973).

8. Rule V clause 2, *House Rules and Manual* § 653 (1973).

9. Rule V clause 2, *House Rules and Manual* § 653 (1973).

10. 6 Cannon's Precedents § 579.3 Hinds' Precedents §§ 2624–25.

Rooms Adjacent to Floor

§ 4.1 Persons who are not entitled to floor privileges under Rule XXXII may not be admitted to the "Hall of the House or rooms leading thereto," which include the cloakroom and the Speaker's lobby.

On Oct. 2, 1945,[11] the following proceedings occurred:

> MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[12] The gentleman will state it.
>
> MR. KEEFE: Mr. Speaker, rule XXXII of the Rules of the House of Representatives reads, in part:
>
> > The persons hereinafter named and none other shall be admitted to the halls of the House or rooms leading thereto. . . .
>
> . . . [D]oes the language "or rooms leading thereto" include the lobby and reading room adjacent to the House floor?
>
> THE SPEAKER: The Chair may say to the gentleman from Wisconsin [Mr. Keefe] that the present occupant of the Chair has always been very jealous of all the rules of the House, and especially this one.
>
> The Chair thinks that no person who is not named in the rule should have the privilege of the floor of the House of Representatives or to the cloakroom or to the Speaker's lobby, so-called, where Members and the newspaper folk and others that are privileged to be in there confer.

Suspension of Rule Relative to Floor Privileges

§ 4.2 The Chair may not entertain a request to suspend Rule XXXII, which enumerates those persons entitled to admission to the House floor.

On Mar. 25, 1940,[13] prior to the consideration of a bill to provide revenue for the District of Columbia, the following unanimous-consent request was made:

> MR. [JACK] NICHOLS [of Oklahoma]: . . . First, Mr. Speaker, I ask unanimous consent that an expert who has aided this committee in the preparation of this bill be permitted to sit at the committee table.
>
> MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Reserving the right to object, Mr. Speaker, I am afraid this would be establishing quite a precedent. It is contrary to the rules of the House.
>
> MR. NICHOLS: I may say to the gentleman from Massachusetts that when similar bills were considered on two previous occasions on the floor of the House the same request was made and agreed to. Certainly there is precedent for such action in the House.
>
> THE SPEAKER:[14] The Chair observes that under the rules the Chair cannot entertain such a request.

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11. 91 CONG. REC. 9251, 79th Cong. 1st Sess.

12. Sam Rayburn (Tex.).

13. 86 CONG. REC. 3359, 76th Cong. 3d Sess.

14. William B. Bankhead (Ala.).

MR. NICHOLS: Similar requests have been submitted and granted when previous tax bills have been under consideration, Mr. Speaker.

THE SPEAKER: Rule XXXIII [now Rule XXXII], which enumerates those persons entitled to the floor, provides, in part, as follows:

> It shall not be in order for the Speaker to entertain a request for the suspension of this rule or to present from the Chair the request of any Member for unanimous consent.

This is the general rule relating to admission to the floor of the House.

Of course, personally, the Chair has no feeling in the matter. Although it may have been done heretofore, the attention of the Chair was not called to it.

Joint Sessions of Congress

§ 4.3 Prior to a scheduled joint meeting of Congress, the Speaker frequently announces that only persons with floor privileges will be admitted to the floor during the joint meeting.

The following announcement, made by Speaker John W. McCormack, of Massachusetts, on Jan. 10, 1967,[15] is typical:

THE SPEAKER: The Chair desires to make an announcement.

After consultation with the majority and minority leaders, and with their consent and approval, the Chair announces that at the time set for the joint session to hear an address by the President of the United States, only the doors immediately opposite the Speaker and those on his left and right will be open. No one will be allowed on the floor of the House who does not have the privileges of the floor of the House. The Chair suggests that ex-Members of the House seat themselves in the folding chairs so that sitting Members may find their accustomed places in the Chamber.

Parliamentarian's Note: On Apr. 14, 1948, Speaker Joseph W. Martin, Jr., of Massachusetts, addressed a letter to all Members of the House suggesting that they refrain from attempting to bring children or relatives on the floor, during the upcoming celebration of the 50th anniversary of the liberation of Cuba.

§ 4.4 Although Rule XXXII, which enumerates those persons entitled to floor privileges, is observed at joint meetings of Congress, it is recognized that under the customs and practices of the House, one of the purposes of a joint meeting is to permit people who do not have the privilege of the floor to come upon the floor.

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15. 113 CONG. REC. 34, 35, 90th Cong. 1st Sess. For further illustrations see 111 CONG. REC. 27, 89th Cong. 1st Sess., Jan. 4, 1965; 107 CONG. REC. 1340, 87th Cong. 1st Sess., Jan. 26, 1961; 97 CONG. REC. 4072, 82d Cong. 1st Sess., Apr. 18, 1951.

On Feb. 24, 1970,[16] the following parliamentary inquiry was raised:

MR. [BERTRAM L.] PODELL [of New York]: Mr. Speaker, I should like to make a parliamentary inquiry.

THE SPEAKER:[17] The gentleman will state his parliamentary inquiry.

MR. PODELL: I should like to know whether or not on tomorrow, at 12:30, during the address by President Pompidou to the joint meeting of the House of Representatives and the Senate, whether Rule 32 of the Rules of the House of Representatives relating to admissions to the floor will be recognized, or whether those rules will be suspended?

THE SPEAKER: The answer to that is that the rule will be recognized, but the purpose of the joint meeting is to receive the visitor who will come to the House Chamber. The Chair will follow the rules of the House.

MR. PODELL: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. PODELL: I should like to know whether or not rule 32, which relates to the restriction of those people to be admitted to the floor, will be observed tomorrow, or whether it will be suspended because it is a joint meeting or because the House is in recess?

THE SPEAKER: The Chair will state that one of the purposes of a joint meeting is to permit people who do not have the privilege of the floor to come upon the floor.

MR. PODELL: . . . I shall read to you [rule] 32 of the Rules of the House of Representatives relating to admission to the floor.

The persons hereinafter named, and none other, shall be admitted to the Hall of the House or rooms leading thereto, viz: The President and Vice President of the United States and their private secretaries, judges of the Supreme Court, Members of Congress and Members-elect. . . .

It continues on with a few more categories, and it says that no other person shall be admitted to the floor and the Speaker may not request such permission under the appropriate provisions.

THE SPEAKER: In further response to the gentleman's inquiry, the Chair will follow the customs and the practices of the House when there is a joint meeting taking place.

Contestants in Election Contests

§ 4.5 On one occasion challengers in an election contest were considered to be "contestants" who were entitled to floor privileges pursuant to Rule XXXII during the pendency of their case, even though they had not been candidates in the election in which the sitting Members were re-elected.

Parliamentarian's Note: On Sept. 16, 1965, three of the five representatives of the Mississippi Freedom Democratic Party who

16. 116 CONG. REC. 4546, 91st Cong. 2d Sess.

17. John W. McCormack (Mass.).

were contesting the re-election of the five sitting Members of the House from Mississippi, requested permission from the Speaker to be present on the floor the following day for the debate relative to their cases. Under Rule XXXII, "contestants in election cases during the pendency of their cases in the House"[18] are entitled to floor privileges. Since none of the challengers had been actual candidates in the congressional elections the previous November, however, their status as "contestants" within the meaning of Rule XXXII was in doubt. The challengers had been defeated in the Democratic primary, and state law had not permitted them to be candidates in the general election. They alleged that the State of Mississippi had systematically excluded blacks from the electoral process, and that the election was therefore without constitutional validity. The Speaker[19] noting that both the resolution dismissing the election contests (H. Res. 585) and the report of the Committee on House Administration (H. Rept. No. 1008, 89th Cong. 1st Sess. [1965]), referred to the petitioners as contestants, ruled that they were "contestants" within the meaning of Rule XXXII, and were therefore entitled to be present on the floor during the consideration of their challenges.[20]

Recipients of Congressional Appreciation

§ 4.6 A concurrent resolution expressing the thanks of Congress, because it is not an act of Congress, is not sufficient to bestow floor privileges, under Rule XXXII.

Parliamentarian's Note: The House, on July 20, 1962,[1] and the Senate, three days later,[2] passed a concurrent resolution (H. Con. Res. 347) expressing the thanks of Congress to General of the Army, Douglas MacArthur. In response to an informal inquiry, the Parliamentarian, on Aug. 10, 1962, informed a Member that while Rule XXXII extends floor privileges to "such persons as have, by name, received the

18. Rule XXXII clause 1, *House Rules and Manual* § 919 (1973).

19. John W. McCormack (Mass.).

20. For a Member's statement during the debate on the resolution dismissing the election contests acknowledging the presence of the three contestants on the floor, see 111 CONG. REC. 24267, 24268, 89th Cong. 1st Sess., Sept. 17, 1965.

1. 108 CONG. REC. 14329, 87th Cong. 2d Sess.

2. 108 CONG. REC. 14528, 87th Cong. 2d Sess., July 23, 1962.

thanks of Congress,"[3] the concurrent resolution passed in favor of General MacArthur was not an act of Congress and did not bestow the privilege.

Ex-Members of the House

§ 4.7 An ex-Member who has a direct interest in a bill pending before Congress or who is in the employ of an organization with such an interest may not enjoy the privilege of the floor during pendency thereof that is normally afforded ex-Members by Rule XXXII.

On Oct. 1, 1945, a former Member, Winder Harris, was present at the majority table while the House was considering a ship-sales bill. [*Parliamentarian's Note:* Winder Harris was at the time an officer in a ship-building firm.] The following day,[4] the propriety of his presence was questioned:

> MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER:[5] The gentleman will state it.
>
> MR. KEEFE: Mr. Speaker, rule XXXII of the Rules of the House of Representatives reads, in part:
>
> > The persons hereinafter named and none other shall be admitted to the halls of the House or rooms leading thereto.
>
> Then follows a list of those permitted, including:
>
> > Ex-Members of the House of Representatives who are not interested in any claim or directly in any bill pending before the Congress.
>
> . . . [D]oes the quoted rule bar from the halls of the House or rooms leading thereto ex-Members of Congress who are in the employ of organizations, corporations, or individuals that have a direct interest in the defeat or passage of a bill pending and under debate in the House?
>
> THE SPEAKER: The Chair may say to the gentleman from Wisconsin [Mr. Keefe] that the present occupant of the chair has always been very jealous of all the rules of the House, and especially this one. The Chair thinks that not even an ex-Member of Congress when he has a bill he is personally interested in that is coming up for consideration in the House nor any ex-Member of the House who is in the employ of an organization that has legislation before the Congress should be allowed the privilege of the House or the rooms that . . . constitute a part of the House of Representatives.

United States Senators

§ 4.8 Since United States Senators have the privilege of the floor, but not the privilege of addressing the House, the Speaker will not recognize a Member who wishes to

3. Rule XXXII clause 1, *House Rules and Manual* § 919 (1973).
4. 91 CONG. REC. 9251, 79th Cong. 1st Sess., Oct. 2, 1945.
5. Sam Rayburn (Tex.).

request unanimous consent for consideration of a resolution inviting Members of the Senate to address the House; such a resolution will be referred to the proper committee.

On Oct. 11, 1943,[6] after several Members expressed a desire that the House invite five Members of the Senate, who had just returned from the war fronts to address the House, Speaker Sam Rayburn, of Texas, made a statement on the subject, which was followed by several clarifying parliamentary inquiries:

> The Chair does not intend to recognize a Member to ask unanimous consent for the present consideration of a resolution inviting Senators to address the House in open or executive session, because the Chair thinks that is tantamount to an amendment to the rules of the House and, therefore, is a matter for the House to determine. If resolutions like that are introduced, they will be sent to the proper committee.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: A parliamentary inquiry, Mr. Speaker.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. RANKIN: Of course, the Speaker has a right to refuse to recognize me for that purpose, but I think if the Speaker will investigate the rules he will find that we have a right to invite those men to come here to address the Members in the House.
>
> THE SPEAKER: The Chair has already investigated that and finds it is otherwise. Members of the Senate have the privilege of the floor, but they do not have the privilege of addressing the House of Representatives.
>
> MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. HOFFMAN: Would it be within the rules to have a recess, as we do when foreign potentates and rulers come here, and have the Senators come over and talk to us?
>
> THE SPEAKER: If the House stands in recess at that time.

B. HOUSE GALLERIES AND BUILDINGS

§ 5. Galleries

The House rules vest in the Speaker control over the galleries in the House Chamber. Under Rule XXXII[7] the Speaker is responsible for assigning sections of the galleries. He sets aside a portion of the West Gallery for the President of the United States,

6. 89 CONG. REC. 8197, 8198, 78th Cong. 1st Sess.

7. *House Rules and Manual* § 922 (1973).

cabinet members, Supreme Court Justices, foreign ministers and suites, and their respective families and another portion for persons to be admitted on the card of Members. The southerly half of the East Gallery is assigned for the use of Members' families. Representatives of the press[8] and broadcast media[9] are each entitled to have a portion of the gallery set aside for their use, subject to such regulations as the Speaker may prescribe. Supervision of these two portions of the gallery, including the designation of employees, is vested respectively in a standing committee of press correspondents and a second committee, the Executive Committee of the Radio and Television Correspondents' Gallery. Both of these committees, however, are subject to the direction and control of the Speaker.[10]

The Speaker, when he deems it necessary to protect the Members' and the Houses' facilities, may order special admission cards for the galleries or a search of visitors.[11] As part of his regular duties under Rule I,[12] the Speaker preserves order and decorum in the galleries, and in the case of disturbance or disorderly conduct, he may order the galleries cleared.[13] When the House has resolved itself into the Committee of the Whole, the Chairman may exercise similar power in preserving order in the galleries.[14]

The Doorkeeper frequently distributes tickets for admission to the galleries on special occasions.[15] Sometimes the House, by resolution, makes a special rule for admission to the galleries on the occasion of the electoral count[16] or some other occurrence of great interest.[17]

Rule XIV clause 8[18] prohibits a Member, while the House is in session, from introducing to or bringing to the attention of the House any occupant in the galleries. The Speaker may not entertain a request for the suspension of this rule by unanimous consent or otherwise,[19] and if it

8. Rule XXXII, *House Rules and Manual* §922 (1973).

9. Rule XXXIV clause 3, *House Rules and Manual* §930a (1973).

10. Rule XXXIV clauses 2 and 3, *House Rules and Manual* §§930 and 930a (1973).

11. See §5.1, infra.

12. *House Rules and Manual* §§621–634 (1973).

13. Rule I clause 2, *House Rules and Manual* §622 (1973).

14. Rule XXIII clause 1, *House Rules and Manual* §861 (1973).

15. See §5.2, infra.

16. 3 Hinds' Precedents §1961.

17. 5 Hinds' Precedents §7033.

18. *House Rules and Manual* §764 (1973).

19. Rule XIV clause 8, *House Rules and Manual* §764 (1973).

is violated without objection from the other Members present in the Chamber, he will invoke it on his own initiative.[20]

The rules and practices of the House do not permit visitors in the galleries to manifest their approval or disapproval of the proceedings on the floor by applause or otherwise.[1]

On occasions when circumstances have warranted it, announcements by the Chair admonishing visitors in the galleries not to applaud have usually been sufficient to restore order.[2] Under the customs and practices of the House, a visitor in the galleries may not, without authorization, photograph the House Chamber.[3] The Speaker may find that it is not necessary to clear the galleries when one visitor is violating the rule. He may just order the offending party to leave the House Chamber.[4]

Speaker's Control Over Admission of Visitors

§ 5.1 When the Speaker's responsibility to protect the Members and the facilities require it, he may order special admission cards for the galleries or a search of visitors.

On Feb. 23, 1942,[5] Speaker Sam Rayburn, of Texas, set forth the reasons for ordering the issuance of new gallery admission cards and the search of visitors entering the galleries:

> THE SPEAKER: One of the responsibilities of the Speakership is the protection of the Members and the places in which they work. This responsibility, of course, is a little more anxious one right now than in ordinary times, and anything that is done or any regulation that is issued is issued after the best and most competent advice the Speaker is able to get.
>
> Some time ago cards were issued and no one was allowed to come into the gallery without one. These cards have been outstanding for some time, and I am sorry to say they have been widely distributed, many of them mailed to distant points in the country. The Chair and those who advise him have decided that it is best to revoke all outstanding cards of admission to the galleries. New cards have been printed and will be distributed to the Members today and tomorrow, as the cards to the gallery outstanding will not be honored after Wednesday morning. . . .
>
> Another thing that those who advise me think is highly advisable is that

20. See § 5.3, infra.
1. See § 5.6, infra.
2. See § 5.6, infra
3. See § 3.5, supra.
4. See § 5.7, infra.
5. 88 CONG. REC. 1524, 77th Cong. 2d Sess.

the people entering any of the galleries, except the Members' gallery, submit themselves to search. This is thought wise and judicious by men who will be in the Capitol and who will be competent for the work.

I hope this may not seem too irksome to some of our people who may come to Washington. I am willing to take this responsibility for the reason that if a mishap occurs around the Capitol somebody has got to take the responsibility, and I am willing to share my part of it. So I hope the cards that will be issued in lieu of those outstanding may be handed in Washington to visitors and constituents of yours and not be mailed around the country.

Parliamentarian's Note: Following the shooting which occurred in the House Chamber on Mar. 1, 1954,[6] the Speaker canceled all outstanding gallery admission cards, effective the day following the shooting. New cards were printed for distribution the following day, with a request being made to all Members by the Speaker that gallery cards be issued only to persons who could be vouched for by each Member issuing the new cards.

Distribution of Gallery Tickets for Special Occasions

§ 5.2 The distribution of tickets for seats in the gallery for special occasions is the responsibility of the Doorkeeper of the House.

On Feb. 28, 1945,[7] a Member on the minority side made an inquiry of the Chair concerning the allocation of gallery tickets for an upcoming joint session of Congress. The Member alleged that the majority generally receives all of the approximately 100 tickets that remain after each Member of the House and Senate receives one ticket. In response, the Speaker pro tempore[8] declared that the tickets are distributed in a proper and equitable way, and stated that the matter was the responsibility of the Doorkeeper.

Reference by Members to Visitors Present in Galleries

§ 5.3 It is a violation of Rule XIV clause 8 to introduce or call attention to anyone in the galleries, and the Speaker, on his own initiative, will invoke this provision.

On Apr. 16, 1940,[9] the following proceedings occurred:

6. See § 2, supra.

7. 91 Cong. Rec. 1594, 1595, 79th Cong. 1st Sess.

8. John W. McCormack (Mass.).

9. 86 Cong. Rec. 4589, 76th Cong. 3d Sess. For further examples see 110 Cong. Rec. 2264, 88th Cong. 2d Sess., Feb. 6, 1964; 109 Cong. Rec. 10157, 10158, 88th Cong. 1st Sess., June 4, 1963; 100 Cong. Rec. 12253, 83d Cong. 2d Sess., July 27, 1954.

MR. [BERNARD J.] GEHRMANN [of Wisconsin]: Mr. Speaker, I am very proud to be able to announce that there are two children in the gallery——

THE SPEAKER PRO TEMPORE:[10] The gentleman from Wisconsin will suspend. The Chair calls the gentleman's attention to the fact that it is a violation of the rules of the House for a Member on the floor to introduce anyone in the gallery.

MR. GEHRMANN: Mr. Speaker, I beg the Chair's pardon, but I am not introducing them. I just want to say that there are two children who were stranded in Finland in the war zone. They got out of there just before——

THE SPEAKER PRO TEMPORE: The gentleman's remarks are still a violation of the rules of the House.

MR. GEHRMANN: Mr. Speaker, it would seem that the extraordinary occasion, the fact that the State Department interested itself——

THE SPEAKER PRO TEMPORE: The time of the gentleman from Wisconsin has expired.

Parliamentarian's Note: On several occasions,[11] a Member. in violation of Rule XIV clause 8,[12] has called the presence of certain visitors in the gallery to the attention of the House. The remarks were made without objection by other Members present in the Chamber, and the Speaker[13] did not invoke the rule because at the time he was engaged in conversation at the rostrum and was unable to hear the remarks.

§ 5.4 It is not in order under Rule XIV clause 8 to refer to visitors in the galleries, even with permission to proceed out of order.

On July 27, 1954,[14] a Member attempted to direct the attention of the House to a French nurse, a heroine of the Battle of Dien Bien Phu, who was seated in the gallery:

MR. [WALTER H.] JUDD [of Minnesota]: Mr. Chairman, I appreciate the gentleman's courtesy in permitting this short interlude. One of the things that always thrills everybody in the world is courage and devotion to duty, especially when under most trying and dangerous circumstances. I appreciate the opportunity to call attention to the presence in our gallery——

THE CHAIRMAN:[15] The gentleman from Minnesota will suspend. The Chair regrets extremely——

MR. JUDD: Mr. Chairman, I ask unanimous consent to proceed out of order.

THE CHAIRMAN: The gentleman may not proceed out of order for the pur-

10. Sam Rayburn (Tex.).

11. 111 CONG. REC. 6022, 6023, 89th Cong. 1st Sess., Mar. 25, 1965; 111 CONG. REC. 5637, 89th Cong. 1st Sess., Mar. 23, 1965.

12. *House Rules and Manual* § 764 (1973).

13. John W. McCormack (Mass.).

14. 100 CONG. REC. 12253, 83d Cong. 2d Sess.

15. Benjamin F. James (Pa.).

pose [for] which he manifestly intends to use the time. The Chair regrets extremely that he must so hold under the rules of procedure of the House. We are all conscious of the great heroism of the person to whom the Chair knows that the gentleman wishes to allude, but it is a matter of extreme regret that because of the rules of the House, reference may not be made to anyone in the gallery.

§ 5.5 It is a violation of Rule XIV clause 8 for a Member to insert in the *Congressional Record* a reference to visitors present in the galleries.

Parliamentarian's Note: On June 13, 1968,[16] a Member was given permission to address the House for one minute and revise and extend his remarks. In revising his statement for the *Congressional Record,* he inserted a reference to visitors who had been present in the galleries, and sent the statement directly to the Government Printing Office instead of returning it to the Official Reporters of Debate. The Government Printing Office was advised to contact the Official Reporters of Debate or the Parliamentarian in the event similar violations of the rules are attempted.

Conduct of Gallery Occupants; Sanctions

§ 5.6 Under the rules and practices of the House visitors in the galleries may not manifest their approval or disapproval of proceedings on the floor by applause or otherwise.

On occasion it has become necessary for the Chair to admonish guests in the galleries that they must maintain order and refrain from manifestations of approval or disapproval of the proceedings on the floor.[17]

The following statement made by the Chairman of the Committee of the Whole, Chet Holifield, of California, on July 31, 1969,[18] is typical:

> The Chair will state that visitors in the gallery are guests of the House of Representatives. Under the rules and practices of the House of Representatives, visitors in the gallery are not permitted to make undue noise or to applaud or to in any way show their pleasure or displeasure as to the actions of the Members of the House.

§ 5.7 It is not necessary to clear the gallery when one visitor is violating the rules by taking pictures; the Speaker may order the of-

16. 114 CONG. REC. 17062, 90th Cong. 2d Sess.

17. See, *e.g.,* 111; CONG. REC. 27449, 91st Cong. 2d Sess., Aug. 5, 1970; 116 CONG. REC. 14449, 91st Cong. 2d Sess., May 6, 1970; 112 CONG. REC. 16837, 89th Cong. 2d Sess., July 25, 1966.

18. 115 CONG. REC. 21634, 91st Cong. 1st Sess.

fending party to leave the gallery.

On Feb. 22, 1950,[19] a visitor with a camera was detected in the gallery:

> THE SPEAKER:[20] The Chair understands there is a camera in the gallery. Whoever has that camera will remove the camera or remove themselves and the camera immediately. That is a violation of the rules of the House.
>
> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry. In that case, it is not the rule to clear the gallery?
>
> THE SPEAKER: Not necessarily.
>
> MR. RANKIN: To clear them of those who are violating the law.
>
> THE SPEAKER: The Chair has just made that suggestion.

§ 6. Office Buildings

The House office buildings are under the control and supervision of the Architect of the Capitol, subject to the approval and direction of the House Office Building Commission.[1] The commission consists of the Speaker and two Members appointed by the Speaker.[2] The commission is authorized to prescribe rules and regulations governing the use and occupancy of rooms in the House office buildings.[3]

The procedure for the assignment of rooms in the House office buildings is provided by statute[4] and by rules adopted by the House Office Building Commission.[5] Section 178 of title 40 provides that the assignment of vacant offices will be based on written requests filed by Members or Members-elect. If only one such request has been made for a particular vacant office, it will be assigned as requested. If two or more Members request the same vacant office, preference will be

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19. 96 CONG. REC. 2152, 81st Cong. 2d Sess.

20. Sam Rayburn (Tex.).

1. 40 USC § 175 (1970).

2. 40 USC § 175 (1970). Under 40 USC § 176 (1970), the Speaker continues as a member of the commission until his successor as Speaker is elected or his term as a Representative in Congress expires.

3. 40 USC § 175 (1970). Section 183 of title 40 provides that the assignment and reassignment of rooms and other space in the House office buildings shall be subject to the control of the House by rule, resolution, order, or otherwise, and that nothing in sections 177–184 of title 40 (discussed below) shall be construed to affect or repeal the provisions of section 175 of the same title, which places the House office buildings under the control of the Architect of the Capitol, subject to the approval and direction of the House Office Building Commission.

4. 40 USC §§ 177–184 (1970).

5. *House Rules and Manual* § 985 (1971).

given to the one "who has been longest in continuous service as a Member and Member-elect of the House."[6] If two or more Representatives with equal periods of continuous service, or two or more Representatives-elect request the same vacant office, preference will be given to the one who first files a request.

A Representative or Representative-elect may not have pending at the same time more than one request under section 178 for a vacant room, but he may withdraw a request at anytime.[7] A Member will be deemed to have relinquished the room previously assigned to him when he is assigned a new room upon his request, or is appointed chairman of a committee having a committee room.[8] Representatives may exchange rooms with each other, but the exchange will be valid only so long as both remain Members or Members-elect of the House.[9] Records of room assignments, exchanges and requests, which are kept by the Architect of the Capitol, are open for the inspection of Members.[10]

The House Office Building Commission has adopted rules of procedure for the assignment of vacant offices that are designed to clarify the statutory procedures defined in section 178 of title 40.[11] Under these provisions, if an office becomes vacant during a session of Congress, applications for the vacancy will be received for a period of 10 days. The system of priority established in section 178 is generally applicable, in addition to a provision that would establish priority by lot in the event that applications are received at the same time from Members with equal periods of service. Applications from re-elected Members and former Members who wish to change offices at the beginning of a new Congress are received between the Monday following election day on the even years and Dec. 1. The seniority provisions of section 178 again establish priority. On Dec. 5, Members-elect without prior service, or their representatives, draw numbers to determine the order of se-

6. For an interpretation of the term "continuous service," see §6.1. infra.

7. 40 USC §179 (1970).

8. 40 USC §179 (1970).

9. 40 USC §180 (1970).

10. 40 USC §181 (1970).

11. The rules are reprinted in *House Rules and Manual* §985 (1973). In 1968 the commission promulgated a similar set of rules based on seniority to govern the assignment of remodeled rooms in the Cannon House Office Building. See 114 CONG. REC. 22155, 90th Cong. 2d Sess., July 18, 1968.

lection-of the remaining offices. Those who do not participate in the drawing must file written applications for the offices that remain unassigned after the conclusion of the drawing. Members of Congress who will not be Members of the succeeding Congress must vacate their offices by 12 o'clock noon on January 1 before the new Congress convenes.

It is provided by statute that unoccupied space in the House office buildings shall be assigned by the Architect of the Capitol under the direction of the commission and subject to the control of the House of Representatives. 40 USC § 184 (1970).

The commission also adopts rules regulating conduct of persons within the House office buildings, House garages, and the Capitol power plant. For example, on Aug. 26, 1965, the commission promulgated rules which, among other things, regulated soliciting and the taking of photographs within the House office buildings and related facilities.[12]

At one time,[13] the seniority of a Member for the purpose of room assignment dated from the beginning of his last uninterrupted service regardless of previous terms of membership in the House. This interpretation of "continuous service", which was rendered on Feb. 8, 1930, by Speaker Nicholas Longworth, of Ohio, as Chairman of the House Office Building Commission, was changed by the commission on Feb. 27, 1967. Under this current ruling, a Member who has had more than one period of uninterrupted service is entitled to have his longest period of uninterrupted service used in determining room assignment priority, even if it is not his last such period.[14]

Assignment of Office Suites to Members

§ 6.1 If two or more Members request the same office suite, preference will be given to the Member with a longest period of uninterrupted service, even if it is not his latest period of service.

On Mar. 2, 1967,[15] Speaker John W. McCormack, of Massa-

12. 111 Cong. Rec. 23926, 23927, 89th Cong. 1st Sess., Sept. 15, 1965. The regulations make subject to arrest and prosecution those persons who fail to comply with the above provisions, or with those sections which prohibit damaging public property, possessing weapons and explosives, creating disturbances, or obstructing any area covered by the regulations.

13. 8 Cannon's Precedents § 3651.

14. See § 6.1, infra.

15. 113 Cong. Rec. 5218, 90th Cong. 1st Sess.

chusetts, as Chairman of the House Office Building Commission, announced the rule of the commission concerning the computation of seniority, as it relates to the selection and assignment of office space:

MR. MCCORMACK: Mr. Speaker, for the information of the Members, I include an action recently taken by the House Office Building Commission:

ASSIGNMENT OF ROOMS, HOUSE OFFICE BUILDINGS

In connection with assignment of rooms to Members of the House of Representatives in the House Office Buildings, 40 U.S.C. 178 provides, in part, as follows:

If two or more requests are made for the same vacant room, preference shall be given to the Representative making the request who has been longest in continuous service as a Member and Member-elect of the House of Representatives.

The question was raised before the House Office Building Commission as to whether the wording "longest continuous service" should refer to any period of continuous service whether or not such continuous service occurred before or after a break in service in the House.

At a meeting of February 27, 1967, the House Office Building Commission unanimously ruled on this point, as follows:

"The term 'longest continuous service' as used in 40 U.S.C. 178, governing seniority in assignment of rooms in the House Office Buildings, is held to refer to the longest period of uninterrupted service as a Member and Member-elect of the House of Representatives (not necessarily the last period of uninterrupted service as held in Cannon's Precedents, Vol. 8, Page 981, Sec. 3651)."

This ruling is effective February 27, 1967 and is being submitted as a matter of record for the information of all Members of the House of Representatives.

Visitors in House Office Buildings

§ 6.2 The House Office Building Commission has jurisdiction over matters relating to the harassment of visitors in the House office buildings.

On May 3, 1935,[16] a parliamentary inquiry was raised concerning the jurisdiction of and the rules adopted by the commission:

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, may I propound a parliamentary inquiry?

THE SPEAKER:[17] The gentleman will state it.

MR. BLANTON: The Speaker of the House of Representatives is the Chairman of the House Office Building Commission in charge of the House Office Building and which controls these office buildings.

I would like to ask the Speaker if there are any means that a Member

16. 79 CONG. REC. 6894, 74th Cong. 1st Sess.

17. Joseph W. Byrns (Tenn.).

has, under the regulations prescribed by the Commission governing these buildings, to prevent a Washington newspaper from installing a snooper at his office to interrogate and harass every person that goes in or comes out of a Member's office in that Government building?

THE SPEAKER: The Commission is composed of 3 Members and the Speaker is only 1 of the 3. I would be pleased if the gentleman would take the matter up with the Commission as a whole. We will be very pleased to give the gentleman a hearing and discuss the matter with him.

Rules and Regulations as to Use

§ 6.3 Rules and regulations governing the House office buildings have been adopted by the House Office Building Commission.

On Mar. 5, 1973, the House Office Building Commission adopted the following rules:

Pursuant to the authority conferred on the House Office Building Commission by the act of March 4, 1907 (34 Stat. 1365, as amended (40 U.S.C. 175)) the following rules and regulations are promulgated governing the use and occupancy of rooms and spaces, including all terraces, entrances, lobbies, foyers, corridors, cafeterias, restaurants and areas appurtenant thereto, in the Cannon, Longworth, and Rayburn House Office Buildings, in the House Annex, the House of Representatives garages, and the Capitol Power Plant:

(1) Property damage: Willful destruction, damage, desecration or removal of any Government property or part thereof is prohibited.

(2) Photographs: Photographing, televising, recording, or broadcasting of committee proceedings is not permitted, except as provided for by the Rules of the House. Visitors are permitted to take photographs of the public areas in the House office buildings with handheld cameras if the photographs are not intended for commercial purposes. The use of flash equipment or other special photolighting devices, tripods, or other bulky accessory equipment is not permitted unless special permission is obtained from the House Office Building Commission. Applications for such special permission should be made to the Speaker.

(3) Soliciting, commercial ventures, and other nongovernmental activities: The soliciting of alms and contributions, commercial soliciting, and vending of all kinds, the display or distribution of commercial advertising, the collecting of private debts, or the distribution of material such as pamphlets, handbills, and flyers, in any of the areas covered by these regulations is prohibited. This section does not apply to national or local drives for funds for welfare, health, and other purposes sponsored or approved by the House Office Building Commission, or to personal notices posted by employees on authorized bulletin boards.

(4) Weapons and explosives: No person, except members of the Capitol Police and individuals authorized by law, shall enter any of the areas covered by these regulations who has in his possession, either openly or concealed, any dangerous or deadly weapon, explosive,

incendiary, or electronic device, and the use or discharge thereof is prohibited.

(5) Disturbances: The making or any harangue, oration, or the utterance of any loud, threatening, or abusive language or sound, or the use of any device which emits any loud, threatening, or abusive language or sound, is prohibited.

(6) Obstruction: It is forbidden to parade, stand, or move in processions or assemblages, or to obstruct the foyers, corridors, rooms or other areas covered by these regulations, or to display therein any flag, banner, or device designed or adapted to bring into public notice any person, party, organization, or movement.

(7) Compliance with regulations: Persons entering, in, or on the areas covered by these regulations shall comply with all official signs of a prohibitory or directory nature, and, during emergencies, with directions of the Capitol Police or other authorized authority.

(8) Enforcement of regulations: It shall be the duty of all persons employed in the service of the Governmcnt in the House Office Buildings to prevent, as far as may be in their power, violations of these regulations, and to aid the Capitol Police and other authorized authority, by information or otherwise, in securing the apprehension of persons violating these regulations.

Any person who fails or refuses to comply with these regulations, or who fails or refuses to comply with directives of the Capitol Police or other authorized personnel, shall be subject to arrest and prosecution.

CHAPTER 5

The House Rules, Journal, and Record

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Commentary and editing by Evan Hoorneman, J.D., and Roy Miller, LL.B.

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The House Rules, Journal, and Record

A. HOUSE RULES AND MANUAL

§ 1. In General; Printing

The following sections discuss the *House Rules and Manual*, with emphasis on certain general principles relating to the adoption and application of the rules.[1]

The *House Rules and Manual* is a House document.[2] Included in it are the Constitution; Jefferson's Manual;[3] the rules of the House; certain provisions of the Legislative Reorganization Acts of 1946 and 1970; pertinent forms, such as forms of putting questions, of petitions, resolutions, bills, reports from committees, and the like; a description of the introduction of a bill and its progress to final passage; a description of joint committees; materials relating to the franking privilege and the assignment of rooms in the House office buildings; and a comprehensive index. Also included at appropriate points throughout the *House Rules and Manual* are the commentary of the Parliamentarian and pertinent references to the precedents of the House and to court cases and other materials.

A statute[4] provides that each House may order printed as many copies as it desires, of the *Senate Manual* and of the *House Rules and Manual.*

Resolution Relating to House Rules and Manual

§ 1.1 At the end of a Congress, a resolution is customarily adopted providing for the printing and distribution of a revised edition of the House Rules and Manual for the succeeding Congress.

A typical resolution relating to the printing and distribution of the *House Rules and Manual* was that adopted in the 91st Congress:[5]

1. See also the general discussion of the rules in 8 Cannon's Precedents §§ 3376–3396.
2. Thus, the *House Rules and Manual* used by the 92d Congress was H. Doc. No. 439, 91st Cong. 2d Sess. (1971).
3. See § 2, infra.
4. 44 USC § 720.
5. 116 Cong. Rec. 44599, 91st Cong. 2d Sess., Jan. 2, 1971. Substantially the same form of resolution has been

H. RES. 1339

Resolved, That a revised edition of the Rules and Manual of the House of Representatives for the Ninety-second Congress be printed as a House document, and that 1,600 additional copies shall be printed and bound for the use of the House of Representatives, of which 700 copies shall be bound in leather with thumb index and delivered as may be directed by the Parliamentarian of the House for distribution to officers and Members of Congress.

§ 2. Jefferson's Manual

Jefferson's Manual was prepared by Thomas Jefferson for his own guidance as President of the Senate in the years of his Vice Presidency, from 1797 to 1801. In 1837, the House, by rule which still exists, provided that the provisions of the Manual should govern the proceedings of the House to the extent specified in the rule. The present rule[6] states:

The rules of parliamentary practice comprised in Jefferson's Manual and the provisions of the Legislative Reorganization Act of 1946, as amended, shall govern the House in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the House and joint rules of the Senate and House of Representatives.

The extent to which particular provisions of Jefferson's Manual are applicable to present-day procedures in the House is indicated in the notes thereto, including the citations of precedents, accompanying the text as printed in the *House Rules and Manual*.

In addition to being traditionally incorporated in some degree in the House rules, Jefferson's Manual serves as part of the basis of the general parliamentary law that governs the House prior to adoption of the rules.[7]

§ 3. Background Information—Power of New House to Adopt Rules

With respect to the importance of adopting rules of procedure in legislative bodies, Jefferson stated in his Manual:[8]

And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a

adopted in other Congresses. See, as examples, 114 CONG. REC. 31313, 90th Cong. 2d Sess., Oct. 14, 1968; 104 CONG. REC. 19699, 85th Cong. 2d Sess., Aug. 23, 1958; and 94 CONG. REC. 5746, 80th Cong. 2d Sess., May 12, 1948.

6. Rule XLII, *House Rules and Manual* § 938 (1973).

7. See § 3, infra.

8. *House Rules and Manual* § 285 (1973).

> rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker or captiousness of the members. . . .

The Constitution[9] provides that, "Each House may determine the Rules of its Proceedings. . . ." Thus, the power of each House of Representatives to make its own rules may not be impaired or controlled by the rules of the preceding House or by a law passed by a prior Congress.[10] As an example, the provisions of a legislative reorganization act enacted into law in a previous Congress cannot restrict the authority of a present House to adopt its own rules.[11] But a law passed by an existing Congress with the concurrence of the House has been recognized by that House as of binding force in matters of procedure.[12]

In some cases, Congress has enacted statutes containing provisions relating to procedures to be followed in certain instances. Such statutes have been enacted as an exercise of the rule-making power of Congress and deemed a part of the rules of each House. Thus, Congress has provided by statute for procedures to be followed with respect to the consideration of certain resolutions relating to executive reorganization plans.[13] Such statutes were enacted with express recognition of the power of each House to change its rules, and with specific limitations on the applicability of the statute.[14]

Joint rules are rarely employed. It may be noted that, in the 91st Congress, a law specifying that the counting of electoral votes for President and Vice President should be conducted in a joint session was made a joint rule of the two Houses by its incorporation by reference in a concurrent resolution.[15]

The House at any time may, by rules, provide new methods of procedure so long as such rules do not conflict with constitutional provisions.[16] With regard to the scope of the power of the House to determine the rules of its proceedings, Jefferson stated in his Manual:[17]

9. U.S. Const. art. I, § 5.

10. See Ch. 1, supra.

11. See 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971 (remarks of Speaker Carl Albert [Okla.]).

12. See, generally, Ch. 1, supra. See also 59 Am. Jur. 2d, *Parliamentary Law* § 2 (adoption and suspension of rules of procedure).

13. 5 USC §§ 908–913.

14. See 5 USC § 908.

15. See 115 CONG. REC. 36, 91st Cong. 1st Sess., Jan. 3. 1969.

16. See § 4, infra.

17. *House Rules and Manual* § 387 (1973).

> Where the Constitution authorizes each House to determine the rules of its proceedings, it must mean in those cases (legislative, executive, or judiciary) submitted to them by the Constitution, or in something relating to these, and necessary toward their execution. But orders and resolutions are sometimes entered in the journals having no relation to these, such as acceptances of invitations to attend orations, to take part in procession, etc. These must be understood to be merely conventional among those who are willing to participate in the ceremony, and are therefore, perhaps, improperly placed among the records of the House.

Propositions to adopt or change a rule are within the jurisdiction of the Committee on Rules.[18]

The action of the House taken with respect to a rule that has been reported by the Committee on Rules is controlling. A rule having been adopted, the Chair will thereafter look to the rule and direct the House to proceed in accordance with its terms, unless the rule has been superseded.[19]

Proceedings in the House are not, of course, governed by the rules exclusively. Thus, the procedure of the House is governed in some instances by the custom or practice of the House rather than by express rules. On the other hand, even where a matter or procedure is not expressly prohibited by the rules, it may be considered unauthorized thereby and therefore deemed improper.[20]

Before the adoption of rules by a new House, that House is governed by general parliamentary law. The Speakers have been inclined to give weight to the precedents of the House in modifying the usual constructions of general parliamentary law.[1]

On occasion, the House has passed a bill of major importance prior to the adoption of the rules.[2]

---

18. See Ch. 17, infra; see also Ch. 21, infra.

19. See § 6, infra.

20. See, for example, the discussion in 7 Cannon's Precedents § 1029. See also 98 CONG. REC. 1334, 82d Cong. 2d Sess., Feb. 25, 1952, in which Speaker Sam Rayburn (Tex.) stated, with reference to the televising of committee meetings, that since there was at that time no authority in the rules of the House granting the privilege of televising the proceedings of the House of Representatives, there was no authorization for televising committee meetings. (Speaker Rayburn's rulings on the subject were later relied upon by Speaker John W. McCormack [Mass.], in 108 CONG. REC. 267–269, 87th Cong. 2d Sess., Jan. 16, 1962.) See § 6.4, infra.

1. See Ch. 1, supra.

2. There was an instance in the 73d Congress (77 CONG. REC. 75 et seq., 73d Cong. 1st Sess., Mar. 9, 1933) in which the House by unanimous consent agreed to consider, under a

§ 4. —Judicial Authority With Respect to Rules

The role that the courts play in adjudicating questions involving the rules of either House must of necessity be a limited one, for the manner in which a House or committee of Congress chooses to run its business ordinarily raises no justifiable controversy.[3] On the other hand, when the application or construction of a rule directly affects persons other than Members of the House, the question presented is of necessity a judicial one.[4] Thus, to a limited extent, the rules of Congress and its committees are judicially cognizable. Even where a judicial controversy is presented, however, the function of the courts is generally a narrow one.

The Constitution empowers each House to determine its rules of proceedings.[5] The House may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations, all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just.[6] In accordance with these principles, the question, as was stated in one case,[7] is not what rules Congress may establish, but rather what rules the House has established and whether they have been followed.

Although rules adopted by the House or its committees have the

stringent procedure with respect to debate and amendments, a bank bill whose immediate passage had been recommended by President Roosevelt.

3. *Yellin* v *United States,* 374 U.S. 109 (1963); *United States* v *Ballin,* 144 U.S. 1 (1892).

4. *Yellin* v *United States,* 374 U.S. 109 (1963); *Christoffel* v *United States,* 338 U.S. 84 (1949).

5. See § 3, supra.

6. *Yellin* v *United States,* 374 U.S. 109 (1963); *United States* v *Ballin,* 144 U.S. 1 (1892).

7. *Christoffel* v *United States,* 338 U.S. 84 (1949). In the *Christoffel* case, the petitioner had been convicted of perjury before a House committee under a statute punishing perjury before a "competent" tribunal. The petitioner contended that the committee was not a "competent" tribunal in that a quorum was not present at the time of the incident alleged. The court reversed the conviction, citing an erroneous instruction that would have allowed the jury to determine competency on the basis of the situation existing at the time the committee convened rather than at the time of the actual incident.

force of law and are binding on those for whose use the rules were established,[8] there is a point beyond which courts will not venture in their disposition of cases concerning the rules. Thus, in a controversy involving a House rule that required testimony to be received by a committee in executive session only if the committee determined that the testimony of the witness would tend to defame, degrade, or incriminate any person, the court stated that it would be an unwarranted interference with the powers conferred by the Constitution upon the legislative branch for any court to presume to dictate that determination.[9] It is worth noting that the court in this case also cited a presumption in favor of the regularity of all official conduct and stated that the presumption required that it be assumed that a committee would not disregard its rules.

§ 5. —Amendment

In the exercise of its rule-making power under the Constitution,[10] the House may amend its rules at any time. It has been said[11] that the question of changing the rules of the House is a matter for decision by the House and not the Chair.

Generally, amendments are made by resolution, although, of course, rules may be, in effect, rescinded or modified through the use of a number of procedural devices, such as unanimous-consent requests.[12] Similarly, statutes containing provisions as to procedure may have the effect of changing a rule of the House where the statute is the later reflection of the will of the House.[13] In adopting the rules of the previous House, of course, the House frequently amends such rules, either by incorporating the amendments in the resolution adopting the rules, or adopting amendments after a negative vote on ordering the previous question on the resolution as first offered.[14]

The Committee on Rules has jurisdiction over the rules and joint rules, other than rules or joint rules relating to the Code of Offi-

8. *Yellin* v *United States*, 374 U.S. 109 (1963); *Christoffel* v *United States*, 338 U.S. 84 (1949); *Randolph* v *Willis*, 220 F Supp 355 (1963).

9. *Randolph* v *Willis*, 220 F Supp 355 (1963).

10. See § 3, supra.

11. See the proceedings at 104 CONG. REC. 12121, 85th Cong. 2d Sess., June 24, 1958 (especially remarks of Speaker Rayburn).

12. See § 5.2 (amendment by unanimous consent) and § 7 (abrogation or waiver), infra.

13. § 6.2, infra.

14. Generally, see § 3, supra.

cial Conduct or relating to financial disclosure by a Member, officer, or employee of the House.[15] Thus, the Committee on Rules has jurisdiction over resolutions proposing amendments to the rules of the House, and may report a resolution referred to it to change the rules of the House except in a respect that would constitute violation of constitutional provisions.[16] The Committee on Rules may itself recommend an amendment to the rules of the House, for the House to pass upon.[17]

The Committee on Standards of Official Conduct has jurisdiction over measures amending the rules of the House relating to financial disclosure by Members, officers and employees of the House.[18]

A rule[19] provides that the Committee on Rules shall have leave to report at any time on rules, joint rules, and the order of business. In accordance with that principle, it has been held that reports of the Committee on Rules on resolutions proposing amendments to the rules of the House are privileged.[20]

The rules of the House have frequently been amended for purposes of transferring jurisdiction over particular matters from one committee of the House to another,[1] or for purposes of changing the name of a committee.[2] In such cases, the changes in the rules may be implemented by resolutions electing the members of the committee under its former name to the newly named committee, and transferring records, bills, and the like to that committee.

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15. Rule XI, *House Rules and Manual* § 715 (1973).

16. For further discussion of the scope of the rule-making power, see § 4, supra.

17. See 92 CONG. REC. 5864, 79th Cong. 2d Sess., May 27, 1946 (remarks of Speaker Rayburn speaking in response to a parliamentary inquiry relating to the scope of authority of the Committee on Rules).

18. For an instance in which the Chairman of the Committee on Standards of Official Conduct inserted in the Record the text of a resolution, referred to that committee, amending the financial disclosure rule, see 116 CONG. REC. 1077, 91st Cong. 2d Sess., Jan. 26, 1970.

19. Rule XI, *House Rules and Manual* § 726 (1973).

20. See § 5.3, infra.

1. See 113 CONG. REC. 29560, 29564–67, 90th Cong. 1st Sess., Oct. 20, 1967.

2. See 115 CONG. REC. 3723, 3745–47, 91st Cong. 1st Sess., Feb. 18, 1969; 97 CONG. REC. 883, 82d Cong. 1st Sess., Feb. 2, 1951.

For discussion of standing committees and their jurisdiction generally, see Ch. 17, infra.

Amendment by Resolution

§ 5.1 Amendments to the rules are generally offered in the form of a privileged resolution reported and called up by the Committee on Rules.

Amendments to the rules are typically brought about by resolution as in the following instance in the 90th Congress:[3]

> MR. COLMER:[4] Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 42 and ask for its immediate consideration.
>
> The Clerk read the resolution, as follows:
>
> H. RES. 42
>
> *Resolved*, That paragraph 4 of rule XXII of the Rules of the House of Representatives is amended by adding at the end thereof the following sentence: "Two or more but not more than ten Members may introduce jointly any bill, memorial, or resolution to which this paragraph applies."
>
> [Mr. Colmer was recognized for one hour.]
>
> MR. COLMER: . . . Mr. Speaker, this resolution . . . provides for a change in the rules of the House to provide that as many as 10 Members of the House may join in sponsoring a resolution or a bill. . . .

3. 113 CONG REC. 10708, 90th Cong. 1st Sess., Apr. 25, 1967.
4. William M. Colmer (Miss.) was the Chairman of the Committee on Rules.

Amendment by Unanimous Consent

§ 5.2 Propositions to make minor changes in the rules are frequently considered by unanimous consent.

As an example of this practice, unanimous consent was asked in the 86th Congress[5] for the immediate consideration of a resolution to amend the rules by renumbering certain paragraphs.

Reports of Committee on Rules as Privileged

§ 5.3 Reports of the Committee on Rules on resolutions proposing amendments to the rules of the House are privileged.

In the 74th Congress, in the course of a discussion of a resolution amending the Private Calendar rule, Speaker Joseph W. Byrns, of Tennessee, in responding to a point of order cited the rule[6] that the Committee on Rules shall have leave to report at any time on rules, joint rules, and

5. 105 CONG. REC. 1209, 86th Cong. 1st Sess., Jan. 27, 1959.
   The practice of amending the rules by unanimous consent, and several examples thereof, are noted in 8 Cannon's Precedents §§ 3379–3381.
6. Now Rule XI, *House Rules and Manual* § 726 (1973).

the order of business, and then stated:[7]

> The pending resolution proposes to amend the rules of the House, it relates to the order of business in the House, and, under the rule the Chair has just read, is made a matter of privilege.

Multiple Reports on Same Resolution

§ 5.4 Two reports may not be filed from the Committee on Rules on the same resolution.

In the 81st Congress, the Chairman of the Committee on Rules, Adolph Sabath, of Illinois, reported a privileged resolution proposing certain amendments to the rules, which was referred to the House Calendar and ordered to be printed. Responding to a subsequent attempt by another Member to file a report on the same resolution, Speaker Sam Rayburn, of Texas, stated,[8] "The Chair is of opinion that two reports cannot be filed on the same resolution at the same time."

Parliamentarian's Note: In this case, Mr. Edward E. Cox, of Georgia, had been authorized to file the report because it was evidently feared that the Chairman, Mr. Sabath, either would not immediately do so or would not call it up within the seven days allowed him under the rule. Mr. Cox stepped aside to permit Mr. Sabath to file the report under an alleged understanding that Mr. Sabath would call it up on a specified day. During discussion of the matter, Mr. Cox attempted to file a report on the same resolution, whereupon Speaker Rayburn expressed his opinion as indicated.

Showing Proposed Changes of Rules

§ 5.5 The Ramseyer rule[9] did not apply to reports of the Committee on Rules on resolutions amending the rules of the House.

In the 74th Congress, in the course of a discussion of a resolution amending the Private Calendar rule, Speaker Joseph W. Byrns, of Tennessee, in response to a parliamentary inquiry, stated:[10]

> The Ramseyer rule . . . has to do with reports of committees on bills

7. 79 Cong. Rec. 4482, 74th Cong. 1st Sess., Mar. 26, 1935.

8. 96 Cong. Rec. 501, 81st Cong. 2d Sess., Jan. 17, 1950.

9. Rule XIII, *House Rules and Manual* § 745 (1973), relating to the requirement that a committee report on a bill amending existing law show the proposed changes in existing law. The Ramseyer rule is discussed in Ch. 17, infra.

10. 79 Cong. Rec. 4482, 74th Cong. 1st Sess., Mar. 26 1935.

which amend the statutes. This resolution proposes to amend the rules of the House, and therefore does not come within the provisions of clause 2a of rule XIII, the so-called "Ramseyer rule." The Chair, therefore, does not think that the Ramseyer rule applies to this report of the Committee on Rules.

Special Orders; Consideration in Committee of the Whole

§ 5.6 A resolution or bill amending the rules of the House may be considered in the Committee of the Whole, pursuant to the terms of a special order reported from the Committee on Rules.

In the 90th Congress, a resolution amending the rules of the House, eligible for consideration in the House as privileged business and subject to the hour rule, was, pursuant to a special order, considered in the Committee of the Whole and debated for two hours.(11) Consideration of the resolution amending the rules proceeded in accordance with the following separate resolution:(12)

H. RES. 1119

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the resolution (H. Res. 1099) amending H. Res. 418, Ninetieth Congress, to continue the Committee on Standards of Official Conduct as a permanent standing committee of the House of Representatives, and for other purposes. After general debate, which shall be confined to the resolution and continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Standards of Official Conduct, the resolution shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the resolution for amendment, the Committee shall rise and report the resolution to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the resolution and amendments thereto.

The purpose of the Committee on Rules in reporting the separate resolution relating to consideration of H. Res. 1099 was to afford the opportunity for adequate debate and the offering of amendments; had H. Res. 1099 come to the floor of the House without a special order, the effect would have been the same as that of a closed rule under which amendments could not be offered.(13) In

11. 114 CONG. REC. 8776–812, 90th Cong. 2d Sess., Apr. 3, 1968.

12. 114 CONG. REC. 8776, 90th Cong. 2d Sess., Apr. 3. 1968.

13. See 114 CONG. REC. 8777, 90th Cong. 2d Sess., Apr. 3, 1968 (remarks of Mr. H. Allen Smith [Calif.]).

the course of consideration of the substantive resolution, a committee amendment was agreed to,[14] and other amendments were offered.[15]

A resolution amending the rules of the House may be considered in the Committee of the Whole under an open rule pursuant to provisions of a resolution reported from the Committee on Rules.[16]

In some instances, a resolution has been reported from the Committee on Rules providing a rule "closed" in part, for consideration of a bill, also reported from that committee, amending the rules of the House. Thus, in the 91st Congress, the House adopted a resolution [17] providing for consideration of a bill amending the rules of the House under a procedure prohibiting amendments that would change the jurisdiction of any standing committee. The proceedings in part were as follows: [18]

> MR. [B.F.] SISK [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1093, and ask for its immediate consideration.
>
> The Clerk read the resolution as follows:
>
> H. RES. 1093
>
> *Resolved*, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H. R. 17654) to improve the operation of the legislative branch of the Federal Government, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed four hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Rules, the bill shall be read for amendment under the five-minute rule. No amendment to the bill shall be in order which would have the effect of changing the jurisdiction of any committee of the House listed in rule XI. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage

14. 114 CONG. REC. 8803, 90th Cong. 2d Sess., Apr. 3, 1968.

15. See, for example, the amendment offered by Mr. Wayne L. Hays [Ohio] (114 CONG. REC. 8804, 90th Cong. 2d Sess., Apr. 3, 1968), against which a point of order was sustained, the Chair ruling that, to a resolution providing an official code of conduct for Members, officers, and employees of the House, an amendment making the code applicable to other persons not associated with the House was not germane.

16. See, for example, 116 CONG. REC. 17013, 91st Cong. 2d Sess., May 26, 1970 (H. Res. 971).

17. H. Res. 1093, providing for consideration of H.R. 17654 (Legislative Reorganization Act of 1970).

18. 116 CONG. REC. 23901, 91st Cong. 21 Sess., July 13, 1970.

without intervening motion except one motion to recommit.

After some discussion, the following proceedings took place:[19]

MR. [H. ALLEN] SMITH [of California]: . . .

This is a closed rule from the standpoint that no amendments to the bill will be permitted so far as changing the jurisdiction of any committee of the House as listed in rule XI is concerned.[20] Other than that, it is an open rule. . . .

The resolution was agreed to.

Amendments to Resolution

§ 5.7 On one occasion the Chairman of the Committee on Rules, after calling up a privileged resolution reported by his committee amending the rules of the House, offered an amendment not previously agreed to by the committee.

In the 90th Congress, in the course of consideration of a resolution amending the rules to permit joint sponsorship of bills, the Chairman of the Committee on Rules offered an amendment as follows:[1]

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Colmer: On page 1, line 4, after "than" strike out "ten" and insert "twenty-five".

The amendment was agreed to.

§ 5.8 A resolution reported by the Committee on Rules proposing to amend the rules may not be amended unless the Member in charge yields for that purpose or the previous question is voted down, nor is an amendment offered by the Member in charge subject to amendment.

The following proceedings took place in the 82d Congress:[2]

MR. [JOHN E.] LYLE [Jr., of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up H. Res. 386 and ask for its immediate consideration.

[The Clerk read the resolution, which proposed an amendment to the rules of the House.]

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I would like to in-

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19. *Id.* at p. 23902.

20. As an example of the effect of the prohibition against amendments that would change committee jurisdiction, an amendment restricting the power of the Committee on Rules to report a closed rule was ruled out of order as effecting a change in that committee's jurisdiction. See 116 CONG. REC. 26414, 91st Cong. 2d Sess., July 29, 1970.

1. 113 CONG. REC. 10711, 90th Cong. 1st Sess., Apr. 25, 1967.

2. 97 CONG. REC. 11394, 11397, 82d Cong. 1st Sess., Sept. 14, 1951.

quire, as a parliamentary inquiry, whether or not this resolution would be subject to amendment if an amendment were offered for and on behalf of the Rules Committee.

THE SPEAKER [Sam Rayburn, of Texas]: The gentleman from Texas [Mr. Lyle] has control of the time. The gentleman from Texas can offer an amendment before he moves the previous question, which amendment the Chair hopes will be offered.

MR. HALLECK: In other words, if the question that has been raised is such as merits the attention of the House before we finally act on this matter, then it could be reached by some sort of amendment offered by the gentleman from Texas [Mr. Lyle]?

THE SPEAKER: Or he could yield to someone to offer an amendment. . . .

MR. [CLARK E.] HOFFMAN [of Michigan]: A parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. HOFFMAN: But unless the gentleman from Texas does offer such an amendment the only way we could have an opportunity would be to vote down the previous question.

THE SPEAKER: That would be correct.

MR. LYLE: Mr. Speaker, when I introduced the resolution I called to the attention of the House the objection that had been raised to the proviso that has been under discussion. I have drawn an amendment which I expect to offer which would strike out lines 12, 13, and 14.

THE SPEAKER: Does the gentleman desire to offer the amendment now?

MR. LYLE: Mr. Speaker, I now offer the amendment.

The Clerk read as follows:

Amendment offered by Mr. Lyle: Strike out lines 1, 13, and 14.

MR. HOFFMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HOFFMAN: Is an amendment to the amendment in order?

THE SPEAKER: Not unless the gentleman from Texas yields for that purpose.

The question is on the amendment offered by the gentleman from Texas.

The amendment was agreed to.

Rereferral or Recommittal of Resolution Amending Rule

§ 5.9 A resolution reported by the Committee on Rules proposing an amendment to the rules of the House was by unanimous consent recommitted to the Committee on Rules, a motion to recommit not being in order.

In the course of the proceedings described above[3] relating to a resolution proposing an amendment to the rules, the following exchange took place:[4]

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

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3. § 5.8, supra.

4. 97 CONG. REC. 11397, 82d Cong. 1st Sess., Sept. 14, 1951 (Speaker Sam Rayburn, Tex.).

MR. HOFFMAN: Is a motion to recommit in order?

THE SPEAKER: Not on a resolution from the Committee on Rules. . . .

MR. [JOHN E.] LYLE [of Texas]: Mr. Speaker, I ask unanimous consent that the resolution may be re-referred to the Committee on Rules.

THE SPEAKER: Is there objection to the request of the gentleman from Texas?

There was no objection.

Discharge of Committee on Rules; Adoption of Resolution

§ 5.10 The Committee on Rules was by motion discharged from further consideration of a resolution amending the rules of the House.

In the 78th Congress, a resolution amending the rules was read with respect to which Mr. John E. Rankin, of Mississippi, remarked:[5]

Mr. Speaker, this resolution was introduced a little more than a year ago, on January 6, 1943. We were unable to get it reported from the Rules Committee. I am reliably informed the Committee on Rules never had a chance to vote on it. It was never laid before them for a vote. Therefore it was petitioned out. Two hundred and eighteen Members of this House signed a petition bringing it before the House at this time. . . .

A motion to discharge the Committee on Rules was agreed to.[6]

§ 5.11 Where the Committee on Rules is discharged from further consideration of a resolution amending the rules, the House immediately votes on adoption of the resolution, and amendments are not in order.

In the course of the proceedings described above concerning a resolution to amend the rules,[7] the following exchange took place:[8]

MR. [HAROLD D.] COOLEY [of North Carolina]: I wish to be advised for my own information and for the information of the House as to whether or not this resolution will be subject to amendment in the event of an affirmative vote on the motion to discharge. There seems to be some uncertainty about it.

THE SPEAKER [Sam Rayburn, of Texas]: The Chair will read the rule, which is very clear:

> If the motion should prevail to discharge the Committee on Rules from any resolution pending before the committee the House shall immediately vote on the adoption of said resolution, the Speaker not enter-

5. See 90 CONG. REC. 629, 78th Cong. 2d Sess., Jan. 24, 1944 (Speaker Sam Rayburn, Tex.).

As to discharging matters from committee consideration generally, see Ch. 18, infra.

6. 90 CONG. REC. 633, 78th Cong. 2d Sess., Jan. 24, 1944.

7. See § 5.10, supra.

8. 90 CONG. REC. 631, 78th Cong. 2d Sess., Jan. 24, 1944.

taining any dilatory or other intervening motions except one motion to adjourn.

MR. [ADOLPH J.] SABATH [of Illinois]: That is on the resolution itself, Mr. Speaker.

THE SPEAKER: On the resolution itself.

MR. COOLEY: My parliamentary inquiry was about the resolution after the discharge of the committee.

THE SPEAKER: That is exactly what the Chair was reading. It reads: "On the resolution." When the House votes to discharge the committee then the resolution is before the House for a vote.

MR. COOLEY: Under the general rules of the House providing for an amendment; or am I mistaken?

THE SPEAKER: This is not under the general rules of the House; this is under the discharge rule.

Discussion of Effect of Proposed Amendment

§ 5.12 The effect of a proposed amendment to the rules is a matter for debate and not within the jurisdiction of the Chair to decide on a parliamentary inquiry.

In the 90th Congress, in the course of debate on a resolution to amend the rules to permit joint sponsorship of bills, the following exchange took place:[9]

MR. [DURWOOD G.] HALL [of Missouri]: . . .

[W]ill the distinguished gentleman yield at this time for a parliamentary inquiry of the Chair, inasmuch as it is important that we try to envisage, in passing this legislation today, what effect it will have on the future rules of procedure in the House, and their application.

MR. [WILLIAM M.] COLMER [of Mississippi]: I yield to the gentleman from Missouri.

THE SPEAKER PRO TEMPORE:[10] The Chair must advise the distinguished gentleman from Missouri that this is a matter for debate on a resolution pending and not a matter properly within the jurisdiction of the Chair on a parliamentary inquiry. It is up to the sponsor of the resolution to explain the terms of the resolution

§ 6. —Applicability; Construction

A rule[11] provides that the rules of proceeding in the House shall be observed in Committees of the Whole House so far as they may be applicable. Similarly, the rules of the House are the rules of its committees and subcommittees so far as applicable.[12] Thus, Members may appeal from decisions of the chairmen of their respective committees in the same manner as Members have a right

9. 113 CONG. REC. 10710, 90th Cong. 1st Sess., Apr. 25, 1967.

10. Carl Albert (Okla.).

11. Rule XXIII, *House Rules and Manual* § 877 (1973).

12. Rule XI, *House Rules and Manual* § 735 (1973).

to appeal from a decision of the Speaker or presiding officer in the House.[13]

It has been stated,[14] in response to objections raised against certain rules changes, that it is not within the province of the Chair in disposing of a point of order to consider the effect or anticipated effect of the passage of any rule on legislation which may be pending. A proposed rule having been reported by the Committee on Rules, it is for the House to consider and act upon it, and such action is controlling. It is the province of the Chair to look to the terms of each existing rule and direct the House to proceed in accordance with those terms.

Where two rules of the House are in conflict, the last one adopted controls.[15] Similarly, where the rules of the House and a subsequent legislative enactment are not consistent, the enactment must prevail.[16] On the other hand, a rule subsequently adopted may supersede the provisions of such an enactment.[17]

Conflicting Rules

§ 6.1 Where two rules of the House are in conflict, the last one adopted controls.

In the 74th Congress, in the course of holding that the House may, by rule, provide for the consolidation into an omnibus bill of private bills once objected to, Speaker Joseph W. Byrns, of Tennessee, stated:[18]

> The gentleman . . . in his argument today, has contended that this rule conflicts with a number of rules to which he has referred. Without passing upon the question of whether or not there is a conflict, the Chair will state that if there is a conflict the rule last adopted would control. The Chair assumes that if this rule should be found to conflict with previous rules that the House intended, at least by implication, to repeal that portion of the previous rule with which it is in conflict.

§ 6.2 Where the rules of the House and a subsequent legislative enactment are not

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13. 95 Cong Rec. 1212, 81st Cong. 1st Sess., Feb. 15, 1949 (remarks of Speaker Sam Rayburn [Tex.]).

14. 79 Cong Rec. 11265, 74th Cong. 1st Sess., July 16, 1935 (remarks of Speaker Joseph W. Byrns [Tenn.].

15. See § 6.1, infra.

16. See § 6.2, infra.

17. In the 86th Congress, a provision in the mutual security appropriation bill reappropriating unexpended balances was conceded to be unauthorized, notwithstanding a section in the Mutual Security Act of 1955 authorizing such reappropriations, since the rules of the House adopted on Jan. 7, 1959 contained a later, expression of Congress to the contrary. See 106 Cong Rec. 13138, 86th Cong. 2d Sess., June 17, 1960.

18. 79 Cong Rec. 11264, 74th Cong. 1st Sess., July 16, 1935.

consistent, the enactment must prevail, being a later expression of the will of the House.

In the 87th Congress, it was held that a House rule prohibiting, on general appropriation bills, provisions reappropriating unexpended balances of appropriations, was not applicable to provisions in an appropriation bill that were authorized by a legislative enactment passed subsequently to the adoption of the rules.[19]

Factors Considered in Construing Rule

§ 6.3 In construing a rule, the Speaker may consider all the facts and issues involved in a point of order arising under the terms of the rule.

In the 75th Congress, a point of order was made against the acceptance by the House of the report of an election committee, on the grounds that the making of the report violated a rule specifying the time within which election committees should make final reports to the House in contested election cases. Speaker William B. Bankhead, of Alabama, ruled that the provisions in question were directory and not mandatory, and did not prevent an election committee from filing a report after expiration of the specified time. In reaching such decision, the Speaker indicated that he would look beyond the strict terms of the rule to all the facts in the case in order to determine the intention of the House in adopting the rule. Among the factors considered by the Speaker in reaching his decision were the constitutional power of the House to decide the qualifications of its Members, and the fact that the time period between the election of Members and the meeting of Congress was much shorter than it had been at the time the rule in question was adopted.[20]

Proceedings Not Expressly Authorized by Rules

§ 6.4 On occasion, acts or proceedings not expressly authorized by the rules may be deemed inconsistent with or in violation of the rules.

Examples may be seen in the rulings of Speakers Sam Rayburn,

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19. 107 CONG REC. 18133, 87th Cong. 1st Sess., Sept. 5, 1961 (Speaker pro tempore John W. McCormack, Mass.).

Of course, a rule subsequently adopted may supersede the provisions of such an enactment. See § 6, supra.

20. See 81 CONG REC. 8842–8846, 75th Cong. 1st Sess., Aug. 13, 1937.

of Texas, and John W. McCormack, of Massachusetts, under the rules as they existed at the time, in regard to televising committee meetings.[21] The tenor of the rulings was that since there was no authority in the rules of the House granting the privilege of televising the proceedings of the House, there was no authorization for televising committee meetings.

§ 7. —Abrogation or Waiver

In most cases, the requirements of the rules can be waived or abrogated through the use of various procedures. The House, for example, may by unanimous consent agree to a certain order of business, or may vote to suspend the rules. These procedures are discussed in detail elsewhere.[1] Generally, the Speaker may recognize for unanimous-consent requests to waive the requirements of existing rules unless the rule in question specifies that it is not subject to waiver.[2] Similarly, the power of the House to change its rules at any time, as by amendment or by provisions included in legislative enactments, is recognized, as has been discussed above.[3] Moreover, it appears that where a motion not in order under the rules of the House is, without objection, considered and agreed to, it controls the procedure of the House until carried out, unless the House takes affirmative action to the contrary.[4]

The strict terms of a rule have been avoided where the Speaker, having considered all of the facts and issues involved in a point of order arising under the terms of the rule, has construed such rule

21. See 98 CONG. REC. 1334, 82d Cong. 2d Sess., Feb. 25, 1952; 101 CONG. REC. 628, 84th Cong. 1st Sess., Jan. 24, 1955; 108 CONG. REC. 267–269, 87th Cong. 2d Sess., Jan. 16, 1962; 113 CONG. REC. 8419, 90th Cong. 1st Sess., Apr. 5, 1967.

1. See Ch. 21, infra.

2. See Ch. 21, infra.

For debate of amendments under the five-minute rule, see Ch. 29, infra.

3. See § 5, supra.

Provisions in a legislative enactment may have the effect of rendering inapplicable a House rule adopted earlier with respect to the matters covered in the enactment. Being a later expression of the will of the House, such enactment may, for example, expressly authorize that which is prohibited by the rule. See § 6.2, supra.

4. 114 CONG. REC. 30214, 90th Cong. 2d Sess., Oct. 9, 1968 (remarks of Speaker John W. McCormack [Mass.], relating to motion of Mr. Adams). See Ch. 23, infra, as to the use of motions generally.

to be directory and not mandatory.[5]

A common means by which the rules may be circumvented is for the Committee on Rules to report, and the House to adopt, a resolution providing for a particular order of business and specifying the conditions under which such business will be considered.[6] Since the Committee on Rules has authority to report resolutions providing for special orders of business, no point of order against such a resolution can be based on the fact that adoption of the resolution would have the effect of abrogating another standing rule of the House.[7] Thus, by direction of the Committee on Rules, a resolution may be called up waiving all points of order against a particular bill. In such manner, a variety of points of order can be waived. As examples, a resolution may waive points of order that could otherwise be raised against legislative provisions in appropriation bills,[8] points of order based on the requirement of germaneness in amendments to bills,[9] and even points of order based on the requirements of the Ramseyer rule,[10] whether the resolution is general in its terms or expressly waives the requirement of compliance with the Ramseyer rule.[11]

5. See § 6.3, supra.

6. See Chs. 17, 21, infra.

7. Generally, see Ch. 21, infra.

8. See Ch. 26, infra.

For an example of a resolution waiving the provisions of the house rule relating to unauthorized appropriations and legislation on general appropriation bills, see 86 CONG. REC. 3443, 76th Cong. 3d Sess., Mar. 25, 1940 (H. Res. 436).

9. See, for example, 106 CONG. REC. 10575, 86th Cong. 2d Sess., May 18, 1960. For general discussion of the requirement of germaneness in amendments to bills, see Ch. 28, infra.

10. As to the Ramseyer rule, requiring in certain circumstances that committee reports show the effects of proposed bills on existing law, see Ch. 17, infra.

11. 95 CONG. REC. 1214, 1218, 81st Cong. 1st Sess., Feb. 15, 1949 (response of Speaker Sam Rayburn [Tex.], to point of order concerning the First Deficiency Appropriation Bill, 1949).

B. THE HOUSE JOURNAL

§ 8. In General; Purpose and Use

The Constitution requires the House of Representatives to keep a Journal of its proceedings, and from time to time publish it excepting such parts as may in its judgment require secrecy.[1] Accordingly, it is the Journal of the House and not the *Corgressional Record* that is the official record of the proceedings of the House,[2] and as such it is appropriately afforded judicial notice by both federal and state courts.[3]

The object of the constitutional clause exacting the keeping of the Journal is to ensure publicity to the proceedings of the House and a correspondent responsibility of the Members to their respective constituents.[4] And, in consonance with such purpose, Jefferson's Manual, although providing that the Clerk is not to let the Journal be taken out of his custody,[5] also emphasizes that as an official record the Journal is open to inspection by every Member and that anyone may take and publish votes therefrom.[6]

The Clerk is required to print and distribute the Journal at the close of each session to the Members and others designated by the House rules.[7] Further, various statutes provide for the distribution of the Journal to the libraries and document rooms of both Houses of Congress, and to the Secretary of the Senate, the Clerk of the House, and several other governmental officials, agencies, and departments.[8]

Effect of Variance Between Journal and Congressional Record

§ 8.1 The Senate Journal is the official record of Senate pro-

1. U.S. Const. art. I, § 5, by which an identical requirement is imposed upon the Senate.
2. 4 Hinds' Precedents § 2727.
3. 31 CJS Evidence § 43.
4. 2 Story, *Commentaries on the Constitution*, §§ 837–839.
5. *House Rules and Manual* § 352 (1973).
6. *House Rules and Manual* § 582 (1973).
7. Rule III clause 3, *House Rules and Manual* § 641 (1973) (which also requires that the Clerk send a copy of the Journal to the Executive and to each branch of the legislature of each state).
8. See, for example, 2 USC §§ 145, 146; 44 USC §§ 713, 1714, 1718.

ceedings, and where there is a variance between a Journal and a Record entry, the Journal is controlling.

On Jan. 8, 11 165,[9] in response to a parliamentary inquiry of a Senator who asked whether the record of the Journal Clerk or the record of an official reporter of debates took precedence in the event that there was any variance between them, the President pro tempore[10] said that the Journal is mentioned in the Constitution, and all the precedents support the Journal as the proper record.

§ 9. The Journal as Evidence

In keeping with the Journal's status as the official record of the House,[11] it is provided by statute[12] that extracts therefrom certified by the Clerk[13] are to be received in evidence with the same effect as the originals would have. However, it has been held that with respect to matters not required by the Constitution to be entered on the Journal, such provision is not a statutory declaration that the Journal is the highest evidence of the facts stated in it or complete evidence of all that occurs in the progress of business in the House.[14]

Although the Constitution requires the objections of the President to a bill returned by him to be entered upon the Journal,[15] the failure of the Journal to show such objections as of a certain time is not conclusive in determining whether the bill was in fact returned within the period allowed by the Constitution,[16] particularly since the President has no control over the entries in the Journal.[17]

9. 111 CONG. REC. 452, 89th Cong. 1st Sess.

10. Carl Hayden (Ariz.).

11. See § 8, supra.

12. 28 USC § 1736.

13. 2 USC § 114 authorizes the Clerk to charge a nominal fee for certified transcripts from the Journal except when required by an officer of the United States in a matter relating to the duties of his office.

14. *Field* v *Clark*, 143 U.S. 649 (1892), construing former Revised Statutes § 895, the provisions of which respecting the admissibility and weight to be afforded certified copies of the Journal were essentially the same as those of 28 USC § 1736.

Collateral references: As to the extent to which resort may be made to legislative journals as an aid in the construction of constitutions or statutes generally, see 70 ALR 5. As to judicial review of parliamentary proceedings generally, see 59 Am Jur 2d *Parliamentary Law* § 15 (1971).

15. See § 10, infra.

16. U.S. Const. art I, § 7.

17. *Prevost* v *Morganthau*, 106 F2d 330 (70 App. D.C. 306, 1939).

It is expressly provided by statute[18] that certified copies of the Journal record of the oath of office personally subscribed by Members are admissible in evidence in any court of the United States as conclusive proof of the fact that the signer duly took the oath of office in accordance with law.[19]

§ 10. Entry of Particular Proceedings

The Constitution provides for the keeping and publication of the Journal,[20] and expressly requires the recording of certain matters therein. Pursuant to its provisions, veto messages of the President accompanying bills disapproved and returned by him to the House must be entered on the Journal.[1] The Constitution also specifies the circumstances under which the yeas and nays are to be entered on the Journal.[2] And, because yea and nay votes are thus always made a part of the Journal, a motion or request to that effect is not necessary.[3]

The specific content of the Journal is also governed to some extent by legislative enactment.[4] For example, a statute requires that the electoral vote be entered on the Journal[5] together with a list of the votes by state in alphabetical order.

Governing the content of the Journal to a far greater extent than the relatively few constitutional and statutory provisions are the rules and practice of the House itself. In this regard, it should be noted that while the Constitution requires that certain matters be recorded in the Journal, it does not specify the particular mode in which, or indicate with what fullness, the Journal is to record those proceedings of the House relating to matters not expressly required by it to be entered therein; consequently the procedures to be followed with respect to such matters are left to the discretion of the House.[6] Thus, the House controls its Jour-

18. 2 USC § 25.

19. Generally, as to taking the oath, see Ch. 2, supra.

20. See § 8, supra.

1. U.S. Const. art I, § 7.

2. See U.S. Const. art I, §§ 5, 7.

3. See § 10.4, infra.

4. See, for example, 2 USC § 25, requiring each Member who takes the oath of office to deliver a signed copy thereof to the Clerk for recordation in the *Congressional Record* and in the Journal.

As to the admissibility in evidence of certified copies of the Journal entry, see § 9, supra.

5. 3 USC § 17.

6. *Field* v *Clark*, 143 U.S. 670 (1892).

nal, even to the extent of omitting things actually done or recording things not done.[7] For example, because the Journal reflects only actions actually taken in the House, a request for unanimous consent which meets with objection is not made part of the Journal.[8] And, in the exercise of that discretion afforded it by the Constitution with respect to the Journal, the House has by its rules expressly provided for the entry therein of such diverse matters as questions of order and the decisions thereon,[9] the designation of a Clerk pro tempore,[10] the titles or subject of reports of committees delivered to the Clerk for printing and reference to the proper calendar under the direction of the Speaker,[11] the hour of adjournment,[12] and messages from the Senate and the President giving notice of bills passed or approved.[13]

Petitions, memorials and bills of a private nature, together with the names of the Members presenting them, are entered in the Journal,[14] as are all public bills, memorials, resolutions and other documents referred under the rules.[15] Additionally, when a bill, resolution or memorial is introduced "by request", these words must also be entered upon the Journal,[16] and although not expressly required to do so by its rules, the House follows an identical practice with respect to petitions so introduced.[17]

Every motion made to the House and entertained by the Speaker, likewise must be entered on the Journal with the name of the Member making it, unless it is withdrawn the same day.[18] A motion to discharge a committee, however, is entered on the Journal only when signed by a majority of the total membership of the House.[19]

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7. 4 Hinds' Precedents § 2784.

8. See § 10.2, infra.

9. Rule III clause 3, *House Rules and Manual* § 641 (1973).

10. Rule III clause 4, *House Rules and Manual* § 647 (1973).

11. Rule XIII clause 2, *House Rules and Manual* § 743 (1973).

12. Rule XVI clause 5, *House Rules and Manual* § 790 (1973).

13. Rule XXXIX, *House Rules and Manual* § 935 (1973).

14. Rule XXII clause 1, *House Rules and Manual* § 849 (1973).

15. Rule XXII clause 4, *House Rules and Manual* § 854 (1973).

16. Rule XXII clause 6, *House Rules and Manual* § 860 (1973), also requiring that the quoted words be printed in the Record.

17. See § 10.7, infra.

18. Rule XVI clause 1, *House Rules and Manual* § 775 (1973), providing further that any such motion must be reduced to writing on the demand of any Member.

19. Rule XXVII clause 4, *House Rules and Manual* § 908 (1973), further

Jefferson's Manual states that conference reports are to be entered in the Journal,[20] but notes that where amendments are made to a question they are not to be printed in the Journal separated from the question, and that the Journal records only the question as finally agreed to by the House.[1]

The Journal also should record the result of every vote and state its subject in general terms.[2] In this regard, the rules provide that when a recorded vote is taken the names of those voting on each side of the question and the names of those not voting are to be entered in the Journal.[3]

The names of those Members counted to establish a quorum of record, but not voting on a roll call, are also reported on the Journal.[4] And when, in the absence of a quorum, a call of the House in the old form is conducted, Members voluntarily appearing report their names to the Clerk to be entered upon the Journal as present.[5]

On the other hand, when a call of the House in the absence of a quorum is ordered, those Members who fail to respond are recorded as absent in the Journal,[6] as are those Members reported as absentees during a call of the roll ordered upon the failure of a quorum in the Committee of the Whole.[7]

Similarly, whenever electronic voting equipment is used in recording any roll call or quorum call, a list of the names of those Members recorded as voting in the affirmative, of those recorded as voting in the negative, and of those voting "present", as the case may be, is to be entered in alphabetical order in each category in the Journal as if their names had been called in the manner otherwise provided for under the provisions of the applicable rule.[8]

providing that a signature may be withdrawn by a Member in writing at any time before the motion is entered on the Journal.

20. *House Rules and Manual,* § 542 (1973).

1. *House Rules and Manual* § 580 (1973).

2. 4 Hinds' Precedents § 2804.

3. Rule I clause 5, *House Rules and Manual* § 630 (1973).

4. Rule XV clause 3, *House Rules and Manual* § 772 (1973).

5. Rule XV clause 2(a), *House Rules and Manual* § 768 (1973).

6. Rule XV clause 2(b), *House Rules and Manual* § 771b (1973).

7. Rule XXIII clause 2, § 863, and Rule XV clause 2(b), § 771b, *House Rules and Manual* (1973).

8. Rule XV clause 5, *House Rules and Manual* § 774b (1973).

Entry of Proceedings, Special Orders, and Unanimous-Consent Requests

§ 10.1 The Journal reflects the proceedings of the day.

On Oct. 8, 1968,[9] a Member propounded a parliamentary inquiry as to whether due diligence was being paid to the proceedings of that day with regard to what the Journal and the *Corgressional Record* would show on the next day. The Speaker pro tempore[10] stated that the Journal and the Record would reflect the proceedings of the day.

§ 10.2 The Journal reflects only the actions that are taken in the House and therefore, where a unanimous-consent request is objected to, such matter is not made part of the Journal.

On Feb. 15, 1950,[11] a Member interrupted the reading of the previous day's Journal to make the point of order that the Journal was incorrect because it noted neither his unanimous-consent request that the House adjourn until a day certain nor the objection of another Member thereto. The Speaker,[12] pointing out that the Clerk was reading the Journal and not the Record, overruled the point of order and declared that the Journal reflects only the actions that are taken.

§ 10.3 The Journal does not include the texts of special orders because they do not constitute business.

On Sept. 13, 1965,[13] a Member rising to a parliamentary inquiry interrupted the reading of the Journal for Sept. 9 to ask whether it included any part of certain special orders. In response, the Speaker[14] stated that the Journal did not include special orders because the same were not business.

Recording Yeas and Nays

§ 10.4 Yea and nay votes are always made a part of the Journal and a motion or request to that effect is not necessary.

On Feb. 21, 1950,[15] in response to a Member who requested that the yea and nay votes just re-

9. 114 Cong. Rec. 3097, 90th Cong. 2d Sess.
10. Wilbur D. Mills (Ark.).
11. 96 Cong. Rec. 1805, 81st Cong. 2d Sess.
12. Sam Rayburn (Tex.).
13. 111 Cong. Rec. 23600, 89th Cong. 1st Sess.
14. John W. McCormack (Mass.).
15. 96 Cong. Rec. 2094, 81st Cong. 2d Sess.

corded be made a part of that day's Journal, the Speaker[16] stated it to be his understanding that yea and nay votes are always made a part of the Journal.

Recording Electoral Votes

§ 10.5 After the dissolution of a joint session of Congress called for the purpose of counting the electoral vote, the Speaker calls the House to order and directs that the electoral vote be spread at large upon the Journal.

On Jan. 6, 1969,[17] after the President pro tempore of the Senate[18] had declared dissolved the joint session of Congress, called pursuant to a Senate concurrent resolution[1] for the purpose of counting the electoral vote, the House was called to order by the Speaker[2] who then directed that the electoral vote be spread at large upon the Journal.

§ 10.6 The names of those Members of Congress whose signatures on an objection to the electoral count are in excess of the minimum number prescribed by statute[3] may be entered on the Journal by unanimous consent.

On Jan. 6, 1969,[4] after the joint session of the two Houses of Congress called to count the electoral vote was dissolved, the Speaker,[5] having called the House to order and directed that the electoral vote be spread at large upon the Journal, announced that there were additional signatures of Members of the House and Senate on the objection raised to the electoral vote of North Carolina, and that without objection such signatures would appear in the Journal and in the Record. There was no objection.

Entry of Bills, Petitions, and Resolutions

§ 10.7 When a petition filed with the Clerk under Rule XXII clause 1 is introduced "by request," these words are entered on the Journal and printed in the Record fol-

16. Sam Rayburn (Tex.).
17. 115 Cong. Rec. 172, 91st Cong. 1st Sess.
18. Richard B. Russell, Jr. (Ga.).
1. S. Con. Res. 1, 91st Cong. 1st Sess. (1969).
2. John W. McCormack (Mass.).
3. 3 USC § 15, providing, inter alia, that such objection must be in writing and signed by at least one Senator and one Member of the House of Representatives.
4. 115 Cong. Rec. 172, 91st Cong. 1st Sess.
5. John W. McCormack (Mass.).

lowing the name of the Member.

The presentation and reference under Rule XXII[6] of a petition introduced "by request" on Apr. 13, 1961, was duly recorded in both the Journal[7] and the *Congressional Record*[8] for that date with the words "by request" noted parenthetically immediately following the name of the Member introducing the petition.

§ 10.8 The printing of the text of a bill in the Journal may be dispensed with by unanimous consent.

On Apr. 26, 1965[9] after the passage of a bill[10] providing for the codification of the general and permanent laws relating to decedents' estates and fiduciary relations in the District of Columbia, a Member asked unanimous consent that the printing of the bill in the Journal and in the *Congressional Record* be dispensed with because of the cost involved. There was no response to the Speaker's[11] call for objections.

6. Clauses 1 and 6, *House Rules and Manual* (1973).

7. H. JOUR. 424, 87th Cong. 1st Sess.

8. 107 CONG. REC. 5900, 87th Cong. 1st Sess.

9. 111 CONG. REC. 8375, 89th Cong. 1st Sess.

10. H.R. 4465, 89th Cong. 1st Sess. (1965).

11. John W. McCormack (Mass.).

§ 10.9 When a resolution has been adopted providing for the consideration of a bill by the Committee of the Whole House on the state of the Union, and the bill is then called up and considered by unanimous consent in the House as in the Committee of the Whole, the Journal indicates the discharge of the Committee of the Whole House on the state of the Union from the further consideration of such bill.

On June 28, 1966,[12] after the adoption of a resolution[13] providing for the consideration of a certain bill[14] in the Committee of the Whole House on the state of the Union under an open rule with one hour of general debate, a Member, by direction of the cognizant Committee, called up the bill and at his request was granted unanimous consent that it be considered in the House as in the Committee of the Whole. The Journal for that day[15] indicated the discharge of the Committee of

12. 112 CONG. REC. 14547, 89th Cong. 2d Sess.

13. H. RES. 895, 89th Cong. 2d Sess. (1966).

14. H.R. 5256, 89th Cong. 2d Sess. (1966).

15. H. JOUR. 650, 89th Cong. 2d Sess. (1966).

the Whole in the following language: "On motion of Mr. Hébert by unanimous consent, the Committee of the Whole House on the state of the Union was discharged from further consideration of the bill H.R. 5256. . . ."

Corrections of the Congressional Record

§ 10.10 When remarks and extraneous matter inserted in the Congressional Record by a Member are, by unanimous consent, ordered expunged from the permanent edition thereof, the Journal records such fact.

The Journal of June 5, 1962,[16] records the fact that at the request of a Member his remarks and certain extraneous material appearing in the *Congressional Record* for a particular date were by unanimous consent ordered expunged from the permanent Record.

§ 11. Reading the Journal

Prior to the 92d Congress, during which the present form of the applicable House rule[17] was adopted, the reading of the Journal of each legislative day was mandatory under the rule as then in force, and could be dispensed with only by unanimous consent[18] or by suspension of the rules.[19]

Under the modern practice, however, the Speaker, after examining the Journal, is authorized on the appearance of a quorum to announce his approval thereof, in which case the Journal is to be considered as read, unless its reading is ordered either by the Speaker himself or by the House. In the latter regard, it is in order to offer one motion that the Journal be read, which motion is of the highest privilege and must be determined without debate.[20] In either event, however, the Journal may not be ordered read, or approved, in the absence of a quorum,[1] and when a point of order as to the absence of a quorum is made prior to the reading of the Journal, the presence of a quorum is therefore ascertained before the reading is begun.[2]

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16. H. JOUR. 372, 87th Cong. 2d Sess.

17. Rule I clause 1, *House Rules and Manual* § 621 (1973), the present form of which is derived from § 127 of the Legislative Reorganization Act of 1970 (84 Stat. 1140).

18. 6 Cannon's Precedents § 625.

19. 4 Hinds' Precedents §§ 2747–2750.

20. Rule I clause 1, *House Rules and Manual* § 621 (1973).

1. 4 Hinds Precedents §§ 2732, 2733; 6 Cannon's Precedents § 629.

2. See § 12.6, infra.

The Journal, if and when read, is ordinarily read in accordance with the practices and customs of the House,[3] as prepared by the Clerk.[4] Once begun, the reading thereof must be in full if so demanded by a Member.[5] However, when a demand that it be read in full is made after a portion thereof has been read, the Clerk begins detailed reading at the point where the demand is made and does not return to that portion which has been passed.[6] Of course, a reading of the Journal may be terminated by unanimous consent.[7]

Reading Practices and Customs

§ 11.1 The Journal is read in accordance with the practices and customs of the House of Representatives.

On Sept. 13, 1965,[8] a Member, having been recognized for the purpose of submitting a parliamentary inquiry, interrupted the reading of the Journal for the previous legislative day to ask whether the reading of the Journal in full would be concluded prior to the reading of the special orders and the referral of bills and rules on that day.

The Speaker[9] stated that the Journal was being read in accordance with the practices and customs of the House of Representatives.

§ 11.2 When the House reconvened after an adjournment to a day certain, the Journal of the last day's proceedings was read.

When the House, pursuant to a Senate concurrent resolution,[10] met on Aug. 15, 1960,[11] after an adjournment of approximately six weeks, the Journal of the last day of meeting was read and approved.

Reading of Journal in Full

§ 11.3 The Journal had to be read in full when demanded by a Member.

On May 4, 1960,[12] before the Clerk had commenced the reading of the Journal of the previous

3. See § 11.1, infra.
4. See § 11.4, infra.
5. See § 11.3, infra.
6. See § 11.9, infra.
7. See § 11.13, infra.
8. 111 Cong. Rec. 23599, 89th Cong. 1st Sess.
9. John W. McCormack (Mass.).
10. S. Con. Res. 112, 86th Cong. 2d Sess.
11. 106 Cong. Rec. 16457, 86th Cong. 2d Sess.
12. 106 Cong. Rec. 9413, 86th Cong. 2d Sess.

day's proceedings, a Member demanded that the Journal be read in full. The Speaker[13] ordered the Clerk to read the Journal in full.

Likewise, on Aug. 27, 1962,[14] before the Clerk could proceed with the reading of the Journal following a call of the House, a Member rose to demand that the Journal be read in full. The Speaker[15] directed the Clerk to read the Journal in full.

§ 11.4 Where demand was made that the Journal be read in full, the Clerk read the Journal in accordance with the way it was prepared.

On Sept. 13, 1965,[16] the reading of the Journal for the previous legislative day was interrupted by a Member who, asserting that the Clerk had failed to read certain material, rose to demand that the Journal be read in full. The Speaker[17] advised that the Clerk was "reading the Journal in accordance with its preparation."

§ 11.5 When the Journal is read in full the names of those Members noted therein as responding on roll calls may also be read.

On June 1, 1934,[18] a Member propounding a parliamentary inquiry interrupted the reading of the Journal in full to ask whether, in the 35 or 36 years of the Speaker's[19] connection with the Congress he had ever known of any requirement under the rule for reading every name of every roll call that occurred and every single word of every proceeding in the Journal. The Speaker replied that while he did not know of such comprehensive reading, it could be done and that the [former] rule so provided.

§ 11.6 A message from the President of the United States, entered in the Journal, must be read in its entirety when the Journal is read in full.

On May 4, 1960,[20] after the Speaker,[1] in response to the demand of a Member, had directed the Clerk to read the Journal of the last day's proceedings in full, the same Member interrupted the

13. Sam Rayburn (Tex.).
14. 108 Cong. Rec. 17653, 87th Cong. 2d Sess.
15. John W. McCormack (Mass.).
16. 111 Cong. Rec. 23599, 89th Cong. 1st Sess.
17. John W. McCormack (Mass.).
18. 78 Cong. Rec. 10226, 73d Cong. 2d Sess.
19. Henry T. Rainey (Ill.).
20. 106 Cong. Rec. 9413, 86th Cong. 2d Sess.
1. Sam Rayburn (Tex.).

reading of the Journal with a parliamentary inquiry, asking whether the message from the President of the United States should be read as part of the Journal. The Speaker replied in the affirmative.

§ 11.7 The names of Members responding to roll calls for the yea and nay vote which had been entered in the Journal were read when the Journal was read in full.

On Apr. 9, 1964,[2] after a Member had earlier demanded that the Journal be read in full, the reading of the Journal was interrupted by another Member who insisted, as a point of order, that the names of those voting on a certain roll call be read. The Speaker,[3] stating it to be his understanding that that was the next item in the Journal to be read, ordered the Clerk to continue to read the proceedings of the preceding session.

§ 11.8 The reading of the Journal was interrupted by a Member contending that the names of those who failed to answer on a roll call were not being read in full.

On Sept. 13, 1965,[4] following a demand that the Journal be read in full, the Clerk, at the direction of the Speaker pro tempore[5] had continued the reading of the Journal when it was interrupted by a Member who contended that the names of those who failed to answer on a particular roll call were not being read in full. The Speaker pro tempore stated that the Clerk took up exactly where he left off. The Clerk then continued to read the Journal.

§ 11.9 Where a demand that the Journal be read in full was made after a portion thereof had been read, the Clerk began a detailed reading at the point where the demand was made and did not return to that portion which had been passed.

On Sept. 13, 1965,[6] a Member interrupted the reading of the Journal for Sept. 9, 1965, with a parliamentary inquiry to ask whether the reading of the Journal in full as previously demanded by him included the reading of the roll call immediately preceding that which was then being read. The Speaker pro tempore[7] replied that that part of the Journal had been passed before the de-

2. 110 Cong. Rec. 7355, 88th Cong. 2d Sess.
3. John W. McCormack (Mass.).
4. 111 Cong. Rec. 23598, 89th Cong. 1st Sess.
5. Carl Albert (Okla.).
6. 111 Cong. Rec. 23598, 89th Cong. 1st Sess.
7. Carl Albert (Okla.).

mand had been made for the reading of the Journal in full, and that the question was therefore moot.

Following a further parliamentary inquiry and a renewed demand by the same Member that the Journal be read in full, the reading of the Journal was resumed at the direction of the Speaker pro tempore and continued until again interrupted by another Member, who submitted that the Clerk was not reading in full the names of those who failed to answer the roll call being read at the time of the previous interruption. The Speaker pro tempore advised that the Clerk took up at the point of interruption.

The Clerk then continued the reading of the Journal.

§ 11.10 It is presumed that the Journal, when read, is always read in full.

On Sept. 11, 1968,[8] in response to a Member's demand that the Journal of the preceding session be read in full, the Speaker[9] said that there is a presumption that the Journal is always read in full.

Similarly, on Oct. 8, 1968,[10] in reply to a demand that the Journal be read in full, the Speaker advised that the Chair assumes that the Journal is always read in full.

Dispensing With Further Reading of the Journal

§ 11.11 Under the former rule, a motion that the further reading of the Journal be dispensed with was not in order because such action required unanimous consent.

On Feb. 22, 1950,[11] in response to a Member who interrupted the reading of the Journal to move that the further reading thereof be dispensed with, the Speaker[12] said that could be done only by unanimous consent.

Similarly, on May 4, 1960,[13] the Speaker[14] ruled that a motion to dispense with the further reading of the Journal was not in order, noting that the reading of the Journal could be dispensed with only by unanimous consent.

Again, on Sept. 19, 1962,[15] in response to a Member who moved that the further reading of the

8. 114 Cong. Rec. 26454, 90th Cong. 2d Sess.
9. John W. McCormack (Mass.).
10. 114 Cong. Rec. 30090, 90th Cong. 2d Sess.
11. 96 Cong. Rec. 2152, 81st Cong. 2d Sess.
12. Sam Rayburn (Tex.).
13. 106 Cong. Rec. 9413, 86th Cong. 2d Sess.
14. Sam Rayburn (Tex.).
15. 108 Cong. Rec. 19941, 87th Cong. 2d Sess.

Journal be dispensed with after objection was heard to his request that it be dispensed with by unanimous consent, the Speaker[16] stated that the motion was not in order.

§ 11.12 Under the former rule, the House, by unanimous consent, could dispense with the further reading of the Journal and consider it as read and approved.

On Aug. 8, 1964,[17] after a Member had interrupted the reading of the Journal to withdraw his demand that it be read in full, the Speaker[18] announced that without objection, the Journal of the proceedings of the previous day would be considered as read and approved. There was no objection.

Likewise on Sept. 11, 1968,[19] after the Speaker[20] had directed the Clerk to continue with the reading of the Journal following an interruption thereof initiated by a call of the House, a Member requested that the further reading of the Journal be dispensed with by unanimous consent. There was no objection.

§ 12. —Propriety of Business Before and During Reading

The reading and approval of the Journal rank second in the daily order of business prescribed by the rules of the House, coming immediately after the prayer by the Chaplain.[1] It is therefore well established that the transaction of business is not in order before the Journal is approved.[2] However, the simple motion to adjourn[3] and the administration of the oath to a Member-elect[4] are both in order prior to the reading of the Journal, and since the Journal may neither be ordered read nor approved in the absence of a quorum,[5] a point of no quorum may also be properly made before the Journal is read.[6]

Once begun, the reading of the Journal may not be interrupted even by business as highly privi-

16. John W. McCormack (Mass.).

17. 110 Cong. Rec. 18630, 88th Cong. 2d Sess.

18. John W. McCormack (Mass.).

19. 114 Cong. Rec. 26456, 90th Cong. 2d Sess.

20. John W. McCormack (Mass.).

1. Rule XXIV clause 1, *House Rules and Manual* § 878 (1973). As to approval of the Journal, see § 14, infra.

2. See § 12.1, infra.

3. See § 12.3, infra.

4. See § 12.5, infra.

5. See § 11, supra.

6. See § 12.6, infra.

leged as the presentation of a conference report[7] or the consideration of a privileged report from the Committee on Rules.[8] It may be interrupted, however, by a point of no quorum,[9] a parliamentary inquiry,[10] an arraignment of impeachment,[11] and a question of privilege of the House.[12]

In addition, certain matters may be authorized before or during the reading of the Journal by unanimous consent. For example, the Speaker may be so authorized to declare a recess subject to the call of the Chair prior to the reading of the Journal.[13] Likewise, a Member may be granted unanimous consent to extend his remarks and include extraneous matter in the Record prior to the reading of the Journal.[14]

Transaction of Business Before Reading

§ 12.1 The transaction of business, however highly privileged, is not in order before the reading and approval of the Journal.

On Oct. 8, 1968,[15] in response to a parliamentary inquiry, the Speaker pro tempore[16] held that it would not be in order to recognize a member of the Committee on Rules to present a rule before the completion of the reading of the Journal of the previous day, noting that even with respect to such a highly privileged matter as a conference report it had been previously ruled[17] that no business was in order until the Journal had been read and approved.

§ 12.2 A privileged report from the Committee on Rules may not be called up for consideration before the reading and approval of the Journal.

On Oct. 8, 1968,[18] before the reading of the Journal had been completed, a Member propounded as a parliamentary inquiry the suggestion that under the House rule[19] making it always in order to call up for consideration a re-

7. Rule XXVIII clause 1(a), *House Rules and Manual* § 909 (1973).
8. See § 12.2, infra.
9. See § 12.13, infra.
10. See § 12.15, infra.
11. 6 Hinds' Precedents § 469.
12. See § 12.17, infra.
13. See § 12.8, infra.
14. See § 12.9, infra.
15. 114 Cong. Rec. 30096 90th Cong. 2d Sess.
16. Wilbur D. Mills (Ark.).
17. 6 Cannon's Precedents § 630.
18. 114 Cong. Rec. 30095, 90th Cong. 2d Sess.
19. Rule XI, *House Rules and Manual* § 729 (1973).

port from the Committee on Rules, and in light of the construction given that rule by an early precedent,[1] it would be in order at that time for the Chair to recognize a member of the Committee on Rules for the purpose of calling up a special order. The Speaker pro tempore,[2] however, noting that the precedent referred to had been superseded by the subsequent ruling[3] that no business was in order until the Journal had been read and approved, held that it thus would not be in order for him to recognize a member of the Committee on Rules to present a rule before the reading of the previous day's Journal had been completed.

Matters Taking Precedence Over Reading

§ 12.3 A simple motion to adjourn is in order prior to the reading and approval of the Journal.

On July 25, 1949,[4] before the Journal of the last day's proceedings was read, a Member moved that the House then adjourn, which motion, after the yeas and nays were ordered thereon, was decided in the negative.

Again, on Dec. 7, 1963,[5] prior to the reading of the Journal and while a point of order that a quorum was not present was pending, a Member moved that the House adjourn. The motion was then agreed to and the House accordingly adjourned until Dec. 9, 1963, at 12 o'clock noon.

§ 12.4 The House may adjourn before the Journal is read and approved.

On Dec. 7, 1963,[6] before the Journal was read and pending the point of order that a quorum was not present, a Member moved that the House adjourn. The motion was agreed to, and the House accordingly adjourned until Monday, Dec. 9, 1963, at 12 o'clock noon.

§ 12.5 The oath of office may be administered to a Member-elect before the Journal is read.

On Apr. 26, 1948,[7] before the Clerk had begun to read the Journal and after a point of no quorum was, at the request of the Speaker,[8] withheld in order that he

1. 4 Hinds' Precedents § 2754.
2. Wilbur D. Mills (Ark.).
3. 6 Cannon's Precedents § 630.
4. 95 Cong. Rec. 10092, 81st Cong. 1st Sess.
5. 109 Cong. Rec. 23752, 88th Cong. 1st Sess.
6. *Id.*
7. 94 Cong. Rec. 4834, 80th Cong. 2d Sess.
8. Joseph W. Martin, Jr. (Mass.).

might swear in a new Member, the Speaker laid before the House a communication from the Clerk attesting to the credentials of the Member-elect concerned, who then appeared at the bar of the House and took the oath of office.

§ 12.6 The point of no quorum may be made before the Journal is read and approved.

On Apr. 26, 1948,[9] before the Clerk had begun to read the Journal, a Member making the point of order that a quorum was not present refused to withhold it until after the Journal was read, although agreeing to do so until after a new Member was sworn, and therefore, following the administration of the oath by the Speaker,[10] a call of the House was ordered. After a quorum had appeared, the House dispensed with further proceedings under the call and the Journal of the previous day was then read and approved.

On Mar. 26, 1965,[11] before the Clerk had commenced the reading of the Journal, a Member making the point of order that a quorum was not present answered in the affirmative when asked by the Speaker[12] whether he was making such point of order before the Journal was read. A call of the House was then ordered, and after a quorum had appeared, further proceedings under the call were dispensed with and the Clerk read the Journal of the previous day.

§ 12.7 When a point of order as to the absence of a quorum is made before the reading of the Journal, the presence of a quorum is established before the reading begins.

On Mar. 26, 1965,[13] after the Clerk had been directed by the Speaker[14] to read the Journal of the previous day but before he had begun to do so, a Member made the point of order that a quorum was not present. A call of the House was then ordered, and after a quorum had appeared in response thereto and further proceedings thereunder had been dispensed with, the Clerk read the Journal.

Matters Authorized by Unanimous Consent

§ 12.8 A recess subject to the call of the Chair may be de-

9. 94 Cong. Rec. 4834, 80th Cong. 2d Sess.
10. Joseph W. Martin, Jr. (Mass.).
11. 111 Cong. Rec. 6094. 89th Cong. 1st Sess.
12. John W. McCormack (Mass.).
13. 111 Cong. Rec. 6093, 89th Cong. 1st Sess.
14. John W. McCormack (Mass.).

clared by the Speaker, if properly authorized, prior to the reading and approval of the Journal.

On Apr. 9, 1964,[15] before the Clerk had begun to read the Journal of the previous day's proceedings, the Speaker[16] (pursuant to authorization by unanimous consent)[17] declared a recess, subject to the call of the Chair, for the purpose of permitting Members to proceed to the Rotunda to witness the conclusion of the lying-in-state ceremonies for the late General of the Army Douglas MacArthur. After the expiration of the recess, the House was called to order by the Speaker, and at his direction, the Clerk read the Journal.

§ 12.9 A Member's request for unanimous consent to extend his remarks and include extraneous matter in the Record may be entertained and acted upon prior to the reading and approval of the Journal.

On Dec. 7, 1963,[18] after the prayer by the Chaplain and before the Journal of the previous day's proceedings had been read, a Member asked unanimous consent to extend his remarks at that point in the Record and include extraneous matter therein. There was no response to the Speaker's[19] call for objections.

Requests Entertained Before Reading

§ 12.10 A request that Calendar Wednesday business be dispensed with by unanimous consent may be entertained prior to the reading and approval of the Journal.

On Sept. 19, 1962,[20] before the Clerk had begun to read the Journal and pending the renewal of a point of no quorum which was being withheld, a Member asked unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on that day. Following the Speaker's[1] interrogative, an objection was heard and the request accordingly denied.

§ 12.11 The Speaker may decline requests for unanimous consent to insert material in the Record until after the

15. 110 Cong. Rec. 7354, 88th Cong. 2d Sess.

16. John W. McCormack (Mass.).

17. 110 Cong. Rec. 7119, 88th Cong. 2d Sess.

18. 109 Cong. Rec. 23751, 88th Cong. 1st Sess.

19. John W. McCormack (Mass.).

20. 108 Cong. Rec. 19940, 87th Cong. 2d Sess.

1. John W. McCormack (Mass.).

Journal has been read and approved.

On Sept. 19, 1962,[2] before the Clerk had begun to read the Journal of the preceding session, a Member, having unsuccessfully sought unanimous consent for dispensing with Calendar Wednesday business on that day, asked unanimous consent to insert in the Record with his own remarks a letter from the Secretary of State addressed to the Speaker of the House. The Speaker[3] stated that unanimous-consent requests would have to wait until after the Journal had been read.

Reception of Messages Prior to Reading

§ 12.12 A message from the Senate may be received before the reading of the Journal.

On Sept. 19, 1962,[4] before the Clerk had begun to read the Journal of the preceding session, a point of order that a quorum was not present was made and, at the request of the Speaker,[5] then withheld in order to permit the reception of a message from the Senate. Following the communication of the message to the Chair, the point of no quorum was renewed, and after a call of the House had been ordered and a motion to dispense with further proceedings thereunder agreed to, the Clerk commenced the reading of the Journal.

Again, on Apr. 9, 1964,[6] a message from the Senate was received after a point of no quorum made before the Clerk had begun to read the Journal was withheld solely for that purpose at the request of the Speaker.[7]

And on Sept. 11, 1968,[8] following a call of the House ordered before the reading of the Journal was begun, and while a motion to dispense with further proceedings under the call was pending, the Speaker[9] received a message from the Senate.

Matters Which May Interrupt Reading

§ 12.13 A point of order of no quorum is in order during the reading of the Journal.

On Dec. 18, 1970,[10] after a Member had interrupted the read-

2. 108 Cong. Rec. 19940, 87th Cong. 2d Sess.
3. John W. McCormack (Mass.).
4. 108 Cong. Rec. 19940, 87th Cong. 2d Sess.
5. John W. McCormack (Mass.).
6. 110 Cong. Rec. 7353, 88th Cong. 2d Sess.
7. John W. McCormack (Mass.).
8. 114 Cong. Rec. 26453, 90th Cong. 2d Sess.
9. John W. McCormack (Mass.).
10. 116 Cong. Rec. 42505, 91st Cong. 2d Sess.

ing of the Journal to make the point of order that a quorum was not present, the Speaker pro tempore[11] announced the intention of the Chair to conduct a count, thereby prompting another Member to ask, by way of parliamentary inquiry, whether it was in order for a Member to be recognized during the reading of the Journal. The Speaker pro tempore replied that a point of order that a quorum is not present is always in order.

§ 12.14 The reading of the Journal may be interrupted by a call of the House.

On Aug. 27, 1962,[12] after the reading of the Journal had been interrupted by a Member making the point of order that a quorum was not present and the Speaker[13] had confirmed such fact by making a count, a call of the House was ordered. Following the appearance of a quorum, further proceedings under the call were dispensed with, and the Clerk then concluded the reading of the Journal.

Again, on Nov. 3, 1967,[14] after the Clerk had begun to read the Journal of the preceding day, a Member made the point of order that a quorum was not present. A call of the House was then ordered, and after a quorum had appeared in response thereto and further proceedings thereunder had been dispensed with by unanimous consent, the Clerk read the Journal.

§ 12.15 A Member may interrupt the reading of the Journal to propound a parliamentary inquiry.

On Apr. 9, 1964,[15] a Member who interrupted the reading of the Journal to submit a parliamentary inquiry was recognized for that purpose by the Speaker.[16]

§ 12.16 The status of the Clerk's progress in reading the Journal of proceedings of the previous day is a proper subject for a parliamentary inquiry.

On Oct. 8, 1968,[17] in response to a parliamentary inquiry asking how many pages of the Journal had been read and how many remained to be read, the Speaker[18]

11. W.J. Bryan Dorn (S.C.).

12. 108 CONG. REC. 17654, 87th Cong. 2d Sess.

13. John W. McCormack (Mass.).

14. 113 CONG. REC. 31081, 90th Cong. 1st Sess.

15. 110 CONG. REC. 7356, 88th Cong. 2d Sess.

16. John W. McCormack (Mass.).

17. 114 CONG. REC. 30100, 90th Cong. 2d Sess.

18. John W. McCormack (Mass.).

characterized the inquiry as a proper one, and following a further expression of interest in the reading by the Member making the inquiry, advised him of the total number of pages to be read and the number already read by the Clerk.

§ 12.17 The reading of the Journal may be interrupted by a question of privilege affecting the House collectively.

On Oct. 9, 1968,[19] in declining recognition to a Member who interrupted the reading of the Journal with a point of personal privilege, the Speaker[20] advised that a question of personal privilege should be made after the Journal had been disposed of but that a matter of privilege of the House was an entirely different situation.

§ 12.18 A Member, by unanimous consent, may secure recognition during the reading of the Journal.

On Apr. 9, 1964,[1] a Member propounding a parliamentary inquiry interrupted the reading of the Journal to ask whether there was any way under the rules by which he might at that point be recognized for one minute. The Speaker[2] advised that such recognition might be obtained by unanimous consent, and after the Member had made a request to that end without any objection thereto being heard, declared him so recognized.

Reception of Messages During Interruption of Reading

§ 12.19 A message from the Senate may be received during an interruption in the reading of the Journal which is occasioned by a point of no quorum.

On Aug. 27, 1962,[3] after the reading of the Journal had been interrupted by a point of no-quorum which at the request of the Speaker[4] was then withheld, a message from the Senate was communicated to the Chair. A call of the House was then conducted, and after proceedings thereunder had been dispensed with, the Clerk continued with the reading of the Journal at the direction of the Speaker.

§ 12.20 A message from the President may be received

19. 114 Cong. Rec. 30214, 90th Cong. 2d Sess.

20. John W. McCormack (Mass.).

1. 110 Cong. Rec. 7356. 88th Cong. 2d Sess.

2. John W. McCormack (Mass.).

3. 108 Cong. Rec. 17651, 87th Cong. 2d Sess.

4. John W. McCormack (Mass.).

during an interruption of the reading of the Journal for a call of the House.

On Aug. 27, 1962,[5] following the interruption of the reading of the Journal for a call of the House, the Speaker[6] received a message from the President prior to ordering the Clerk to resume the reading of the Journal.

Resumption of Reading After Interruption

§ 12.21 Once the reading of the Journal has been interrupted for a call of the House under Rule XV,[7] it may not be resumed even though a quorum has responded to such call until the House has agreed to dispense with further proceedings thereunder.

On Oct. 8, 1968,[8] in response to a parliamentary inquiry as to whether or not the reading of the Journal could proceed if a quorum was present after a call of the House had been made under Rule XV clause 2, the Speaker[9] replied that the reading of the Journal could not be resumed until further proceedings under the call had been dispensed with.

§ 12.22 When the reading of the Journal is resumed after having been interrupted, the Clerk continues to read from the point of interruption.

On Sept. 19, 1962,[10] a Member interrupted the reading of the Journal to make the point of order that the Clerk had not resumed the reading of the Journal at the point where he concluded when interrupted by a call of the House. The Speaker[11] ordered the Clerk to continue the reading of the Journal from the point of the first interruption.

Again, on Sept. 13, 1965,[12] following several parliamentary inquires and a demand that the Journal be read in full, the reading of the Journal was resumed and continued until again interrupted by a Member who submitted that the Clerk was not reading in full the names of those who failed to answer the particular roll call being read at the time of the previous interruption. The Speaker pro tempore[13] ad-

5. 108 Cong. Rec. 17653, 87th Cong. 2d Sess.
6. John W. McCormack (Mass.).
7. Rule XV clause 2(a), *House Rules and Manual* § 768 (1973).
8. 114 Cong. Rec. 30094, 90th Cong. 2d Sess.
9. John W. McCormack (Mass.).
10. 108 Cong. Rec. 19943, 87th Cong. 2d Sess.
11. John W. McCormack (Mass.).
12. 111 Cong. Rec. 23598, 89th Cong. 1st Sess.
13. Carl Albert (Okla.).

vised that the Clerk took up the reading exactly where first interrupted.

Matters Not in Order Until Reading Completed

§ 12.23 A request that the Record be corrected is not in order during the reading of the Journal.

On June 1, 1934,[14] in response to a Member who interrupted the reading of the Journal with a parliamentary inquiry as to the propriety of asking at that time that the Record be corrected, the Speaker[15] advised that it would not be proper at that time.

§ 12.24 The motion to dispense with Calendar Wednesday business is not in order during a reading of the Journal.

On Sept. 19, 1962,[16] before the Clerk had completed his reading of the Journal, a Member moved that business in order under the Calendar Wednesday rule be dispensed with after an objection was voiced to his request that such business be dispensed with by unanimous consent. The Speaker[17] ruled that the motion was not in order until after the Journal was read.

§ 13. Effecting Corrections

Jefferson's Manual[18] states that on information of an incorrect or omitted entry in the Journal, a committee may be appointed to examine and rectify it, and report it to the House. However, in practice, the correction of the Journal is accomplished without utilizing such procedure, being done simply either by motion[19] or unanimous consent.[20] The latter method is employed usually, if not exclusively, when the Journal to be corrected is that of a day prior to the previous legislative day.[1] For example, when the Journal of a day preceding the previous legislative day fails through oversight to indicate that the Speaker signed a particular enrolled bill,[2] or which shows an incorrect placement of an amendment to a bill,[3] it may be corrected by unanimous consent.

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14. 78 Cong. Rec. 10226, 73d Cong. 2d Sess.

15. Henry T. Rainey (Ill.).

16. 108 Cong. Rec. 19943, 87th Cong. 2d Sess.

17. John W. McCormack (Mass.).

18. *House Rules and Manua1* § 583 (1973).

19. See, for example, § 13.1, infra.

20. See, for example, § 13.4, infra.

1. See §§ 13.4 et seq., infra.

2. See § 13.5, infra.

3. See § 13.7, infra.

The motion to amend the Journal takes precedence of the motion to approve it,[4] but is not in order before the reading of the Journal has been completed,[5] and will be denied after the previous question has been demanded on the motion to approve the Journal.[6] However, the motion to commit provided for in the rule for the previous question[7] may be applied to a motion to amend the Journal.[8]

Time for Making Corrections

§ 13.1 A motion to amend the Journal is not in order prior to a reading of the Journal.

On May 4, 1960,[9] prior to the commencement of the reading of the Journal, a Member stating a parliamentary inquiry asked whether a motion to amend the Journal was in order at that point or during the reading of the Journal or at the conclusion of the reading of the Journal. The Speaker[10] ruled that such a motion was not in order at that point.

§ 13.2 A motion to amend the Journal is not in order until the reading thereof has been completed.

On Sept. 13, 1965,[11] a Member rising to a parliamentary inquiry interrupted the reading of the Journal to ask whether it would be in order to move to amend the Journal at that time or after completion of the reading of the Journal. In response, the Speaker[12] stated that the effort of any Member to amend the Journal would have to be at the conclusion of the reading of the Journal.

§ 13.3 A motion to amend the Journal, made after the previous question is demanded on a motion to approve, will be denied.

On June 1, 1934,[13] following the reading of the Journal, a Member moved that the Journal be approved, and on that motion demanded the previous question. Another Member then moved to amend the Journal, making the point of order that such motion

4. 4 Hinds' Precedents § 2760; 6 Cannon's Precedents § 633.
5. See § 13.2, infra.
6. See § 13.3, infra.
7. Rule XVII clause 1, *House Rules and Manual* § 804 (1973).
8. 5 Hinds' Precedents § 5574.
9. 106 Cong. Rec. 9413, 86th Cong. 2d Sess.
10. Sam Rayburn (Tex.).
11. 111 Cong. Rec. 23598, 89th Cong. 1st Sess.
12. John W. McCormack (Mass.).
13. 78 Cong. Rec. 10226, 73d Cong. 2d Sess.

had precedence. The Speaker,[14] citing an earlier precedent,[15] ruled that a motion to amend the Journal might not be had after the moving of the previous question on a motion to approve the Journal. The previous question was then ordered.

Again, on Sept. 13, 1965,[16] after the reading of the Journal had been completed, a Member moved that it be approved as read and moved the previous question thereon, whereupon another Member moved to lay on the table the motion to approve and attempted to offer an amendment to the Journal. The Speaker[17] ruled that the motion to lay on the table was in order, but that the amendment was not.

Method of Effecting Corrections

§ 13.4 When the Journal erroneously shows a Member as absent during a roll call, it may be corrected by unanimous consent.

On June 29, 1966,[18] at the request of a Member, the Journal of June 27, 1966, was corrected by unanimous consent to show him as present and answering to his name in response to a roll call conducted on that date.

§ 13.5 Where the Journal of a day preceding the previous legislative day fails through oversight to indicate that the Speaker signed a particular enrolled bill, it may be corrected by unanimous consent.

On June 24, 1968,[19] the Journal of the proceedings of Thursday, June 20, having been read and approved, the Speaker[20] announced that although he had signed a particular enrolled bill[1] on Wednesday, June 19, through accident or oversight that fact was not noted in either the Journal or the Record, and that therefore, without objection, the Journal and Record of June 19 would be amended to reflect such action. There was no objection.

§ 13.6 Where the Journal contains an error with respect to an appointment made by the Speaker, it may be corrected by unanimous consent.

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14. Henry T. Rainey (Ill.).

15. 4 Hinds' Precedents § 2770.

16. 111 Cong. Rec. 23600, 89th Cong. 1st Sess.

17. John W. McCormack (Mass.).

18. H. Jour. 655, 89th Cong. 2d Sess.

19. H. Jour. 591, 90th Cong. 2d Sess. (1968).

20. John W. McCormack (Mass.).

1. H.R. 4566, 90th Cong. 2d Sess. (1968).

On Feb. 4, 1963,[2] the Speaker,[3] calling attention to an error in the list of those appointed by him on Jan. 31, 1963, to the Board of Visitors to the U.S. Military Academy, asked unanimous consent that the Journal and Record be corrected accordingly. There was no objection.

§ 13.7 The Journal may, by unanimous consent, be corrected to show the proper place for an adopted amendment in a bill.

On Aug. 30, 1957,[4] a Member asked unanimous consent that the Journal of June 17, 1957, which erroneously showed a certain amendment to a reported bill[5] as having been adopted following a particular line therein, be corrected to properly reflect the action taken by the House and show that such amendment was instead adopted as a specific subsection and inserted immediately following a different line of the reported bill. There was no response to the call of the Speaker pro tempore[6] for objections.

2. H. JOUR. 177, 88th Cong. 1st Sess. (1963).
3. John W. McCormack (Mass.).
4. 103 CONG. REC. 16760, 85th Cong. 1st Sess.
5. H.R. 6127, 85th Cong. 1st Sess. (1957).
6. Jere Cooper (Tenn.).

Precedence of Motion to Amend Journal in Senate

§ 13.8 In the Senate, a motion to amend the Journal made after the reading thereof takes precedence of a motion to lay a House bill before the Senate and make it the pending business.

On July 26, 1962,[7] following a quorum call conducted immediately after the reading of the Journal, a Senator moved that the Senate turn to the consideration of a certain House bill[8] and that it be laid down and made the pending business. Another Senator, however, pointing out that because of the quorum call there had been no opportunity to offer amendments to the Journal, raised the point of order that such motion was not in order until such time as amendments to the Journal had been offered and consideration thereof completed. The presiding officer[9] sustained the point of order, noting that under Senate Rule III[10] any motion to amend or correct the Journal was privileged and to be proceeded

7. 108 CONG. REC. 14857, 87th Cong. 2d Sess.
8. H.R. 11040, 87th Cong. 2d Sess. (1962).
9. Lee Metcalf (Mont.).
10. Rule III clause 1, *Senate Manual.*

with until disposed of, but that there had been no opportunity to present such a motion because the Senate found itself without a quorum.

§ 14. Approval

In ordinary practice the Journal is approved by the House without the formality of a motion,[11] after the Speaker, in accordance with the applicable House rule,[12] has examined it and announced that it meets with his approval. But when objection is raised to the approval of the Journal by unanimous consent, the Speaker may immediately put the question thereon to the House.[13] Moreover, even though the Speaker announces his approval of the Journal, he or the House may order it read.[14] And, in this regard, a motion that the Journal be approved as read, in the absence of timely objection thereto, may be entertained and acted upon even though offered before the reading of the Journal has been completed.[15] On the other hand, the motion to amend the Journal, although taking precedence over the motion to approve it, may not be admitted after the previous question has been demanded on the motion to approve.[16]

It is a long-established rule that the transaction of business, no matter how highly privileged, is not in order before the approval of the Journal.[17] Thus, even a matter of such high privilege as a report from the Committee on Rules may not be called up for consideration before the Journal has been approved.[18] However, the Journal's approval yields to, and thus may be delayed by, the simple motion to adjourn,[19] the administration of the oath,[20] a point of no quorum,[1] an arraignment of impeachnent,[2] a parliamentary inquiry,[3] and questions of privilege of the House.[4] And, of course, those matters sanctioned by unanimous consent prior to or during the reading of the Journal are at the same time necessarily in order before the approval of the Journal also.[5]

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11. See §§ 14.10, 14.11, infra.
12. See § 11, supra.
13. See § 14.12, infra.
14. See § 11, supra.
15. See §§ 14.4 et seq., infra.
16. See § 13, supra.
17. See § 12, supra.
18. See § 12.2, supra.
19. See § 12.3, supra.
20. See § 12.5, supra.
1. See §§ 12.6, 12.13, supra.
2. 6 Cannon's Precedents § 469.
3. See § 12.15, supra.
4. See § 12.17, supra.
5. See § 12, supra.

It is the uniform practice in the House to approve the Journal for each legislative day.[6] Even when the House is reconvening after an adjournment to a day certain of several weeks duration, the Journal of the last day of meeting is taken up for approval.[7]

Order of Approval of Journals

§ 14.1 When the Journals of more than one session remain unread and unapproved, they are taken up for approval and disposed of in chronological order.

On Dec. 9, 1963,[8] following the prayer by the Chaplain, the Journal of the proceedings of Dec. 6, 1963, was read and approved. The Journal of the proceedings of Dec. 7, 1963, was then read and, after a Member had reserved the right to object thereto, eventually approved when the Speaker[9] put the question thereon to the House.

Delay in Approval

§ 14.2 The failure of the Record to show an action taken in the House does not justify a delay in the approval of the Journal which correctly recorded such action.

On June 7, 1948,[10] a Member questioning the accuracy of the Journal as read reserved the right to object thereto, and pointing out by way of explanation that the Record for the day in question showed the adoption of only one Senate amendment to a certain House joint resolution[11] when there were in fact two such amendments to be considered, requested that the approval of the Journal therefore be put off until the next day in order that the matter might be investigated.

The Speaker pro tempore[12] declared that the Journal as prepared and read stated the true facts and the true record of the situation, and that the Record, which he had examined and found to be in error, could be corrected by unanimous consent to state the true facts in conformity with the Journal. He concluded that in his opinion the Journal should be approved as read.

6. 4 Hinds' Precedents § 2731.
7. See § 11.2, supra.
8. 109 Cong. Rec. 23830, 88th Cong. 1st Sess.
9. John W. McCormack (Mass.).
10. 94 Cong. Rec. 7281, 80th Cong. 2d Sess.
11. H.J. Res. 296, 80th Cong. 2d Sess. (1948).
12. Charles A. Halleck (Ind.).

Motion That Journal Be Approved as Read

§ 14.3 A motion that the Journal be approved as read which interrupts the reading thereof is subject to a point of order when made.

On Mar. 26, 1965,[13] after a Member had interrupted the reading of the Journal to move that it be approved as read, debate was had on the motion and the previous question was ordered thereon. Then, in responding to a series of parliamentary inquiries, the Speaker[14] advised that a point of order against the motion at that particular stage would come too late, but emphasized that he would not want the inference to be drawn that the point could not be made under other circumstances.

§ 14.4 A motion that the Journal be approved as read, in the absence of timely objection thereto, may be entertained by the Speaker and acted upon by the House, even though offered before the reading of the Journal has been concluded.

On Mar. 26, 1965,[15] after a Member had interrupted the reading of the Journal to move that it be approved as read, debate was had on the motion and the previous question was ordered thereon. Thereafter the Speaker,[16] noting in response to a parliamentary inquiry that a point of order against the motion would at that stage come too late, put the question of approval to the House, and the motion then being agreed to, the Journal as read was approved

§ 14.5 A point of order against a motion that the Journal be considered as read and approved came too late after there had been debate on the motion and the previous question had been ordered thereon, notwithstanding that such motion was made before the reading of the Journal was completed.

On Mar. 26, 1965,[17] a Member interrupted the reading of the Journal to move that it be approved, after which debate was had on the motion and the previous question was ordered thereon. Thereafter, in responding to a

13. 111 Cong. Rec. 6095, 89th Cong. 1st Sess.
14. John W. McCormack (Mass.).
15. 111 Cong. Rec. 6095, 89th Cong. 1st Sess.
16. John W. McCormack (Mass.).
17. 111 Cong. Rec. 6095, 89th Cong. 1st Sess.

series of parliamentary inquiries, the Speaker[18] said that the reading of the Journal had not been completed, and that a motion had been made that the Journal be considered as read and approved; he stated that while he would not want the inference to be drawn that a point of order could not be made against the motion under other circumstances, at that particular stage the point of order came too late.

§ 14.6 A motion that the Journal be approved as read is not subject to the point of order that the reading of the Journal has not been completed after the vote on the question of approval has been taken.

On Mar. 26, 1965,[19] after a Member had interrupted the reading of the Journal to move that it be approved, debate was had on the motion and the previous question was then ordered thereon. Subsequently, in response to a number of parliamentary inquiries, the Speaker[20] conceded that the reading of the Journal had not been completed, but said, inter alia, that a point of order would not lie against the motion once the vote on the question of approval had been taken, because the will of the House would then have been expressed.

§ 14.7 Whenever the previous question has been ordered on a motion to approve the Journal on which there has been no debate, a Member may demand the right to debate the motion under the rules[1] of the House.

On Sept. 13, 1965,[2] a Member moved that the Journal be approved, and without any debate on such motion, the previous question was ordered thereon. The Speaker,[3] in response to a parliamentary inquiry, then ruled that debate on the motion might be had at that time under Rule XXVII clause 3 if a Member claimed the right.

§ 14.8 The motion to lay on the table is applicable to a motion that the Journal be ap-

18. John W. McCormack (Mass.).
19. 111 Cong. Rec. 6095, 89th Cong. 1st Sess.
20. John W. McCormack (Mass.).

1. Rule XXVII clause 3, *House Rules and Manual* § 907 (1973), providing, inter alia, that 40 minutes of debate shall be allowed whenever the previous question has been ordered on any proposition on which there has been no debate.
2. 111 Cong. Rec. 23602, 89th Cong. 1st Sess.
3. John W. McCormack (Mass.).

proved as read and takes precedence over a prior demand for the previous question thereon.

On Sept. 13, 1965,[4] after the Clerk had finished the reading of the Journal, a Member made the motion that it be approved as read and then moved the previous question thereon, whereupon another Member moved to table the motion to approve and offered an amendment to the Journal. The Speaker[5] ruled that the amendment was not in order, but recognized a Member to move to table the motion to approve the Journal.

§ 14.9 The yeas and nays may be had on ordering the previous question on a motion that the Journal be approved as read.

On July 25, 1949,[6] after the Clerk had finished the reading of the Journal of the previous legislative day, a Member moved that the Journal as read stand approved, and on that motion moved the previous question. The question was then stated by the Speaker[7] to be on ordering the previous question, and following the demand of another Member for the yeas and nays thereon, the yeas and nays were so ordered.

Approval by Unanimous Consent

§ 14.10 Under the old rule, under which the Journal was read, the Journal was customarily approved as read by unanimous consent.

On Oct. 18, 1965,[8] after the Clerk had read the Journal of the proceedings of the preceding session, the Speaker[9] announced that without objection the Journal, as read, would stand approved. There was no objection.

§ 14.11 Under the new rule, the Journal is normally approved by the House without the formal putting of a motion to approve.

On Feb. 21, 1972,[10] the Speaker,[11] having announced to the House his examination and approval of the Journal of the last day's proceedings, declared that, without objection, the Journal

4. 111 Cong. Rec. 23600, 89th Cong. 1st Sess.
5. John W. McCormack (Mass.).
6. 95 Cong. Rec. 10092, 81st Cong. 1st Sess.
7. Sam Rayburn (Tex.).
8. 111 Cong. Rec. 27170, 89th Cong. 1st Sess.
9. John W. McCormack (Mass.).
10. 118 Cong. Rec. 4748, 92d Cong. 2d Sess.
11. Carl Albert (Okla.).

would stand approved. There was no objection.

§ 14.12 Where objection was raised to the approval of the Journal by unanimous consent, the Speaker could immediately put the question of approval to the House.

On Dec. 9, 1963,[12] in response to a Member's reservation of the right to object to the Journal as read for the previous legislative day, the Speaker[13] immediately declared the question to be on the motion to approve the Journal for that day, and after the motion was agreed to announced that the Journal stood approved.

Reception of Messages Before Approval

§ 14.13 The Speaker may receive a message from the Senate prior to the approval of the Journal.

On Sept. 13, 1965,[14] while a motion to approve the Journal was under debate, a Member rising to a point of order objected to the reception by the Speaker of a message from the Senate as the transacting of business of the House prior to the completion of the reading of the Journal. The Speaker[15] stated that it is always proper to receive a message from the President of the United States, or from the other body, as quickly as possible.

§ 14.14 A message from the Senate may be received while the motion to approve the Journal is under debate.

On Sept. 13, 1965,[16] while the motion to approve the Journal as read was under debate, a Member made the point of order that the receipt of a message from the Senate then being communicated to the House constituted the transacting of business of the House prior to the completion of the reading of the Journal. The Speaker[17] replied that it is always proper, as well as courteous, to receive a message from the other body.

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12. 109 CONG. REC. 23831, 88th Cong. 1st Sess.

13. John W. McCormack (Mass.).

14. 111 CONG. REC. 23604, 89th Cong. 1st Sess.

15. John W. McCormack (Mass.).

16. 111 CONG. REC. 23607, 89th Cong. 1st Sess.

17. John W. McCormack (Mass.).

C. THE CONGRESSIONAL RECORD

§ 15. In General; Purpose and Format

The *Congressional Record* is "substantially a verbatim report of proceedings" in the two Houses of Congress.[1] While the House Journal[2] is the official record of the proceedings of the House,[3] it contains only minutes of official actions, and is not a record of debate.

The statutory provisions and rules which govern the format[4] and content[5] are discussed below. In addition, it should be noted that although the Record is "substantially a verbatim report," the rules of the Joint Committee on Printing and the general practices of the House permit Members to extend their remarks so as to include matters not spoken on the floor,[6] and to edit remarks actually delivered on the floor.[7] The House may also order the deletion from the Record of remarks made by a Member without recognition by the Speaker, and unparliamentary remarks which reflect unfavorably upon the House, its membership, or institutions.[8]

Control over the arrangement and style of the Record is vested in the Joint Committee on Printing[9] by statute.[10] The Joint Committee on Printing has adopted rules to provide for the prompt publication and delivery of the Record.[11]

Each House of Congress separately controls the content of its

1. 44 USC § 901 (1970).
   The origin, publication, and distribution of the Record is discussed in 5 Hinds' Precedents § 6959.
2. See §§ 8–14, supra.
3. 4 Hinds' Precedents § 2727.
4. See §§ 15.1, 15.2, infra.
5. See § 16, infra.
6. See § 20, infra.
7. See § 19, infra.
8. See § 17, infra.
9. The Joint Committee on Printing is composed of three Members of the Senate and three Members of the House. The House elects its members from the Committee on House Administration, and the Chairman of that committee must be one of the three selected. *House Rules and Manual* § 1001 (1973).
10. 44 USC § 901 (1970). See also 44 USC §§ 902–910 (1970) for other statutory provisions relative to the *Congressional Record*.
11. The rules of the Joint Committee on Printing are frequently reprinted in the daily edition of the *Congressional Record* in the section entitled "Laws and Rules for Publication of the *Congressional Record*," which precedes the section entitled "Daily Digest." The individual rules will be considered herein as they pertain to the subject matter under discussion.

portion of the Record.[12] By House rule, the Committee on House Administration has jurisdiction over "[m]atter relating to printing and correction of the *Congressional Record*."[13]

House Rule XXXIV clause 1[14] provides for the appointment and removal of the official reporters of debate, and vests in the Speaker the manner of the execution of their duties. The reporters of debates have played a significant role in the evolution by which the House has developed a system of daily verbatim reports of its proceedings.[15]

Congress has statutorily mandated that the Record be published in daily form during each session, and be revised, printed, and bound promptly in permanent form for distribution during and after the close of each session of Congress.[16] Thus a daily edition is published and distributed on each working day while Congress is in session, and a softbound edition, known as the "greenbound" edition is published and distributed biweekly while Congress is in session. The hardbound permanent edition is generally ready for publication and distribution sometime subsequent to the conclusion of a session of Congress.

The Record for each day is divided into four main sections: Proceedings of the House; Proceedings of the Senate; Extensions of Remarks;[17] and Daily Digest. The Joint Committee on Printing has directed the Public Printer to arrange the contents of the daily edition of the Record so as to alternate the placement in consecutive issues of the House and Senate proceedings insofar as such an arrangement is feasible.[18] The House and Senate proceedings directly precede the "Extensions of Remarks" section, which is followed by the "Daily Digest."

Congress has directed the Joint Committee on Printing to provide for the preparation and publication of an index to the *Congressional Record* semimonthly while Congress is in session, and a complete index to the entire session subsequent to the close of each session of Congress.[19] The index consists generally of two main

12. 8 Cannon's Precedents § 2503.

13. *House Rules and Manual* § 693 (1973).

14. *House Rules and Manual* § 923 (1973).

15. See 5 Hinds' Precedents § 6959.

16. 44 USC § 903 (1970).

17. See § 20, infra, for a discussion of the content of the "Extensions of Remarks" section.

18. Rule 1 of the Joint Committee on Printing, effective May 23, 1972.

19. See 44 USC §§ 901, 902 (1970).

parts, an index to proceedings, and a history of bills and resolutions, which is arranged by bill and resolution number.

As part of the Legislative Reorganization Act of 1946,[20] Congress adopted the following provision, which is the statutory authority for the Daily Digest:

> The Joint Committee on Printing shall provide for printing in the daily Record the legislative program for the day together with a list of congressional committee meetings and hearings, and the place of meeting and subject matter. It shall cause a brief résumé of congressional activities for the previous day to be incorporated in the Record, together with an index of its contents prepared under the supervision of the Secretary of the Senate and the Clerk of the House of Representatives, respectively.

The Daily Digest regularly contains the following subsections: Highlights; Senate Chamber Action; Senate Committee Meetings; House Chamber Action; House Committee Meetings; and Joint Committee Meetings. A list of House and Senate committee meetings scheduled for the morning of which the Record is published concludes the Daily Digest. In addition, the Friday issues contain a section entitled "Congressional Program Ahead" which discusses the activities scheduled in the House and Senate and their committees for the coming week.

The Joint Committee on Printing has specified to the Public Printer the type size and printing style that is to be used in the publication of the Record.[1] Neither the Speaker nor the House may order changes in the type size or printing style without the approval of the Joint Committee on Printing.[2]

A Member, upon payment of the cost, may receive from the Public Printer extracts from the *Congressional Record* for his personal use and distribution.[3]

When reprints are to be made of material in the Record by the Government Printing Office, it is customary to obtain the approval of those Members whose remarks are to be reprinted.[4]

Format Changes

§ 15.1 A unanimous-consent request to change the format of

20. See 44 USC § 905 (1970).

1. See Rule 2 of the Joint Committee on Printing, effective May 23, 1972.
2. See §§ 15.1, 15.2, infra.
3. 44 USC § 907 (1970). See 44 USC § 908 (1970) for the statutory procedure by which the Sergeant at Arms may deduct the cost of printing the extracts from the salary of a Member or Delegate who is delinquent in paying for the extracts.
4. See § 15.4, infra.

the Record to permit a comparative print of three versions of a legislative enactment to be printed in three parallel columns should be submitted subject to the approval of the Joint Committee on Printing.

On Oct. 30, 1939,[5] Mr. Lawrence Lewis, of Colorado, requested unanimous consent that a comparative print showing the Neutrality Act of 1937, together with House Joint Resolution 306,[6] as passed by the House, and the same joint resolution as amended and passed by the Senate, be printed in the Record in three parallel columns. At the time of this request the proceedings of Congress were being printed in the Record in double parallel columns. The Speaker[7] responded to this request to deviate from the basic format of the Record as follows:

> THE SPEAKER: The Chair thinks it proper, in order to conform to the established rules of practice in the House with reference to the matter covered by the request of the gentleman from Colorado, to state to the gentleman that in the conference he had with the Chair this morning relative to this matter the information was not disclosed that the request would require a change in the usual format of the Record. The Chair is advised by the Parliamentarian that it would be contrary to the law with reference to printing of the Record to submit the request.
>
> The Chair would suggest to the gentleman from Colorado that he submit his request subject to the approval of the Joint Committee on Printing.

Mr. Lewis amended the request to incorporate the suggestions of the Speaker, but an objection was raised. Later in the same meeting, however, a substantially similar request was agreed to by the House without objection, and the comparative print was inserted in the Record.[8]

Type Size

§ 15.2 The Speaker will not entertain a unanimous-consent request to permit a letter inserted in the Record to be printed in larger type than that provided in the regulations of the Joint Committee on Printing.

On Feb. 25, 1936,[9] Mr. Joseph P. Monaghan, of Montana, re-

5. 85 CONG. REC. 1059, 76th Cong. 2d Sess.
6. 76th Cong. 2d Sess. (1939).
7. William B. Bankhead (Ala.).
8. 85 CONG. REC. 641 (appendix), 76th Cong. 2d Sess., Oct. 30, 1939.
9. 80 CONG. REC. 2767, 74th Cong. 2d Sess.

quested unanimous consent to have the Record corrected so that the letter he had previously inserted would be printed in 7½-point type in the permanent Record, rather than the type size that was specified for such documents in the rules of the Joint Committee on Printing.[10] The Speaker[11] responded as follows:

> THE SPEAKER: The Chair will state to the gentleman that letters, no matter by whom they are written, are printed in small type. The gentleman from Montana made no request that his letter be printed in any other form of type. That is a matter which rests entirely with the Joint Committee on Printing, and that committee has formulated certain rules, and the Chair assumes that the Public Printer is following the rules as laid down by the Joint Committee on Printing. What is the request of the gentleman?
>
> Mr. MONAGHAN: I ask unanimous consent that the Record be corrected and that this letter be reprinted in 7½-point type, inasmuch as aged people are the ones who will read it.
>
> THE SPEAKER: The Chair does not think he has a right to even recognize the gentleman to make a unanimous consent request on that matter, because that is fixed by law.

Reporters—Insertion of Applause

§ 15.3 Demonstrations in the House are not part of the Record, and the reporters are instructed not to insert "applause" or "loud applause."

On Mar. 6, 1945,[12] the Speaker,[13] in response to a parliamentary inquiry, stated his reasoning for instructing the reporters not to insert "applause" or "loud applause" in the Record where such demonstrations have occurred on the floor of the House:

> In times past there appeared in the Record the word "Applause" where a Member spoke. In another place there was "Loud applause." In another place there was "Loud and prolonged applause." In another place there was "Loud and prolonged applause, the Members rising." If I had made a speech and had received "applause," and some Member had followed me immediately and had received "loud and prolonged applause, the Members rising," my opponent in the next primary might have called attention to how insignificant I was because I only received "applause" and the other Member had received "loud and prolonged applause, the Members rising."

10. The current rules of the Joint Committee on Printing still require such documents and "all matter included in the remarks for speeches of Members of Congress, other than their own words," to be printed in 6½-point type. See Rule 2 of the Joint Committee on Printing, effective May 23, 1972.

11. Joseph W. Byrns (Tenn.).

12. 91 CONG. REC. 1789, 79th Cong. 1st Sess.

13. Sam Rayburn (Tex.).

> The Chair has held that demonstrations in the House are not a part of the Record, and shall continue to hold that until the rules of the House are changed.

Later in the same discussion,[14] Mr. Charles L. Gifford, of Massachusetts, called the attention of the House to the fact that in the Record of Mar. 1 there appeared an address in which the word "applause" appeared 20 times, and seemed to be a part of the proceedings of the House. Speaker Rayburn responded as follows:

> The present occupant of the Chair was not here; and, furthermore, that was a joint session of the two Houses of Congress.

Reprints

§ 15.4 It is the policy of the Joint Committee on Printing and the Public Printer to request the approval of Members, whose remarks appear in the Record, before those remarks are reprinted and distributed pursuant to the request of another Member. (A Member requesting a reprint sometimes announces to the House that Members' remarks on a particular subject will be included in a reprint unless they register objection.)

On Feb. 28, 1950,[15] Senator Harry P. Cain, of Washington, read to the Members of the Senate a letter from the Public Printer to Senator William F. Knowland, of California, dated Aug. 13, 1946, which explained the policy of the Joint Committee on Printing and the Public Printer concerning the reprinting and distribution of materials appearing in the *Congressional Record*. The letter, in relevant portion, is as follows:

> In reply, I am pleased to advise that, since the *Congressional Record* is a public document, it is not copyrighted, and matter appearing in the Record may be reprinted by outside sources without obtaining a clearance from anyone. As to reprints by the Government Printing Office, it has long been the policy of the Joint Committee on Printing and this Office to ask for the approval of the Member whose remarks are to be reprinted before reprinting and distributing the same. . . .
>
> This is purely for the protection of each individual Member, as it not only protects the Members whose remarks are to be reprinted, but it also protects the Member who would order and distribute the same against charges of abuse of the franking privilege, unauthorized use of Federal funds, and so forth.

On Mar. 7, 1968,[16] Mr. Daniel J. Flood, of Pennsylvania, made

14 91 CONG. REC. 1790, 79th Cong. 1st Sess.

15. 96 CONG. REC. 2490, 81st Cong. 2d Sess.

16. 114 CONG. REC. 5764, 90th Cong. 2d Sess.

the following announcement on the floor of the House, which illustrates a procedure by which the consent of Members, whose remarks are to be reprinted, is obtained:

> Mr. Speaker, with respect to the 50th anniversary of Ukrainian independence, a private order is being submitted for reprint publication of all statements and other insertions made by Members of the House of Representatives prior, during, and after the January 22, 1968, event, which was observed in the House on January 23, 1968.
>
> If there is no objection from any such Member, his or her statement or insertion will be incorporated in the reprint brochure, which has been requested by the Ukrainian Congress Committee of America.

§ 16. Matters Printed in the Record; Civil Liability

Statutory law, House rules, and the practices of the House regulate the content of the House portion of the Record. In addition, the House frequently agrees by unanimous consent to permit specific items to be inserted in the Record which would not ordinarily be included.

The oath of office subscribed to by Members and Delegates is required by statute[17] to be printed in the Record. A list of Members filing the oath with the Clerk of the House is then recorded following the text of the oath.[18]

Occasionally an act of Congress requires a governmental activity to report to Congress and specifies that "the Clerk of the House . . . shall cause to be published in the *Congressional Record* all reports submitted pursuant to this law."[19] Where publication of such reports in the Record is required by statute, the Parliamentarian furnishes a copy of the report to the Clerk at the time the communication is referred to committee, and the Clerk submits the report for printing in the Record.[20]

The insertion of certain types of materials in the Record is prohibited. For example, maps, diagrams, or illustrations may not be

17. 2 USC § 25 (1970).

18. An example of the form of entry in the Record of the oath and the listing of Members subscribing to it may be found at 94 CONG. REC. 5750, 80th Cong. 2d Sess., May 12, 1948.

19. § 4(b) of Pub. L. No. 85–804, an act to authorize the making, amendment, and modification of contracts to facilitate the national defense, is an example of such a statutory provision. This act is codified at 50 USC 1434 (1970).

20. For an example of the form of entry in the Record of such reports, see 107 CONG. REC. 4816–18, 87th Cong. 1st Sess., Mar. 24, 1961.

inserted in the Record without the approval of the Joint Committee on Printing.[1]

Certain significant matters are printed in the Record under the House rules. The list includes the following: petitions or memorials or bills of a private nature;[2] bills, resolutions and documents referred to committee under the rules;[3] amendments to be protected for debate time under the five-minute rule;[4] the filing of committee reports;[5] committee expenditures;[6] conference reports and accompanying statements;[7] messages received from the Senate and President of the United States, giving notice of bills passed or approved;[8] voting pairs;[9] and motions (with signatures) to discharge a committee from further consideration of a bill.[10]

Certain matters are traditionally printed in the Record pursuant to the practices of the House. For example, notations of the following occurrences are usually printed: bills signed by the Speaker subsequent to adjournment *sine die*, by title;[11] bills "pocket vetoed" by the President during adjournment to a day certain, and supporting memoranda;[12] delivery of bills and joint resolutions to the President by the Committee on Enrolled Bills;[13] the delivery of bills to the White House endorsed "held for presentation to the President upon his return to the United States,"[14] or "delivered to the White House for forwarding to the President" by the Committee on House Administration;[15] reference by the Speaker

1. 44 USC § 904 (1970).

2. Rule XXII clause 1, *House Rules and Manual* § 849 (1973).

3. Rule XXII clause 4, *House Rules and Manual* § 854 (1973).

When a bill or resolution is introduced by request, that fact is noted in the Record. Rule XXII clause 6, *House Rules and Manual* § 860 (1973).

4. Rule XXIII clause 6, *House Rules and Manual* § 874 (1973).

5. Rule XIII clause 2, *House Rules and Manual* § 743 (1973).

6. *House Rules and Manual* § 738 (1973).

7. Rule XXVIII clause 2(a), *House Rules and Manual* § 912 (1973).

8 Rule XXXIX *House Rules and Manual* § 935 (1973).

9. Rule VIII clause 2, *House Rules and Manual* § 660 (1973).

10. Rule XXVII clause 4, *House Rules and Manual* § 908 (1973).

11. 88 CONG. REC. 9620, 77th Cong. 2d Sess., Dec. 26, 1942.

12. 89 CONG. REC. 755, 78th Cong. 1st Sess., July 19, 1943.

13. 89 CONG. REC. 10539, 78th Cong. 1st Sess., Dec. 9, 1943.

14. 105 CONG. REC. 17637, 86th Cong. 1st Sess., Sept. 1, 1959.

15. 109 CONG. REC. 11792, 88th Cong. 1st Sess., June 26, 1963.

of House bills with Senate amendments to committee;[16] reference to more than one committee of executive communications;[17] appointment by the Speaker of Members to a commission subsequent to adjournment;[18] and submission of the report of the Board of Visitors, U.S. Coast Guard Academy.[19]

The House frequently agrees by unanimous consent to permit the insertion in the Record of materials at the request of Members. The occasions are so numerous and the types of materials so varied, that the following insertions serve only as examples: a communication from the Chamber of Deputies, Peru, expressing condolences on the Alaskan earthquake;[20] rules and regulations governing the use of the House office buildings,' the House garages, and the Capitol power plant, adopted by the House Office Building Commission;[1] and the Speaker's analysis of a session of Congress and the accomplishments of the House.[2]

The protection afforded matters printed in the Record by the Speech or Debate Clause of the Constitution[3] has been the subject of several court decisions. In *Hentoff* v *Ichord*,[4] the United States District Court for the District of Columbia enjoined the publication or distribution of a congressional committee report by the Public Printer because it was held to be without any proper legislative purpose and an infringement upon first amendment rights. The court, however, stated that publication in the *Congressional Record* of the report could not be enjoined, because of the protection afforded by the Speech or Debate Clause. A more extensive discussion of this subject is found elsewhere in this work.[5]

The Speech or Debate Clause does not immunize a Member from a civil libel action for the reprinting and distribution of allegedly libelous statements which have appeared in the Record. In *Long* v *Ansell*,[6] the Supreme

16. 97 CONG. REC. 8987, 82d Cong. 1st Sess., July 30, 1951.

17. 106 CONG. REC. 10625, 86th Cong. 2d Sess., May 18, 1960.

18. 97 CONG. REC. 13783, 82d Cong. 1st Sess., Oct. 31, 1951.

19. 109 CONG. REC. 13639, 88th Cong. 1st Sess., July 30, 1963.

20. 110 CONG. REC. 7962, 88th Cong. 2d Sess., Apr. 15, 1964.

1. 111 CONG. REC. 23926, 89th Cong. 1st Sess., Sept. 15, 1965.

2. 109 CONG. REC. 25556, 88th Cong. 1st Sess., Dec. 24, 1963.

3. U.S. Const. art. I, § 6.

4. 318 F Supp 1175 (D.D.C. 1970).

5. See Ch. 7, infra.

6. 293 U.S. 76 (1934).

Court stated this proposition in dictum. In *McGovern* v *Martz*,[7] the United States District Court for the District of Columbia held that remarks made on the floor and published in the Record were absolutely privileged, and approved the dictum in *Long* v *Ansell* to the effect that such privilege would not extend to the republication and distribution by a Member of remarks he had made on the floor of the House.

Bills

§ 16.1 The House, in the interest of economy, occasionally agrees by unanimous consent to dispense with the printing in the Record of the text of an especially lengthy bill.

On June 17, 1963,[8] the House was considering a bill to enact part II of the District of Columbia Code, entitled "Judiciary and Judicial Procedure."[9] In view of the high cost of printing such a lengthy bill, the House agreed by unanimous consent to dispense with the printing of the text of the bill in the Record.[10]

On Apr. 2, 1962,[11] the House, while considering a bill to revise and codify the general and permanent laws relating to the Canal Zone,[12] agreed by unanimous consent to permit the insertion of a statement in the Record explaining the bill in lieu of printing the entire bill.[13]

§ 16.2 Upon the rejection by the House of an amendment in the nature of a substitute that the Committee of the Whole had reported to the House in place of the bill as reported by a committee, the text of the original bill was printed in the Record.

On Dec. 16, 1970,[14] a bill to amend the Food Stamp Act of 1964,[15] as reported with standing committee amendments, was being considered in the Committee of the Whole. The Committee of the Whole agreed to and

7. 182 F Supp 343 (D.D.C. 1960).

8. 109 CONG. REC. 10910, 88th Cong. 1st Sess.

9. H.R. 4157, 88th Cong. 1st Sess. (1963).

10. 109 CONG. REC. 10911, 88th Cong. 1st Sess., June 17, 1963.

11. 108 CONG. REC. 5531, 87th Cong. 2d Sess.

12. H.R. 10931, 87th Cong. 2d Sess. (1962).

13. For additional illustrations of this precedent, see 111 CONG. REC. 8375, 89th Cong. 1st Sess., Apr. 26, 1965; 109 CONG. REC. 18044, 88th Cong. 1st Sess., Sept. 25, 1963.

14. 116 CONG. REC. 41981, 91st Cong. 2d Sess.

15. H.R. 18582, 91st Cong. 2d Sess. (1970).

reported to the House an amendment in the nature of a substitute, as amended.[16] The House, by a roll call vote, then rejected the amendment in the nature of a substitute, as amended.[17] After the bill was ordered to be engrossed and read a third time, the text of the original bill was printed in the Record.[18]

§ 16.3 After a bill was reported back to the House by a standing committee with an amendment, in accordance with a motion to recommit with instructions, the entire text of the bill, as amended, was printed in the Record, instead of the usual notation of the third reading of the bill by title.

On Apr. 16, 1970,[19] the House, while considering the Family Assistance Act of 1970,[20] adopted a motion to recommit with instructions to report the bill back with specific amendments forthwith. The committee reported back the bill as instructed, the House agreed to the amendment, and the Speaker[1] then put the question of the engrossment and third reading of the bill to the House. At this point the full text of the bill, as amended, was printed in the Record.[2]

Parliamentarian's Note: The adoption of a motion to recommit with instructions does not ordinarily require the printing of the complete text of the bill, as amended, in the Record. The third reading of the bill is by title, and usually this is so indicated in the Record. In this instance, due to the widespread public interest in the bill, the Speaker requested that the bill be printed in full, as amended, in the Record.

§ 16.4 The text of a House amendment to a Senate bill was, by unanimous consent, ordered printed in the Record on the following legislative day rather than at the point in the proceedings at which it was adopted.

Parliamentarian's Note: On Mar. 19, 1970, the House discharged the Committee on the District of Columbia from further consideration of the Senate bill for District of Columbia court reorganization and criminal law re-

16. 116 Cong. Rec. 42032, 91st Cong. 2d Sess., Dec. 16, 1970.
17. *Id.* at p. 42033.
18. *Id.*
19. 116 Cong. Rec. 12092, 91st Cong. 2d Sess.
20. H.R. 16311, 91st Cong. 2d Sess. (1970).

1. John W. McCormack (Mass.).
2. 116 Cong. Rec. 12093, 91st Cong. 2d Sess., Apr. 16, 1970.

form,[3] and substituted an amendment containing the text of a bill which had already passed the House.[4] Because of the length of the bill and the lateness of the hour on Mar. 19, the House expressed unanimous consent that the text and the amendment be printed in the Record for the next legislative day, Monday, Mar. 23, in order not to delay the printing of the Record for Mar. 19.[5] The Government Printing Office, however, misinterpreted this request and deferred the printing of the entire proceedings surrounding the adoption of the amendment to Mar. 23, as well as the text of the amendment itself.[6]

Petitions

§ 16.5 Neither the Speaker nor the Committee on Printing has jurisdiction over the manner of printing of petitions of Members in the Record under clause 1 of Rule XXII; appeal must be made to the individual Member concerned.

On Apr. 30, 1935,[7] the following discussion occurred concerning the propriety of repeated insertions in the Record by a Member of petitions covering subject matter that had been dealt with legislatively by the House in the current session:

> MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, the inquiry I wish to direct to the Chair is whether the Committee on Printing cannot control the matter of inserting such petitions in the Record, after a measure passes, when it is clearly apparent the petitions can accomplish no useful purpose?
>
> THE SPEAKER:[8] The gentleman understands that the Chair has no right to judge . . . the sufficiency or propriety of petitions Members may insert in the Record; nor, in the opinion of the Chair, does the Committee on Printing have any jurisdiction in the matter. Appeal must be made to the individual Member concerned.
>
> MR. BLANTON: And control is not within the jurisdiction of the Committee on Printing.
>
> THE SPEAKER: No; the Chair just stated that the Committee on Printing does not have jurisdiction.
>
> Paragraph 1, rule XXII, provides as follows:
>
> > Members having petitions or memorials or bills of a private nature to present may deliver them to the Clerk, endorsing their names and the reference or disposition to be

3. S. 2601, 91st Cong. 2d Sess. (1970).

4. H.R. 16196, 91st Cong. 2d Sess. (1970).

5. 116 CONG. REC. 8221, 91st Cong. 2d Sess., Mar. 19, 1970.

6. See 116 CONG. REC. 8495–8550, 91st Cong. 2d Sess., Mar. 23, 1970, for the entire proceedings.

7. 79 CONG. REC. 6631, 74th Cong. 1st Sess.

8. Joseph W. Byrns (Tenn.).

made thereof; and said petitions and memorials and bills of a private nature, except such as, in the judgment of the Speaker, are of an obscene or insulting character, shall be entered on the Journal, with the names of the Members presenting them, and the Clerk shall furnish a transcript of such entry to the official reporters of debates for publication in the Record.

After further debate, the Speaker stated:

The Chair may say to the gentleman from Texas that as a matter of practice there is not the slightest objection to a Member lumping all of the petitions together. Then they would be in the Record. But this is up to the Member.

MR. [JOHN J.] O'CONNOR [of New York]: Mr. Speaker, the situation, as I understand it, is this, and I have talked to the members of the Printing Committee: A member files petitions at the desk. On the same day he may file 100 or 200 of them, reading, "The petitioner, John Jones, and others." Each one of those petitions is referred to in the Appendix. I think the desk itself at the close of the day might lump together the petitions of each Member as to the same subject. There would then be only one reference in the Appendix or in the Record, instead of sometimes 10 pages. I do not see why it cannot be done mechanically by the Clerk.

THE SPEAKER: Under the rules no one at the desk has authority to lump the petitions together. It is a matter either for the House, under the rule which has just been read, or else an appeal must be made to the individual Member. No one at the desk has authority to combine them without the consent of the Member who introduces them. The House, of course, could control the matter.

Committee Reports

§ 16.6 The Public Printer refused to print in the Record the text of a congressional committee report that had already been printed in pamphlet form, citing a ruling by the Joint Committee on Printing that prohibits such duplication of printing.

On Mar. 29, 1949,[9] Mr. John E. Rankin, of Mississippi, stated that on the preceding day he had asked and received the unanimous consent of the House to extend his remarks in the Record and to include a report on spies issued by the Committee on Un-American Activities. Mr. Rankin further stated that he had been informed by the Government Printing Office that the report would not be printed in the Record, because to do so would violate a ruling by the Joint Committee on Printing that prohibits the printing of committee reports in the Record that have previously been printed in pamphlet form.[10]

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9. 95 CONG. REC. 3396, 81st Cong. 1st Sess.

10. This rule, which applies to committee and subcommittee reports but not to conference reports, is rule 9 of the rules adopted by the Joint Com-

§ 16.7 The House agreed by unanimous consent to permit the printing of a committee activity report in both pamphlet form and in the Congressional Record notwithstanding the rule of the Joint Committee on Printing that prohibits the printing of committee reports in both forms.

On Sept. 1, 1960,[11] the House agreed by unanimous consent to permit the printing of an activity report of the Committee on Interstate and Foreign Commerce in the Record. Immediately thereafter Mr. Oren Harris, of Arkansas, requested unanimous consent that the same report be printed in pamphlet form for distribution notwithstanding the rule of the Joint Committee on Printing that prohibits committee reports to be printed in both pamphlet form and in the Record.[12] The House agreed to the request without objection.

Conference Reports

§ 16.8 The consideration of conference reports is privileged business, and the calling up of such a report does not require unanimous consent after the report has been printed in the Record.

On Sept. 2, 1959,[13] the House was considering a conference report on a bill relating to the power of the states to impose net income taxes on income derived from interstate commerce and establishing a Commission on State Taxation of Interstate Commerce and Interstate and Inter-governmental Taxation Problems.[14] After Mr. Wright Patman, of Texas, reserved the right to object to a request that the statement of the managers of the bill be read in lieu of the report, the following discussion occurred:

> MR. PATMAN: If I do not object to the reading, that does not foreclose me from objecting to the consideration of the conference report?

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mittee on Printing, effective May 23, 1972.

11. 106 CONG. REC. 19139, 86th Cong. 2d Sess.

12. This rule is often reprinted in the daily edition of the *Congressional Record* in the section entitled "Laws and Rules for Publication of the Congressional Record", which immediately precedes the section entitled "Daily Digest". See for example rule 9 of the rules of the Joint Committee on Printing, effective May 23, 1972, that are reprinted in the daily edition of the *Congressional Record* for Thursday, Apr. 19, 1973.

13. 105 CONG. REC. 17769, 86th Cong. 1st Sess.

14. H.R. 2524, 86th Cong. 1st Sess. (1959).

THE SPEAKER:[15] This is a privileged matter. No objection lies.

MR. PATMAN: No objection lies on this? The Speaker is talking about the reading?

THE SPEAKER: The Chair is talking about the conference report, which is a privileged matter.

MR. PATMAN: And one objection would not lie to it?

THE SPEAKER: No objection would.

§ 16.9 A conference report was called up as a privileged matter even though it had not been printed in the Record because the House had not been in session the previous day when the report was filed.

On Tuesday, May 12, 1959,[16] the House agreed by unanimous consent to give the conferees on a bill making supplemental appropriations for the fiscal year ending June 30, 1959,[17] until midnight Wednesday, May 13, to file a conference report on the disagreeing of votes of the two Houses on the Senate amendments to the bill. The House adjourned from Tuesday, May 12 until Thursday, May 14. Since there were no House proceedings to be printed in the Record for Wednesday, May 13, the conference report was not printed at the time it was filed. On Thursday, May 14,[18] the conference report was called up as a privileged matter, and no objection was made to the fact that it had not been printed in the Record as required by House Rule XXVIII clause 2.[19]

§ 16.10 The House has agreed by unanimous consent to order the printing of a conference report in the Record for a day in which the House was not in session.

On Aug. 3, 1961,[20] the House agreed, by unanimous consent, to permit the managers on the part of the House to have until mid-

15. Sam Rayburn (Tex.).

16. 105 CONG. REC. 8006. 86th Cong. 1st Sess.

17. H.R. 5916, 86th Cong. 1st Sess. (1959).

18. 105 CONG. REC. 8167, 86th Cong. 1st Sess.

19. *House Rules and Manual* § 912 (1973). At the time of the consideration of this conference report the controlling House rule required only that a conference report be printed in the Record prior to its consideration by the House. 5 Hinds' Precedents § 6516. The provision in Rule XXVIII clause 2(a), which requires the conference report to be printed in the Record three days before being considered by the House, was added by the Legislative Reorganization Act of 1970, section 125(p), and made part of the rules in 1971. H. Res. 5, 92d Cong. 1st Sess. (1971).

20. 107 CONG. REC. 14544, 87th Cong. 1st Sess.

night the following day, Friday, Aug. 4, to file a conference report on a bill,[1] and to order the report to be printed in the Record for Aug. 4, notwithstanding the fact that the House would not be in session. On Friday, Aug. 4, the conference report was printed in the daily edition of the Record under the heading "House of Representatives," which immediately followed the Senate proceedings. In the bound edition of the Record for Friday, Aug. 4,[2] however, there appears under the heading "House of Representatives" only a notation indicating that the conference report had been submitted on that date. The full text of the report does not appear until it was Considered by the House on Aug. 7, 1961.[3]

§ 16.11 The House, by unanimous consent, has provided for the consideration of a conference report notwithstanding the fact that it had not been printed in the Record as required by the House rules.

On July 14, 1970,[4] the House agreed to the following unanimous-consent request:

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that it shall be in order on tomorrow, Wednesday, July 15, to consider the conference report on the bill S. 2601, the District of Columbia Court Reform and Criminal Procedure Act of 1970, notwithstanding rule 28, clause 2.
>
> Mr. Speaker, I make this request because of the high cost of printing the voluminous conference report in the Congressional Record. I am informed that it might cover as many as 160 pages of the Record. I can assure the Members that printed copies of the report, in pamphlet form, will be available for their consideration before this report is called up.

On several occasions the House has agreed, by unanimous consent, that it shall be in order during the week to consider any conference report at any time.[5] The House has also agreed, by unanimous consent, to permit a conference report to be considered on

1. H.R. 7445, 87th Cong. 1st Sess. (1961).
2. 107 CONG. REC. 14727, 87th Cong. 1st Sess.
3. 107 CONG. REC. 14757–59, 87th Cong. 1st Sess. For other occasions on which the House has ordered a conference report to be printed in the Record for a day that the House was not in session, see, *e.g.*, 108 CONG. REC. 14841, 87th Cong. 2d Sess., July 26, 1962; 107 CONG. REC. 18642, 87th Cong. 1st Sess., Sept. 7, 1961.
4. 116 CONG. REC. 24030, 91st Cong. 2d Sess.
5. 100 CONG. REC. 14670, 83d Cong. 2d Sess., Aug. 16, 1954; 94 CONG. REC. 10258, 80th Cong. 1st Sess., July 25, 1947.

the same day it was filed, even though it had not been printed in the Record.[6]

§ 16.12 The House agreed by unanimous consent to permit 40 minutes of debate on a conference report subsequent to its adoption, and to have the text of the debate inserted in the Record preceding the adoption of the report.

On May 22, 1968,[7] the House agreed, without debate, to the conference report[8] on the Consumer Credit Protection Act.[9] Subsequent to the adoption of the report, Mr. Carl Albert, of Oklahoma, made the following unanimous-consent request:

> Mr. Speaker, I ask unanimous consent that 40 minutes of debate may be had on this matter, to be equally divided between the gentleman from Texas (Mr. Patman) and the gentleman from New Jersey (Mr. Cahill), and that it appear in the Record prior to the adoption of the conference report.

The House agreed to the request.[10]

Presidential Messages

§ 16.13 A designated Speaker pro tempore may refer a Presidential message and order it printed in the Record only with the unanimous consent of the House.

On Oct. 9, 1969,[11] the Speaker pro tempore[12] laid before the House the Second Annual Report of the National Advisory Committee on Adult Basic Education, a message from the President of the United States.[13] The message was, without objection, referred by the Speaker pro tempore to the Committee on Education and Labor and ordered to be printed in the Record.

Change of Vote

§ 16.14. The change of a vote by a Member after the con-

6. 108 Cong. Rec. 19258, 87th Cong. 2d Sess., Sept. 12, 1962. Although the conference report had not previously been printed in the daily edition of the Record, it does appear in the permanent edition immediately preceding the consideration of the report by the House. *Id.* at p. 19278.

   Conference reports generally, see Ch. 33, infra.

7. 114 Cong. Rec. 14396, 90th Cong. 2d Sess.

8. H. Rept. No. 1397, 90th Cong. 2d Sess. (1968).

9. S. 5, 90th Cong. 2d Sess. (1968).

10. 114 Cong. Rec. 14405, 90th Cong. 2d Sess., May 22, 1968.

11. 115 Cong. Rec. 29347, 91st Cong. 1st Sess.

12. Richard Bolling (Mo.).

13. H. Doc. No. 176, 91st Cong. 1st Sess. (1969).

clusion of a roll call and before the announcement of the result is noted in the Record.

On Mar. 16, 1934,[14] the following exchange occurred relating to a parliamentary inquiry

> MR. [JOHN J.] O'CONNOR [of New York]: As I understand it, the practice has been for some time that when a Member changes his vote from "no" to "aye" or from "aye" to "no" there is nothing in the Record to show it. The reporters do not take it down.
>
> I make the point of order at this time that every word that is uttered in this House should appear in the Congressional Record, and I make the point of order that when a Member changes his vote, as was done 2 days ago, when 40 or 50 Members on the majority and minority sides changed their votes, that change should appear in the Congressional Record.
>
> THE SPEAKER:[15] The gentleman from New York is correct as to the practice that has prevailed heretofore. The Chair thinks that if a Member changes his vote it ought to appear in the Record, and hereafter the reporters will see that all Members who change their votes are reported in the Congressional Record.

On Dec. 20, 1969,[16] several Members changed their vote on the conference report[17] concerning a foreign assistance appropriation bill.[18] The changes were noted in the Record, immediately following the announcement of pairs, as follows:

> Mr. Davis of Georgia, Mr. Bow, Mrs. Reid of Illinois, Mr. Minshall, and Mr. Kuykendall changed their votes from "nay" to "yea."
>
> Mr. McCarthy, Mr. Scheuer, Mr. Culver, and Mr. Tiernan changed their votes from "yea" to "nay."
>
> Mr. Scheuer changes his vote from "nay" to "yea."

§ 17. Deletion of Unparliamentary Remarks

Although the *Congressional Record* is "substantially a verbatim report of proceedings,"[19] the House frequently excludes from the Record remarks made out of order or unparliamentary remarks which reflect unfavorably upon the House, its committees, or individual Members. Remarks made on the floor by a Member after he has been called to order, without recognition by the Chair, or without the consent of the Member occupying the floor, are frequently deleted from the Record by the House, the Speaker, or the Member in revising his remarks.[20]

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14. 78 CONG. REC. 4691, 73d Cong. 2d Sess.

15. Henry T. Rainey (Ill.).

16. 115 CONG. REC. 40456, 91st Cong. 1st Sess.

17. H. REPT. No. 779, 91st Cong. 1st Sess. (1969).

18. H.R. 15149, 91st Cong. 1st Sess. (1969)

19. 44 USC § 901 (1970).

20. See §§ 17.7–17.10, infra.

A Member occasionally makes a remark in the heat of debate which reflects unfavorably upon the House, its membership, or its committees, and which he immediately regrets. In such instances the Member who has spoken the words may request the unanimous consent of the House that they be deleted from the Record or such request may be made by another Member. The House frequently agrees to these requests made in the spirit of apology.[1]

During floor debate a Member will sometimes demand that words spoken by another Member be taken down. The Speaker[2] then determines whether the words spoken in debate reflect unfavorably upon the House, its membership or institutions. If the Speaker rules the words unparliamentary, a Member frequently makes a motion or introduces a resolution to delete the unparliamentary remarks from the Record.[3] Occasionally the Speaker will immediately order the unparliamentary remarks deleted from the Record, without awaiting action by the House.[4]

A Member may also challenge unparliamentary remarks that were not deleted from the reporter's notes prior to publication of the daily edition of the Record. The usual procedure is similar to the procedure employed in challenging remarks that were inserted in the Record under leave to extend. In such instances a Member is recognized on a question of privilege.[5]

Procedure; Deletion or Expungement Generally

§ 17.1 The insertion in the Record of unparliamentary remarks is sufficient to raise a question of the privilege of the House.

On Sept. 5, 1940,[6] Mr. Clare E. Hoffman, of Michigan, was recognized on a question of the privilege of the House, and offered a resolution[7] to expunge from the daily edition of the Record for the

Disorder in debate generally, see Ch. 29, infra.

1. See §§ 17.11, 17.12, infra.
2. If the words are taken down in the Committee of the Whole they must be reported to the House for a decision by the Speaker. See § 17.17, infra.
3. See § 17.13, infra.
4. See §§ 17.21, 17.22, infra.
5. See § 17.19, infra.

   For a general discussion of questions of privilege, see Ch. 11, infra.
6. 86 CONG. REC. 11552, 76th Cong. 3d Sess.
7. H. Res. 591, 76th Cong. 3d Sess. (1940).

previous day words spoken on the floor of the House by Mr. Beverly M. Vincent, of Kentucky, which impugned the patriotism of Mr. Martin L. Sweeney, of Ohio. The House agreed to the resolution.

§ 17.2 The Speaker held that the question of whether an allegedly unparliamentary remark inserted in the Record under leave to extend violated the privileges granted the Member who made the insertion was not subject to a point of order, but was a question for the House.

On Feb. 27, 1946,[8] Mr. John E. Rankin, of Mississippi, made a point of order alleging that Mr. Adolph J. Sabath, of Illinois, had inserted in the Record an attack on the Committee on Un-American Activities.[9] The Speaker[10] responded as follows:

> The Chair thinks the remedy of the gentleman from Mississippi is not a point of order. This is an extension of remarks and whether or not it violated the privileges granted the gentleman from Illinois [Mr. Sabath] would be a question for the House to pass on, not the Chair.

Mr. Rankin then made a motion to delete the remarks of Mr. Sabath from the permanent Record. The House rejected the motion for the previous question on Mr. Rankin's motion, but the House agreed to a unanimous-consent request by Mr. Sabath that the remarks referring to the Committee on Un-American Activities be deleted from the Record. Mr. Rankin then withdrew his motion.

§ 17.3 The action of the House in ordering the entire speech of a Member and the proceedings under a call to order expunged from a permanent Record does not give rise to a question of personal privilege or privilege of the House; the proper method of reopening the matter is by a motion to reconsider the vote whereby such action was taken.

On Feb. 13, 1941,[11] Mr. Clare E. Hoffman, of Michigan, rose to state a question of personal privilege and privilege of the House. He offered a resolution stating that on Feb. 11, Mr. Samuel Dickstein, of New York, had, during the course of his remarks on the House floor, impugned the integrity of a committee of the

8. 92 CONG. REC. 1725, 79th Cong. 2d Sess.

9. Mr. Sabath had referred to the Committee on Un-American Activities as "the House Un-American Committee."

10. Sam Rayburn (Tex.).

11. 87 CONG. REC. 979. 77th Cong. 1st Sess.

House. Mr. Hoffman had interrupted Mr. Dickstein's remarks with a point of order that such remarks were out of order and in violation of the Constitution. The Speaker[12] refused to rule the words out of order and permitted Mr. Dickstein to continue speaking. A few moments later Mr. Dickstein's remarks were again interrupted, this time by Mr. John E. Rankin, of Mississippi, who demanded that the words be taken down. The words were taken down, and Mr. Rankin moved "to expunge the entire speech of the gentleman from New York [Mr. Dickstein] from the Record." The House agreed to the motion, and the Record of the House proceedings for Feb. 11 did not contain either the remarks of Mr. Dickstein or the proceedings by which the words were taken down. Mr. Hoffman stated in his resolution that the deletion of the entire proceedings from the Record raised a question of personal privilege and privilege of the House, and requested that the permanent edition for Feb. 11 be corrected so as to include a portion of Mr. Dickstein's remarks and the entire proceedings by which his words were taken down.

In response to Mr. Hoffman's argument in support of the resolution that the omission of the proceedings referred to violates the First Amendment freedom of speech and of the press, the Speaker stated that the Constitution also gives the House the authority to establish rules for its own procedure. After Mr. Hoffman further argued in support of the question of the privilege of the House which he had raised, the Speaker responded as follows:

> The House would have to decide that, and, in the opinion of the Chair, the House did decide the matter when it expunged the remarks from the Record. The Chair thinks, under the circumstances, that the proper way to reopen the question would be by a motion to reconsider the vote whereby the motion of the gentleman from Mississippi [Mr. Rankin] was adopted. The Chair is of the opinion that inasmuch as the question raised by the gentleman from Michigan was decided by a vote of the House on a proper motion, that he does not now present a question of privilege of the House or of personal privilege.

§ 17.4 The Speaker declined to rule on a question of personal privilege arising from the insertion in the Record of allegedly unparliamentary remarks because the transcript of the insertion had not been submitted for the inspection of the Chair.

On Apr. 7, 1943,[13] Mr. Emanuel Celler, of New York, was rec-

12. Sam Rayburn (Tex.).

13. 89 Cong. Rec. 3065, 78th Cong. 1st Sess.

ognized on a question of personal privilege. He stated that several days earlier a Member had inserted in the Record remarks which reflected upon his integrity, and requested an opportunity to respond to that charge. The Speaker[14] requested that the original transcript of the remarks be submitted for his inspection. Mr. Celler replied that he did not have a copy of the transcript in his possession at that time, and asked the permission of the Chair to proceed nevertheless. With respect to the question of personal privilege, the Speaker stated as follows:

> The Chair is not going to rule on this question without seeing the original transcript and it is not here. If there is no objection, the gentleman may proceed for 10 minutes.

§ 17.5 The Speaker ruled that a delay of several months did not preclude a Member from being recognized on a question of personal privilege concerning remarks appearing in the Record.

On June 30, 1939,[15] Mr. Clare E. Hoffman, of Michigan, requested recognition on a question of personal privilege. He cited in support of his question of privilege remarks made on the floor of the Senate by a Member of that body on Jan. 17, 1939, which were highly critical of a statement he had previously made in the House. Mr. John E. Rankin, of Mississippi, then made the following point of order:

> Mr. Speaker, I make the point of order that the statement that the gentleman from Michigan is making does not in any way constitute a question of high constitutional privilege. . . . [T]he statement made in the Senate was months and months ago. It has been in the Congressional Record all this time, and the gentleman from Michigan knew it. Now he is guilty of what is called laches in our courts. He is not entitled to rise to the question of high constitutional privilege at this time in order to use it to filibuster against the bill before the House. I make the point of order that the gentleman is not entitled to rise to a question of high constitutional privilege.

The Speaker, William B. Bankhead, of Alabama, ruled against Mr. Rankin's point of order, and recognized Mr. Hoffman on the question of personal privilege.

Remarks Made Out of Order

§ 17.6 The Chair may direct the exclusion or deletion, from the Record, of words held to be out of order. (See § 17.21, infra.)

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14. Sam Rayburn (Tex.).

15. 84 CONG. REC. 8468, 76th Cong. 1st Sess.

§ 17.7 Remarks made by a Member on the floor of the House after he has been called to order by the Chair are excluded from the Record.

On June 17, 1936,[16] Mr. Robert F. Rich, of Pennsylvania, was propounding a question to the Member occupying the floor, under a reservation of the right to object, when the regular order was demanded by Mr. Claude A. Fuller, of Arkansas. Mr. Rich, however, ignoring the announcement by the Speaker that the regular order had been demanded, made an additional statement. The Speaker[17] stated that Mr. Rich had been out of order in extending his statement after the Chair announced that the regular order was demanded. The following parliamentary inquiry and response by the Speaker then occurred:

> MR. FULLER: Mr. Speaker, under the ruling of the Chair I suppose it is to be taken for granted that the remarks of the gentleman from Pennsylvania should be stricken from the Record. If they are not I want to object, because he was speaking out of order, speaking after the Chair had cautioned him, as is his custom all the time.
>
> THE SPEAKER: The remarks of the gentleman from Pennsylvania, or any other gentleman who interjects remarks into the Record after he has been called to order by the Chair upon a demand for the regular order, are not entitled to be incorporated in the Record.

§ 17.8 Remarks made by a Member subsequent to his point of order that a quorum is not present are ordinarily excluded from the Record, because the point of order is not debatable and only remarks that are made in order are included in the Record.

On Apr. 15, 1940,[18] Mr. John Taber, of New York, was recognized on a question of the privilege of the House. He stated that earlier in the debate Mr. John E. Rankin, of Mississippi, had made a point of order that a quorum was not present, and thereafter had made additional statements. Mr. Taber made the point of order that Mr. Rankin had not been recognized for the purpose of making those statements and that they should not be in the Record. The Speaker pro tempore[19] made the following ruling:

> Under the rules of the House, remarks should only be included in the Record that are made in order. After a

16. 80 CONG. REC. 9694, 74th Cong. 2d Sess.

17. William B. Bankhead (Ala.).

18. 86 CONG. REC. 4517, 76th Cong. 3d Sess.

19. Sam Rayburn (Tex.).

point of order is made, which is not debatable, any further remarks should not be included in the Record. Therefore the Chair rules that any remarks that may have been made after the point of order that a quorum was not present was made should not be included in the Record.

§ 17.9 The reporters are instructed to take down and include as part of the Record of the proceedings remarks interjected by a Member to whom the Member occupying the floor has refused to yield.

The reporters are instructed to take down such interjections even though they are out of order and may be stricken from the permanent Record by the House, the Speaker, or the Member in revising his remarks.[20]

§ 17.10 A parliamentary inquiry may not be used to place statements in the Record.

On Jan. 6, 1933,[1] the following parliamentary inquiry was made:

> MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, a parliamentary inquiry. Would it be in order to state that the Republican organization voted silently against the previous question?

The Speaker[2] responded as follows:

> That is not a parliamentary inquiry, and the gentleman ought not to take advantage of a parliamentary inquiry to make a statement.

Deletion by Unanimous Consent

§ 17.11 The House occasionally agrees to a unanimous-consent request by a Member to have certain unparliamentary remarks spoken in debate by another Member deleted from the Record.

On Aug. 4, 1970,[3] Mr. Page H. Belcher, of Oklahoma, referred to Mr. Silvio O. Conte, of Massachusetts, as "the other guy" who was horning in. Mr. Leslie C. Arends, of Illinois, requested unanimous consent that "the other guy" as spoken by Mr. Belcher in debate be deleted from the Record and that there be inserted in lieu thereof "the gentleman from Massachusetts." The House agreed to the request.[4]

§ 17.12 A Member may, with the unanimous consent of the House, have his own remarks, which had been inserted under leave to extend, deleted from the permanent Record.

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20. This ruling is discussed in § 19.8, infra.

1. 76 CONG. REC. 1362, 72d Cong. 2d Sess.

2. John N. Garner (Tex.).

3. 116 CONG. REC. 27130, 91st Cong. 2d Sess.

4. CONG. REC. (daily ed.), 89th Cong. 2d Sess.

On Sept. 20, 1966,[5] a speech delivered by Mr. Arnold Olsen, of Montana, which was made in Montana and was highly critical of another Member, appeared in the Record. The following day, Mr. Olsen, in requesting the unanimous consent of the House that the speech be deleted from the permanent Record, stated that it had been inserted by his staff, without his permission or knowledge. The House agreed to the unanimous-consent request.[6]

Deletion Pursuant to Motion

§ 17.13 After the Speaker ruled certain words spoken by a Member in debate to be out of order, the House agreed to a motion deleting his entire speech from the Record.

On Feb. 11, 1941,[7] the Speaker[8] ruled that certain words spoken by a Member in debate on a resolution[9] to continue an investigation by a Special Committee on Un-American Activities impugned the motives and actions of a committee and its individual members, and were therefore out of order. Mr. John E. Rankin, of Mississippi, moved to expunge the entire speech from the Record. The House agreed to the motion.

§ 17.14 The Speaker ruled that a motion to strike from the Record would have to be put in writing where the material to be stricken gave rise to a question of privilege of the House.

On Apr. 25, 1944,[10] Mr. Clare E. Hoffman, of Michigan, introduced a resolution to strike from the Record a statement inserted by another Member that impugned the integrity and patriotism of Mr. Hoffman and which mentioned various Senators and Representatives. During debate on the resolution the Speaker[11] in-

5. CONG. REC. (daily ed.), 89th Cong. 2d Sess., Sept. 21, 1966.
6. On several other occasions the House has agreed by unanimous consent to permit a Member to delete his remarks from the Record. See, *e.g.*, CONG. REC. daily ed.), Aug. 12, 1970 (remarks critical of a United States Senator); CONG. REC. (daily ed.), Sept. 14, 1967 (remarks critical of another Member); 86 CONG. REC. 1124, 76th Cong. 3d Sess., Feb. 6, 1940 (letters that were later found to have been forged); CONG. REC. (daily ed.), Mar. 18, 1965 (an extension of remarks by a Member that had been lost by the Public Printer, rediscovered nine years later, and inserted as if it were current).
7. 87 CONG. REC. 894–899, 77th Cong. 1st Sess.
8. Sam Rayburn (Tex.).
9. H. Res. 90, 77th Cong. 1st Sess. (1941).
10. 90 CONG. REC. 3696–98, 78th Cong. 2d Sess.
11. Sam Rayburn (Tex.).

dicated that there was an inconsistency in the resolution,[12] and Mr. Hoffman requested permission to withdraw the resolution on the condition that he be permitted to reword it and offer it again later in the day. At that point Mr. John E. Rankin, of Mississippi, requested the opinion of the Chair as to whether a motion to strike the matter under discussion from the Record must be in writing, or whether it could be done orally. The Speaker responded as follows:

> The Chair is going to demand that any motion to strike from the Record be put in writing. The gentleman withdraws the resolution.

Later in the same day Mr. Hoffman introduced a modified resolution.[13]

§ 17.15 Debate on a motion to expunge from the Record words taken down and ruled out of order is under the hour rule.

On June 12, 1947,[14] after Mr. John E. Rankin, of Mississippi, was recognized on his motion to strike words from the Record that had been held out of order by the Speaker,[15] he made the following parliamentary inquiry:

> Mr. Speaker, I am recognized now for 1 hour and I have a right to yield to any other Member I desire in this discussion?

The Speaker responded affirmatively.

§ 17.16 A Member who has been called to order for words spoken in debate is not entitled to be recognized by the Speaker during debate on a motion to expunge his words from the Record.

On Feb. 11, 1941,[16] during debate on a resolution[17] to continue an investigation by a special Committee on Un-American Activities, the Speaker[18] ruled that words spoken by Mr. Samuel Dickstein, of New York, impugned the motives and actions of a committee and the members thereof and were therefore not in order. Mr. John E. Rankin, of Mississippi, moved to expunge the entire speech of Mr. Dickstein from

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12. The resolution directed both that the words be stricken from the Record and that the resolution be referred to the Committee on Rules for such action as it may deem proper.

13. The resolution provided for its referral to the Committee on Rules and directed the committee to consider the offensive statement and to take such action as it deemed proper.

14. 93 Cong. Rec. 6895, 80th Cong. 1st Sess.

15. Joseph W. Martin, Jr. (Mass.).

16. 87 Cong. Rec. 894–899, 77th Cong. 1st Sess.

17. H. Res. 90, 77th Cong. 1st Sess. (1941).

18. Sam Rayburn (Tex.).

the Record. During the debate on the resolution Mr. Dickstein sought recognition for the purpose of making a parliamentary inquiry. The Speaker replied that he could not be recognized.

§ 17.17 A motion to expunge words from the Record is not in order in the Committee of the Whole; words taken down in debate in the Committee must be reported to the House by the Chairman.

On Feb. 18, 1941,[19] during debate in the Committee of the Whole, Mr. Robert F. Rich, of Pennsylvania, demanded-that certain words spoken by Mr. Clare E. Hoffman, of Michigan, be taken down. The Clerk, upon the order of the Chairman,[20] read the words objected to. Mr. Rich then requested that the words be expunged from the Record. The Chairman stated that it was a matter for the House to decide, and he directed the Committee to rise. The Committee then rose and Mr. Magnuson reported to the House that certain words in debate had been objected to, taken down upon request, and read at the Clerk's desk. After listening to the Clerk's reading of the words objected to, the Speaker[1] ruled that they did not reflect in an unparliamentary manner upon any Member, and that they did not violate the rules of the House.

§ 17.18 A motion to delete from the Record certain words reported to the House by the Committee of the Whole is in order subsequent to a ruling by the Speaker holding them unparliamentary.

On Mar. 24, 1961,[2] the Committee of the Whole reported to the House that certain words used in debate had been objected to and, on request, taken down and read at the Clerk's desk. When the House resumed sitting, the Clerk reported the words objected to, and the Speaker[3] ruled them out of order. The following parliamentary inquiry and response by the Speaker then occurred:

MR. [THOMAS B.] CURTIS [of Missouri]: The ruling means that these

19. 87 CONG. REC. 1126, 77th Cong. 1st Sess.

On May 31, 1934, in a similar situation, a Member moved to expunge from the Record words taken down during a debate in the Committee of the Whole. A point of order was made that the words would have to be first reported to the House. The Chairman, John H. Kerr (N.C.), agreed and directed the Committee to rise. 78 CONG. REC. 10167–70, 73d Cong. 2d Sess.

20. Warren G. Magnuson (Wash.).

1. Sam Rayburn (Tex.).

2. 107 CONG. REC. 4780, 87th Cong. 1st Sess.

3. Sam Rayburn (Tex.).

words will be stricken from the Record?

THE SPEAKER: If a motion is made to strike them from the Record.

Mr. Curtis then made a motion to strike the words from the Record, and the House agreed to the motion.

Deletion Pursuant to Resolution

§ 17.19 The insertion in the Record of unparliamentary remarks is sufficient to give rise to a question of privilege, which is frequently presented in the form of a resolution to expunge such remarks from the permanent Record.

On May 13, 1946,[4] Mr. Clare E. Hoffman, of Michigan, rose to a question of the privilege of the House and offered a resolution[5] stating that on May 10, Mr. Frank E. Hook, of Michigan, had caused to be inserted in the *Congressional Record* an address delivered by the President of the Michigan CIO Council, which impugned the integrity of Congress and the individual Members thereof. The resolution requested that the entire speech be expunged from the permanent Record. On a roll call vote, the House agreed to the resolution and the speech was expunged from the permanent Record.[6]

§ 17.20 A resolution, which proposes to strike from the Record language inserted under leave to extend, and which provides that such resolution is to be referred to the Committee on Rules for such action as it may deem proper, is privileged.

On Apr. 25, 1944,[7] Mr. Clare E. Hoffman, of Michigan, rose to a question of privilege and introduced a resolution[8] instructing the Committee on Rules to consider a statement impugning the integrity and patriotism of Mr. Hoffman, that had been inserted in the Record by another Member. Subsequent to the Speaker's[9] statement that without objection

4. 92 CONG. REC. 4922–24, 79th Cong. 2d Sess.
5. H. Res. 616, 79th Cong. 2d Sess. (1946).
6. See 93 CONG. REC. 2461–63, 80th Cong. 1st Sess., Mar. 24, 1947, for another occasion on which the House agreed to a resolution expunging from the permanent Record unparliamentary remarks which had been inserted under leave to extend.
7. 90 CONG. REC. 3698, 78th Cong. 2d Sess.
8. H. Res. 516, 78th Cong. 2d Sess. (1944)
9. Sam Rayburn (Tex.).

the resolution was agreed to, the following exchange occurred:

> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, reserving the right to object——
>
> THE SPEAKER: It is a privileged resolution.
>
> MR. RANKIN: I understand, but anything that goes to the Committee on Rules is not a privileged resolution.
>
> THE SPEAKER: The Chair recognized the gentleman from Michigan on the theory that it is a privileged resolution, and holds that it is a privileged resolution. The Chair has already recognized the gentleman to offer it.

Deletion by the Chair

§ 17.21 The Speaker, after ruling certain words taken down in debate out of order, immediately ordered them deleted from the Record, without awaiting action by the House.

On Feb. 22, 1945,[10] Mr. John E. Rankin, of Mississippi, requested that certain words spoken in debate by Mr. Frank E. Hook, of Michigan, be taken down. The Speaker pro tempore,[11] after hearing the words read by the Clerk, made the following ruling:

> The Chair rules the words out of order and they will be stricken from the Record.

Mr. Clare E. Hoffman, of Michigan, then asked the Chair, in the form of a parliamentary inquiry, what had become of the request that the words be taken down. The Speaker pro tempore responded as follows:

> The Chair has already ruled on that. The words were stricken from the Record.

§ 17.22 Although the Speaker may strike from the Record of the proceedings remarks made by a Member to whom the Member occupying the floor has refused to yield, the Chairman of the Committee of the Whole may not.

Although it has been said that the Speaker has no control over the official record of debates,[12] it is well established that he may exclude from the Record flagrantly disorderly words,[13] words spoken by a Member after he has been called to order,[14] and remarks made by a Member who has not been recognized and to whom the Member having the floor has declined to yield.[15] The Chairman of the Committee of the Whole, however, does not share even the Speaker's limited control over the

10. 91 CONG. REC. 1371, 79th Cong. 1st Sess.
11. John W. McCormack (Mass.).
12. 5 Hinds' Precedents § 7017.
13. 8 Cannon's Precedents § 3471.
14. 5 Hinds' Precedents §§ 6975–6978.
15. 8 Cannon's Precedents § 3466.

Record, since it is well established that the Committee of the Whole itself has no control over the *Congressional Record*.[16]

On Apr. 20, 1937,[17] the Speaker[18] stated that only the Speaker, and not the Chairman of the Committee of the Whole, has the authority to direct the reporters to delete certain improper remarks from the Record. The Speaker cited this principle as partial support for a ruling by which the reporters were instructed to take down and include as part of the Record of the proceedings remarks made by a Member to whom the Member having the floor had declined to yield.[19]

Deletion by Government Printing Office

§ 17.23 The Government Printing Office edits materials inserted in the "Extension of Remarks" section of the Record so as to delete profane words, and indicates such deletions with dashes.

On Feb. 24, 1970,[20] Mr. Ken Hechler, of West Virginia, directed the attention of the House to the fact that he had inserted in the "Extension of Remarks" section of the Record for the previous day a printed newspaper interview with George Titler, who was then the vice president of the United Mine Workers of America, in which Mr. Titler was quoted as making a number of critical remarks against the character of the late Joseph Yablonski. Mr. Hechler noted that the Government Printing Office had properly deleted several profane remarks made by Mr. Titler in the text of the interview, because such profanity in the Record would not be in conformity with the rules of the House.[1]

Parliamentarian's Note: The Government Printing Office has been authorized by the Chairman of the Joint Committee on Printing to delete profane extraneous material inserted in the Record, and to indicate such deletions with dashes.

§ 18. Correction of Errors

The House may correct errors in the printing of the *Congressional Record* in order to ensure that the

16. 5 Hinds' Precedents § 6986.
17. 81 Cong. Rec. 3670, 75th Cong. 1st Sess.
18. William B. Bankhead (Ala.).
19. This ruling is discussed in § 19.8, infra.
20. 116 Cong. Rec. 4543, 91st Cong. 2d Sess.

1. The text of the interview appears at 116 Cong. Rec. 4457, 91st Cong. 2d Sess., Feb. 24, 1970.

proceedings of the House are accurately recorded.[2] This prerogative of the House, however, does not permit it to revise remarks that are correct and in order, because the House may not change the Record merely to show what a Member should have said on the floor.[3]

Although a Member may edit and revise his own remarks without the consent of the House,[4] and the Speaker may order unparliamentary remarks or remarks made out of order deleted from the Record,[5] only the House, and not the Speaker,[6] may order the correction of printing errors in the Record.

The correction of printing errors in the Record is frequently raised as a question of privilege of the House.[7] While the correction of the Record is usually proposed informally, by the submission of minor corrections to the official reporters,[8] or by unanimous-consent requests for more significant changes,[9] a motion or resolution must be submitted if a question of order[10] is raised.

A question of privilege concerning an error in the Record may not be raised until the daily edition has appeared.[11] Under the rules of the Joint Committee on Printing,[12] once the daily edition is published, the House has 30 days to submit corrections for the permanent edition, before it is made up for printing and binding. No corrections may be submitted after the permanent edition of the particular volume is published.[13]

Question of Privilege of the House

§ 18.1 An error in the printing of the Congressional Record, by which the remarks of one Member are attributed to an-

2. 5 Hinds' Precedents § 6972.
3. 8 Cannon's Precedents §§ 3469, 3498; 6 Cannon's Precedents § 583; 5 Hinds' Precedents § 6974. The right of the House to delete from the Record unparliamentary remarks or remarks made out of order is discussed in § 17, supra.
4. See § 19, infra.
5. See § 17.21, supra.
6. 5 Hinds' Precedents § 7019.
7. Sec §§ 18.1, 18.2, infra.
8. See § 18.3, infra.
9. See §§ 18.4, 18.5, infra.
10. 8 Cannon's Precedents § 3464.
11. 5 Hinds Precedents § 7020.
12. Rule 8 of the Joint Committee on Printing, effective May 23, 1972. These rules are frequently reprinted in the daily edition of the *Congressional Record* in the section entitled "Laws and Rules for Publication of the Congressional Record," which precedes the section entitled "Daily Digest."
13. See § 18.2, infra.

other, gives rise to a question of privilege.

Parliamentarian's Note: An error in the printing of the *Congressional Record* by which the remarks of one Member are attributed to another, raises a question of the privilege of the House. (Generally, see Ch. 11, infra.)

§ 18.2 An error in the printing of the Congressional Record, by which a Member's remarks were quoted in the text of an insertion made by another Member and were not printed in smaller type as required by a rule of the Joint Committee on Printing, gives rise to a question of the privilege of the House.

On May 11, 1936,[14] Mr. John Taber, of New York, was recognized on a question of the privilege of the House. He stated that certain remarks attributed to him had been inserted in the Record of May 7, 1936,[15] but did not appear in small type as required by the rules of the Joint Committee on Printing in the case of quotations.

Mr. Taber introduced a resolution to correct the Record, but it was defeated on a roll call vote. Mr. John A. Martin, of Colorado, sought unanimous consent to correct the Record so as to reduce the quotation to small type; this request was objected to.

Submitting Corrections to Reporters

§ 18.3 A Member may submit minor corrections of the Record to the official reporters, but controversial questions or matters that might involve another Member must be submitted to the House.

On Feb. 9, 1937,[16] the following exchange occurred concerning a parliamentary inquiry:

> MR. [JOHN J.] O'CONNOR of New York: In the matter of correcting the Record, as I understand it, unless it is a matter that involves the Journal or would adversely affect another Member, these minor corrections can be made by the Member going to the desk in front of the Speaker and taking it up with the reporters.
>
> THE SPEAKER:[17] Answering the gentleman from New York, the rule is that upon insignificant or minor matters such corrections may be made at the request of the Member by submitting it to the reporter at the desk; but if it involves any substantial matter

14. 80 CONG. REC. 7019–21, 74th Cong. 2d Sess.

15. CONG. REC. (daily ed.), 74th Cong. 2d Sess.

16. 81 CONG. REC. 1013, 75th Cong. 1st Sess.

17. William B. Bankhead (Ala.).

that might bring into controversy some other Member or some other controversial question, the Member must rise and ask for such correction from the floor.

Correction by Unanimous Consent

§ 18.4 The House agreed, by unanimous consent, to correct the Record so as to reflect the actual content of a Presidential message which had been transmitted to the House.

On Mar. 12, 1963,[18] the House agreed to the unanimous-consent request of Mr. Carl Albert, of Oklahoma, that the Record of the previous day be corrected so as to reprint accurately the text of a Presidential message, as transmitted to the House by the President of the United States.[1]

Parliamentarian's Note: The original copy of the message relating to the International Rules of Judicial Procedure, which was transmitted to the House by the President, was correct in all respects. One of the attached copies, however, contained a message on an unrelated subject which had been attached before the message had left the White House. It was the submission of this erroneous copy to the official reporters at the desk that caused the error in the Record.

§ 18.5 Although a Member's words have been taken down and read to the House, the Speaker may recognize him for a unanimous-consent request to withdraw or modify the words objected to.

On June 5, 1962,[2] Mr. John D. Dingell, of Michigan, during the course of his remarks on the House floor, referred to Mr. Thomas B. Curtis, of Missouri, as a "mouthpiece" for the American Medical Association. Mr. Curtis requested that the words be taken down, and the Speaker[3] ordered the Clerk to report the words objected to. Following the reading by the Clerk, Mr. Dingell requested unanimous consent of the House to change the word "mouthpiece"

18. CONG. REC. (daily ed.). 88th Cong. 1st Sess.

1. The House must approve the correction of most errors in the printing of the *Congressional Record,* since only minor corrections may be submitted to the official reporters by a Member. See § 18.3, supra. The House frequently manifests its consent to changes in the Record by agreeing to unanimous-consent requests made by an individual Member. For example, see §§ 18.13–18.16, infra (correction of errors in recording of vote).

2. 108 CONG. REC. 9739, 87th Cong. 2d Sess.

3. John W. McCormack (Mass.).

to "self-appointed spokesman." The request was agreed to without objection, and Mr. Curtis withdrew his point of order.[4]

Correction by Motion

§ 18.6 A motion to correct the Record is privileged after the approval of the Journal.

On Jan. 24, 1936,[5] Mr. Joseph P. Monaghan, of Montana, requested unanimous consent that an error in the Record of the previous day, by which only part of an amendment he had submitted was printed in the Record, be corrected so as to include the entire text of the amendment. Mr. Thomas L. Blanton, of Texas, then obtained recognition, on a reservation of objection to the unanimous-consent request, in order to praise the clerks for the conscientious and efficient manner in which they usually performed their duties. Mr. Clifton A. Woodrum, of Virginia, made a point of order to the effect that a motion to correct the Record would be in order, and that the unanimous consent of the House was not required. The Speaker[6] agreed. Thereupon Mr. Monaghan moved that the Record be corrected. Mr. Blanton again rose to state that he had obtained recognition on a reservation of objection to the unanimous-consent request, and the regular order was demanded. The Speaker presented the unanimous-consent request, and an objection was raised against it. Mr. Monaghan immediately moved that the Record be corrected in the manner in which he had previously described. The previous question was ordered, and the House agreed to the motion.

§ 18.7 Debate on a motion to correct the Record is under the hour rule.

On July 5, 1945,[7] Mr. Malcolm C. Tarver, of Georgia, made a motion to correct the Record so as to include the exact colloquy which had occurred between himself and Mr. John E. Rankin, of Mississippi, which had been modified by Mr. Rankin in the process of revising his remarks. After Mr. Tarver had concluded his remarks

4. See 93 CONG. REC. 6895, 80th Cong. 1st Sess., June 12, 1947, for an occasion on which Speaker Joseph W. Martin, Jr. (Mass.) ruled that a Member who has had his words taken down may be recognized to propound a unanimous-consent request.

5. See 80 CONG. REC. 977, 74th Cong. 2d Sess.

6. Joseph W. Byrns (Tenn.).

7. 91 CONG. REC. 7221–25, 79th Cong. 1st Sess.

in support of this motion, Mr. Rankin requested to be heard on the motion. Upon being recognized by the Speaker,[8] Mr. Rankin inquired as to how long he would be permitted to speak. The Speaker advised him that he would be permitted to speak under the hour rule.[9]

§ 18.8 The House agreed to a motion to refer a motion to correct the Record to the Committee on Rules.

On July 5, 1945,[10] Mr. Malcolm C. Tarver, of Georgia, made a motion to correct the Record so as to include the language actually spoken in debate by himself and Mr. John E. Rankin, of Mississippi, on July 2, 1945. Mr. Tarver stated in support of his motion that the colloquy which had occurred on the floor, as taken down by the reporters, had been changed substantially by Mr. Rankin in revising the text of his remarks. Subsequently, a motion was made to refer Mr. Tarver's motion to the Committee on Rules. The House, by a division vote, agreed to the motion to refer.

Correction by Resolution

§ 18.9 Upon objection being raised to a unanimous-consent request that the Record be corrected to show remarks as reported by the official reporters, the House agreed to a resolution so correcting the Record.

On Mar. 23, 1949,[11] Mr. William J. Green, Jr., of Pennsylvania, requested unanimous consent that the Record be corrected to indicate the exact language that had occurred in the colloquy between himself and Mr. John E. Rankin, of Mississippi, the previous day. In support of his request Mr. Green alleged that Mr. Rankin had altered the language of their exchange in revising the text of his remarks. Mr. Rankin raised an objection to the unanimous-consent request, and Mr. Green thereupon offered the following resolution:[12]

> *Resolved*, That the Record of Tuesday, March 22 be amended by printing the colloquy between Mr. Rankin and Mr. Green as reported by official reporters.

The House agreed to the resolution.

§ 18.10 Debate on a resolution to correct the Record is under the hour rule.

8. Sam Rayburn (Tex.).
9. 91 CONG. REC. 7222, 79th Cong. 1st Sess.
10. *Id.* at pp. 7221–25.
11. 95 CONG. REC. 3041, 81st Cong. 1st Sess.
12. H. Res. 164, 81st Cong. 1st Sess. (1949).

On Feb. 13, 1946,[13] Mr. Howard W. Smith, of Virginia, introduced a resolution to delete from the Record of the previous day remarks spoken on the floor and inserted in the Record by Mr. Charles R. Savage, of Washington, which reflected unfavorably upon Virginia state officials. Mr. Smith was recognized to speak on the resolution, and the following parliamentary inquiry and response by the Speaker[14] then occurred:

> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry; for how long is the gentleman from Virginia recognized?
>
> THE SPEAKER: The gentleman from Virginia is under the 1-hour rule.

The House agreed to the resolution.

Government Printing Office Omissions

§ 18.11 Where a committee report is ordered printed in the Record and certain illustrations are omitted from the Record version due to mechanical limitations at the Government Printing Office, such omissions are noted in the Record.

On Feb. 2, 1966,[15] H. Rept. No. 1241[16] was reprinted in the Record. The following notation of omissions was printed immediately following the House report:

> Illustrations identified as Robert Shelton, Exhibits Nos. 1, 3, and 7 are omitted because of mechanical limitations in printing the Congressional Record. All of the referenced exhibits, however, are fully illustrated in House Report No. 1241 which was filed and printed this date.[17]

Time for Correction

§ 18.12 The Record is not subject to correction after the permanent edition has been printed.

On Jan. 23, 1969,[18] Mr. William F. Ryan, of New York, made a unanimous-consent request that a correction be made in the Record for Oct. 15, 1968. The Speaker[19] refused to recognize Mr. Ryan for this purpose because an error in the Record of a previous Congress cannot be corrected when the permanent edition has already been printed.[20]

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13. 92 CONG. REC. 1274, 79th Cong. 2d Sess.

14. Sam Rayburn (Tex.).

15. 112 CONG. REC. 1742, 89th Cong. 2d Sess.

16. 89th Cong. 2d Sess. (1966).

17. 112 CONG. REC. 1754, 89th Cong. 2d Sess.

18. CONG. REC. (daily ed.), 91st Cong. 1st Sess.

19. John W. McCormack (Mass.).

20. The principle that the Record is not subject to correction after the perma-

The Speaker did indicate, however, that Mr. Ryan's statement of the error would appear in the Record of the proceedings for the current day.

Roll Call Vote Corrections

§ 18.13 The correction of a Member's erroneously recorded roll call vote can be made only with the unanimous consent of the House; the insertion in the Record, with the unanimous consent of the House, of remarks in which such an error is recited, does not constitute the consent of the House to effect a change in the Record.

On June 28, 1966,[1] Mr. Lawrence H. Fountain, of North Carolina, with the unanimous consent of the House, had inserted in the Record the following remarks:

> Mr. Speaker, the Record of yesterday's rollcall No. 153 has me recorded as being absent. I was present and so answered to my name. I ask unanimous consent that the journal be so corrected.
>
> I ask unanimous consent that the Congressional Record of June 27, 1966, be corrected, in that, on rollcall No. 153 I am recorded as absent, I was present and so answered to my name.

§ 18.14 The House may agree to a unanimous-consent request by a Member to correct the permanent edition of the Record so as to correctly record his vote, but a request by a Member to change his vote is not in order after the announcement of the result.

On May 28, 1959,[2] the House agreed to a unanimous-consent request of Mr. James G. Fulton, of Pennsylvania, who had been incorrectly recorded as not voting on roll call No. 59, to correct the Record so as to indicate that he had been present and had voted "aye". The following subsequent parliamentary inquiry and reply by the Speaker pro tempore[3] illustrates the distinction between correcting an erroneously recorded vote in the Record and changing a vote after the announcement of the result:[4]

> MR. [CLARE E.] HOFFMAN [of Michigan]: I did not hear how the gentleman

nent edition has been printed is a long-standing one. See 8 Cannon's Precedents § 3093.

1. CONG. REC. (daily ed.), 89th Cong. 2d Sess.

2. 105 CONG. REC. 9335, 86th Cong. 1st Sess.

3. John W. McCormack (Mass.).

4. A Member may not change his vote after the announcement of the result. 8 Cannon's Precedents §§ 3070, 3123, 3124, 3160; 5 Hinds' Precedents §§ 5931–5933, 6093, 6094.
Generally, see Ch. 30, infra.

stated he had voted. Is it permissible to change a vote, on a roll call, a aye-and-nay vote? May a Member change from one to the other the next day?

THE SPEAKER PRO TEMPORE: Of course it is not permissible to change a vote, but it is permissible for a Member to correct the Record.[5]

§ 18.15 A request by a Member to correct his incorrectly recorded vote on a roll call is noted in the Record, provided the request is made before the announcement of the result.

On Sept. 6, 1961,[6] Mr. Peter F. Mack, Jr., of Illinois, following a roll call vote[7] and prior to the announcement of the result, announced that his vote had been incorrectly recorded, and requested that he be recorded as having voted "aye." Following the announcement of the result of the vote, Mr. Mack made the following parliamentary inquiry:

Mr. Speaker, I was incorrectly recorded on the last roll call. I am wondering if the Record will show that I was incorrectly recorded or whether it will show that I changed my vote.

The Speaker pro tempore[8] responded as follows:

All the Chair can state is that the Record will show what actually transpired.

Pairs

§ 18.16 Although as a general rule the House does not take cognizance of pairs, a Member may request the unanimous consent of the House that the Record be corrected where pairs are erroneously recorded or omitted.

On Aug. 3, 1965,[9] the House agreed to a unanimous-consent request by Mr. Carl Albert, of Oklahoma, to correct the Record so as to indicate that the live pairs recorded at the conclusion of roll call No. 215 the previous day[10] should have been recorded as general pairs. On other occasions the House has similarly agreed by unanimous consent to delete from the Record pairs erroneously recorded[11] and to include pairs erroneously omitted.[12]

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5. For a similar occasion on which the House agreed by unanimous consent to correct an error in the recording of a Member's vote in the Record, see CONG. REC. (daily ed.), Jan. 8, 1964.

6. 107 CONG. REC. 18256, 87th Cong. 1st Sess.

7. The vote was on the question of whether to suspend the rules and pass H.R. 9000, 87th Cong. 1st Sess. (1961).

8. John W. McCormack (Mass.).

9. CONG. REC. (daily ed.), 89th Cong. 1st Sess.

10. 111 CONG. REC. 18976, 89th Cong. 1st Sess., Aug. 2, 1965.

11. CONG. REC. (daily ed.), Aug. 14, 1967.

12. CONG. REC. (daily ed.), Dec. 10, 1963.

Cosponsors of Bill or Resolution

§ 18.17 An error in the listing of the cosponsors on a bill or resolution that has been introduced in the House cannot be subsequently corrected, but a Member's statement that an error has occurred will appear in the Record.

On Oct. 9, 1969,[13] Mr. Jeffery Cohelan, of California, announced to the House that the name of Mr. Michael J. Kirwan, of Ohio, was incorrectly included as a cosponsor of a House joint resolution for the funding of the Department of Health, Education, and Welfare under a continuing resolution.[14] In response to Mr. Cohelan's unanimous-consent request that the Record stand corrected, the Speaker pro tempore[15] stated as follows:

> The gentleman's statement will appear in the Record. There is no way of correcting the resolution.

13. 115 CONG. REC. 29347, 91st Cong. 1st Sess.

For an example of another occasion on which the statement of a Member that the listing of the cosponsors of a particular bill was in error, see 114 CONG. REC. 1873, 90th Cong. 2d Sess., Feb. 1, 1968.

14. H.J. Res. 927, 91st Cong. 1st Sess. (1969).

15. Richard Bolling (Mo.).

§ 19. Revision of Remarks

Although the Record is "substantially a verbatim report of proceedings",[16] it has been the practice of the House to permit a Member, with the approval of the Speaker, but without permission from the House, to edit and revise his remarks before publication in the Record.[17] The consent of the House, however, is required for the correction of major errors,[18] and the deletion of unparliamentary remarks or remarks made out of order.[19] In addition a Member may not extend his remarks without permission from the House.[20]

Under the rules of the Joint Committee on Printing[1] a revision shall consist only of corrections of the original copy and shall not include deletions of correct material, substitutions for correct

16. 44 USC § 901 (1970).

17. 5 Hinds' Precedents § 6971.

18. See § 18, supra.

19. See § 17, supra.

20. See § 20, infra.

1. Rule 8 of the Joint Committee on Printing, effective May 23, 1972. These rules are frequently reprinted in the daily edition of the *Congressional Record* in the section entitled "Laws and Rules for Publication of the Congressional Record," which precedes the section entitled "Daily Digest."

material, or additions of new subject matter.

The official reporters of debate frequently submit to Members for their inspection and editing remarks they have made on the floor of the House that day. In order to ensure publication in the Record for the following morning, manuscripts must be returned to the Government Printing Office not later than 9 o'clock p.m.[2] A Member may withhold his remarks from the Record for a period not to exceed 30 calendar days from the date when its printing was authorized.[3]

There are a number of significant limitations upon the right of a Member to edit and revise his remarks. For example, a Member may not delete from the Record the proceedings by which his words were taken down,[4] remarks interjected by another Member to whom he has yielded[5] or to whom he has responded.[6] A Member may not revise remarks which alter the context of colloquys with other Members, without their consent.[7] A Member may, however, withhold his remarks from the Record for revision up to 30 days notwithstanding the fact that such remarks contain a colloquy with another Member.[8]

Member's Own Remarks

§ 19.1 A Member may revise his own remarks without obtaining permission from the House, but he must have permission to extend his remarks.

On Jan. 25, 1939,[9] the following exchange occurred on the floor of the House:

> MR. [HUGH] PETERSON of Georgia: Mr. Speaker, I ask unanimous consent to revise my own remarks. I am asking not to extend my remarks in the Record but to revise them.
>
> MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Reserving the right to object, Mr. Speaker, I may say that under the rules of the House the gentleman has the right to revise his remarks, but he does not have the right to extend them.
>
> THE SPEAKER:[10], In the opinion of the Chair, the gentleman has the right to revise his remarks.

2. Rule 3 of the Joint Committee on Printing.

3. Rule 7 of the Joint Committee on Printing.

4. See § 19.2, infra.

5. See § 19.7, infra.

6. See § 19.6, infra.

7. See §§ 19.3, 19.4, infra.

8. See § 19.10, infra.

9. 84 CONG. REC. 791, 76th Cong. 1st Sess.

10. William B. Bankhead (Ala.).

Remarks Affecting Official House Proceedings

§ 19.2 A Member's revision of his remarks, so as to delete from the Record the proceedings by which his words were taken down, gives rise to the question of the privilege of the House.

On Apr. 26, 1940,[11] Mr. Clare E. Hoffman, of Michigan, was recognized on a question of the privilege of the House, and submitted a resolution requesting that the Record of the previous day be corrected so as to include the proceedings by which words spoken by Mr. Edward E. Cox, of Georgia, had been taken down and ruled out of order. Mr. Cox, after his words were ruled out of order, had requested and received the unanimous consent of the House to withdraw them from the Record. In revising his remarks, however, Mr. Cox deleted the entire proceedings by which his remarks had been taken down, and ruled out of order.

Mr. Hoffman's resolution was rejected by the House. Mr. Cox, after explaining that the proceedings had been deleted inadvertently, requested the unanimous consent of the House that the permanent edition of the Record be corrected so as to include them. The House agreed to the request.[12]

Remarks Affecting Colloquys

§ 19.3 A Member may edit the reporters' transcript of remarks he has made on the floor of the House, provided he does not alter the remarks of other Members.

On Aug. 5, 1941,[13] the Chair was asked to clarify the conditions under which a Member may re-

11. 86 CONG. REC. 5111–14, 76th Cong. 3d Sess.

12. For a ruling by Speaker William B. Bankhead (Ala.) that a question of the privilege of the House is raised by the action of a Member in withholding from the Record for up to 30 days the proceedings by which his words were taken down and ruled upon by the Speaker, see § 19.11, infra.

13. 87 CONG. REC. 6801, 77th Cong. 1st Sess.

The principle that permits a Member to revise his remarks without permission as long as the change does not affect the remarks of another Member is a long-standing one. See 8 Cannon's Precedents §§ 3461, 3463, 3497; 5 Hinds' Precedents § 6972. For a ruling by Speaker William B. Bankhead (Ala.) to the effect that a Member, under the rules of the House, need not secure the permission of the House to revise his remarks, but that such permission was required to extend his remarks, see § 19.1, supra.

vise his remarks without the consent of the House. The proceedings were as follows:

> MR. [DAVID L.] POWERS [of New Jersey]: Mr. Speaker, can a Member without unanimous consent, revise and extend his remarks in the Record?
>
> THE SPEAKER PRO TEMPORE:[14] He may not extend his remarks without permission.
>
> MR. POWERS: Another parliamentary inquiry, Mr. Speaker.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state it.
>
> MR. POWERS: The Speaker said he may not extend his remarks. May a Member revise his remarks without unanimous consent?
>
> THE SPEAKER PRO TEMPORE: He may make corrections, as I understand it. The Chair will read the rule:
>
> > The practice is to allow Members to edit the reporters' transcription of their remarks before it is sent to the printer, but such revision shall not alter language affecting the context of colloquies with other Members without their approval. Where the remarks of another are not affected, a Member in revising his speech for the Record may strike out any portion or may edit the speech in its entirety, but alterations which place a different aspect on the remarks of a colleague require authorization by the House.

§ 19.4 Members who desire to revise for the permanent Record remarks that affect each other, but who cannot agree upon the appropriate revision, should submit the matter to the Speaker for decision.

On May 9, 1934,[15] the following parliamentary inquiry was raised:

> MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, in the course of debate on yesterday . . . I entered into a colloquy with the gentleman from Colorado [Mr. Lewis], who had made a statement in regard to certain occurrences in my State with which I felt obliged to take issue.
>
> The gentleman from Colorado later in the correction of the stenographic copy of his remarks, I am sure in good faith, because I know the gentleman would not willingly do an injustice to anyone, having ascertained that his statements were not in accord with the facts, undertook to correct, and did correct, the stenographic record so as to eliminate the statements of which I complained. The difficulty lies in the fact that my own remarks made in the Record immediately after his statement have remained unchanged, and the effect is to place me in a false light and in the attitude of questioning statements of the gentleman appearing in the Record which were not made on the floor at all.
>
> May I inquire whether or not I am entitled to have the Record corrected to show the statements made by the gentleman from Colorado in the course of this colloquy?

The Speaker[16] responded as follows:

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14. Wright Patman (Tex.).

15. See 78 CONG. REC. 3562 et seq., 73d Cong. 2d Sess.

16. Henry T. Rainey (Ill.).

No Member has the right in revising his own remarks to change them in such a way as to affect another Member without the consent of the other Member concerned. The Members involved should try to adjust the matter among themselves, but if they cannot agree, the matter should be submitted to the Speaker for decision.

Remarks Interjected by Another Member

§ 19.5 Remarks made by a Member without recognition from the Chair or the permission of the Member occupying the floor at that time may be deleted from the Record by the latter in revising his remarks.

On Apr. 14, 1936,[17] Mr. Marion A. Zioncheck, of Washington, made a point of order to the effect that Mr. John J. Boylan, of New York, had deleted from the text of his remarks certain remarks interjected by Mr. Zioncheck without the authority to do so. Mr. Boylan had been addressing the House the previous day when Mr. Zioncheck requested that he be yielded time to speak. Mr. Boylan refused, immediately prior to the expiration of his speaking time. After the gavel fell, and without recognition by the Chair, Mr. Zioncheck made the remarks which were later deleted from the Record by Mr. Boylan. The Speaker[18] made the following ruling:

The Chair may say to the gentleman that no Member of the House has the right to have his remarks inserted in the Record unless he has obtained the consent of the House or the Chair or the gentleman addressing the House.

§ 19.6 A Member may not delete from the Record of the proceedings remarks improperly interjected by a Member to whom he has declined to yield, if he has offered any response to those remarks.

On Apr. 20, 1937,[19] Mr. Edward W. Curley, of New York, made a parliamentary inquiry[20] concerning the right of a Member in revising his remarks to delete from the Record those remarks improperly interjected by a Member to whom he has declined to yield. Mr. Curley stated that on Apr. 15, during an address by Mr.

17. 80 Cong. Rec. 5478, 74th Cong. 2d Sess.

18. Joseph W. Byrns (Tenn.).

19. 81 Cong. Rec. 3669, 75th Cong. 1st Sess.

20. Mr. Curley's parliamentary inquiry was first made on Apr. 19, 1937, and was withdrawn at the suggestion of several Members, in order to permit Mr. Wadsworth, a significant participant in the proceedings, to be present for the Speaker's ruling. 81 Cong. Rec. 3589, 75th Cong. 1st Sess.

James W. Wadsworth, Jr., of New York, in the Committee of the Whole, he was twice recognized by the Chairman of the Committee of the Whole[1] for the purpose of requesting Mr. Wadsworth to yield the floor. On both occasions Mr. Wadsworth refused to yield. Immediately subsequent to the second refusal Mr. Curley stated the following: "The gentleman is making a wrong statement." Mr. Wadsworth continued his remarks without responding to that statement. The daily edition of the Record for Apr. 15 contained the remarks of Mr. Wadsworth without any reference to either the requests to yield or the subsequent statement made by Mr. Curley. Mr. Curley stated that he had been informed by the reporter that the omitted remarks had been included in the reporter's original notes, and that the omission from the daily edition of the Record was in error.[2] Mr. Curley contended that the Record should be corrected so as to include the omitted exchanges. The Speaker,[3] after discussing the applicable precedents on the subject, which indicate that a Member may delete from his remarks those remarks made by another Member to whom he has declined to yield, ruled against the request of Mr. Curley.

Mr. Curley then made a further parliamentary inquiry concerning the fact that a similar interruption of the same speech by another Member had occurred, and that exchange had appeared in the Record. That exchange was as follows:

> MR. [JOSEPH A.] GAVAGAN [of New York]: Mr. Chairman, will the gentleman yield?
>
> MR. WADSWORTH: I cannot yield

Mr. Gavagan, despite the rule that prohibits a Member from speaking under these circumstances, then stated:

> I am sure if the gentleman had read the bill he would not have made that statement.

Thereupon Mr. Wadsworth recognized Mr. Gavagan's statement and responded to it by saying:

> I have read the language.[4]

Mr. Curley requested the opinion of the Chair as to why Mr. Gavagan's exchange with Mr.

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1. John J. O'Connor (N.Y.).

2. It should be noted that at the conclusion of the discussion Mr. Wadsworth indicated that he had not deleted from the text of his remarks any words interjected by another Member. 81 CONG. REC. 3670, 75th Cong. 1st Sess., Apr. 20, 1937.

3. William B. Bankhead (Ala.).

4. The entire exchange between Mr. Wadsworth and Mr. Gavagan is reprinted at 81 CONG. REC. 3521, 75th Cong. 1st Sess., Apr. 15, 1937.

Wadsworth had appeared in the Record, and his similar exchange with Mr. Wadsworth had been deleted. The Speaker responded as follows:

> So it seems from the particular circumstances of these two incidents that although neither the gentleman from New York [Mr. Curley] nor the gentleman from New York [Mr. Gavagan], under the rules, had any right to make any statement whatever, the gentleman from New York [Mr. Wadsworth], occupying the floor, agreed to recognize the interpolation of the gentleman from New York [Mr. Gavagan] and voluntarily replied to it.

This ruling of the Speaker was further clarified by the following parliamentary inquiry and response of the Speaker:

> MR. [GERALD J.] BOILEAU [of Wisconsin]: In the event a Member interrupts some other Member who is occupying the floor, without the Member having the floor specifically giving the other Member the right to interpose a question, and the Member having the floor answers the question, as the gentleman from New York [Mr. Wadsworth] did with respect to the question of the gentleman from New York [Mr. Gavagan], could the gentleman from New York [Mr. Wadsworth] as a matter of right then delete that portion of his remarks?
>
> THE SPEAKER: The Chair will state in answer to the question of the gentleman from Wisconsin that if a Member occupying the floor voluntarily decides to respond to a question asked by another Member, he thereby waives any right to interpose the objection that it is a violation of the rule and under those circumstances the transcript of the Record should show actually what did occur.

§ 19.7 A Member, in revising his remarks, may not delete or alter the meaning of remarks actually spoken by another Member to whom he has yielded, without such Member's consent

On Mar. 27, 1935,[5] a discussion occurred on the floor of the House with respect to the right of a Member, who had yielded the floor to another Member for the purpose of asking a question, to delete that Member's words from the Record, whether spoken from the floor or inserted with the unanimous consent of the House. The Speaker[6] had held that a Member to whom the floor was yielded must, in correcting his remarks, obtain the consent of the Member who yielded, especially if the correction changes the meaning of the question asked. The following parliamentary inquiry was then made concerning the right of a Member who has yielded the floor to strike from the Record words spoken by the Member to whom he has yielded:

> MR. [ALBERT E.] CARTER [of California]: As I understand, the gen-

5. 79 CONG. REC. 4540, 74th Cong. 1st Sess.

6. Joseph W. Byrns (Tenn.).

tleman from California [Mr. Kramer] attempts to justify his striking out what I wrote in on the ground that he had authority to do that. My inquiry is, has any Member the right to strike out any portion of any other Member's remarks, whether it is in there by his permission or not?

THE SPEAKER: No. If those remarks were made in the course of the debate and with the consent of the Member.

§ 19.8 The reporters are instructed to take down and include as part of the Record of the proceedings remarks interjected by a Member to whom the Member occupying the floor has refused to yield, even though such remarks are out of order and may be stricken from the permanent Record by the House, the Speaker, or the Member in revising his remarks.

On Apr. 20, 1937,[7] the Speaker[8] made a ruling by which the reporters were instructed to take down and include as part of the Record of the proceedings the remarks of a Member, even though the Member occupying the floor had declined to yield and those remarks were not in order. That ruling was a revision of a ruling made the previous day[9] in which the Speaker had instructed the reporters not to record remarks made under such circumstances. The Speaker's revised ruling was made in response to a renewed parliamentary inquiry that had been made and withdrawn the previous day.[10]

The Speaker gave the following reasons in support of the revised ruling:

The Chair has been induced to change his position upon that question, for two reasons: In the first place, upon more mature consideration, the Chair is of the opinion that it places upon the reporters of the House what might be termed a species of censorship of editing of the remarks the Members make, however improvidently made or improperly stated. The Chair does not think that this type of burden should be imposed upon the reporters of the House. In the second place, as was the instance here referred to, the remarks were made while we were in Committee of the Whole, presided over by a Chairman and not by the Speaker of the House; and under the rule only the Speaker-and not a Chairman of the Committee—has the authority to direct the reporters to delete certain improper remarks from the Record.

So in order that full justice may be done to all Members, although they

7. 81 CONG. REC. 3670, 76th Cong. 1st Sess.

8. William B. Bankhead (Ala.).

9. 81 CONG. REC. 3588, 75th Cong. 1st Sess., Apr. 19, 1937.

10. A Member requested the opinion of the Chair as to whether the Record might be corrected so as to include remarks he had made after the Member occupying the floor at the time had refused to yield to him.

may be in small measure violating the rules of the House, and in order that the Record may definitely show what actually transpired in haec verba, the Chair withdraws that part of his ruling directing the reporters hereafter not to take down such improvident remarks, and will conform to the old practice which the Chair thinks probably the best, leaving to the Members themselves, after the speeches are transcribed, the right and privilege to strike from the transcript any remarks made by a Member where the Member speaking and sought to be interrupted has declined to yield.

Previous rulings of the Chair indicate that where a Member is occupying the floor at the time of an unauthorized interruption of his speech,[11] the Speaker,[12] the House or the Member himself,[13] may strike the remarks of the interrupting Member.

§ 19.9 A question of privilege arises when a Member, in revising his remarks for the permanent Record, strikes out remarks made by another Member after he had reserved the right to object to a unanimous-consent request.

On Aug. 3, 1939,[14] the following exchange occurred concerning a question of privilege:

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, this involves the integrity of the Record. Under date of July 27, when the gentleman from Illinois [Mr. Keller] had the floor, certain remarks were made by me under a reservation of the right to object. I send to the Speaker's desk a printed copy of the Record and a transcript from the Official Reporters, which shows that all of those remarks made by me were stricken from the Record by the gentleman from Illinois. That is the question of personal privilege and of the privilege of the House I now present. . . .

THE SPEAKER:[15] The Chair is of the opinion that the gentleman presents a question affecting the privileges of the House and he is recognized for 1 hour.

Following a discussion of the deleted material, the House agreed to a motion reinserting that material in the permanent Record.[16]

Withholding of Remarks

§ 19.10 A Member who controlled the floor has the right to withhold remarks he made at that time from the Record for revision up to 30 days notwithstanding the fact that such remarks contain a colloquy with another Member.

On Mar. 26, 1940,[17] Mr. Compton I. White, of Idaho, raised a

11. 8 Cannon's Precedents § 3465.
12. 8 Cannon's Precedents § 3466.
13. 8 Cannon's Precedents § 3467.
14. 84 CONG. REC. 10966, 76th Cong. 1st Sess.
15. William B. Bankhead (Ala.).
16. 84 CONG. REC. 10968, 76th Cong. 1st Sess.
17. 86 CONG. REC. 3451, 76th Cong. 3d Sess.

question of privilege. The proceedings were as follows:

> MR. WHITE of Idaho: Mr. Speaker, on yesterday, when an appropriation bill was being considered by the House, the gentleman from Michigan [Mr. Hoffman] and I had quite a colloquy on the National Labor Relations Board. I find on inspection of the Record this morning that nothing appears of that debate. I appreciate the courtesy of the gentleman in yielding to me, and I would like to have the statements made on the floor appear in the Record. I find the matter has been withheld. . . .
>
> THE SPEAKER:[18] The Chair may say to the gentleman from Idaho [Mr. White] that when a Member who has the floor in his own right engages in colloquy with another Member, under the rules he has the right to withhold the remarks from the Record temporarily. The Chair may add that he has 30 days, under the rules of the House, in which to revise his remarks and place them in the Record.

§ 19.11 Although under the general practice of the House, a Member who controlled the floor has the right to withhold his remarks from the Record for revision [up to 30 days], he may not withhold that part of the proceedings whereby his remarks were taken down.

On June 1, 1939,[19] Mr. Clare E. Hoffman, of Michigan, introduced a resolution[20] raising a question of the privilege of the House. Mr. Hoffman stated in his resolution that on the previous day, during debate in the Committee of the Whole, Mr. Sam C. Massingale, of Oklahoma, had intimated that in the future the action of the House Committee on Ways and Means on the bill which was under consideration would be regarded as "pusillanimous." A Member demanded that the words be taken down and the Committee rose. When the House convened, the Speaker[1] ruled upon the point of order, and Mr. Massingale was permitted to proceed. Thereafter the House again resolved itself into the Committee of the Whole, and Mr. Massingale continued his remarks.[2] Subse-

18. William B. Bankhead (Ala.).

19. 84 CONG. REC. 6531, 76th Cong. 1st Sess.

20. H. Res. 208, 76th Cong. 1st Sess. (1939).

1. William B. Bankhead (Ala.).

2. When Mr. Massingale continued his remarks in the Committee of the Whole, he went on to make certain charges involving the integrity of another Member of the House. The words were taken down, the Committee again arose, the House convened, and the Speaker this time sustained the point of order. Mr. Massingale, however, obtained the unanimous consent of the House to have those remarks deleted from the Record. In addition, the House agreed to a unanimous-consent request by Mr. Sam Rayburn (Tex.)

quently, Mr. Massingale withheld from the Record of May 31 not only the remarks by which he had impugned the integrity of the Committee on Ways and Means, but also the entire proceedings by which the words were taken down and ruled upon by the Speaker. The resolution requested that the following action be taken:

> *Resolved,* That a committee of three be appointed by the Speaker of the House, or in the discretion of the Speaker, make reference to a standing committee of the House, to ascertain from the reporters of the House and from such other sources as they may deem trustworthy a true and correct record of what did occur, deleting from such record all such matters which the gentleman from Oklahoma [Mr. Massingale] was given permission to delete, and retaining in the Record all such other transactions and proceedings which occurred on the floor of the House and for the withdrawal of which permission was not given; and thereupon to report its conclusions to the House, together with such recommendations as it may deem desirable.

Mr. Hoffman, in support of his resolution, emphasized that in his opinion the record of the proceedings of May 31 was not a true and accurate text of what had occurred on the floor, because Mr. Massingale had not obtained permission to withhold the entire proceedings by which his remarks reflecting upon the integrity of another Member had been taken down and ruled upon by the Speaker. The Speaker stated:

> The Record shows that the gentleman from Oklahoma [Mr. Massingale] did obtain unanimous consent to revise and extend his remarks. Under the general practice of the House that gave to the gentleman from Oklahoma the right to withhold revision of his remarks from the Record. The Chair is of the opinion that the other subject matter stated in the resolution of the gentleman from Michigan [Mr. Hoffman] probably does raise a question of the privileges of the House.

The resolution was referred to the Committee on Rules.

§ 19.12 The Committee on Rules has jurisdiction of a resolution that proposes the creation of an investigating committee to determine whether a Member has wrongfully withheld remarks from the Record.

On June 1, 1939,[3] Mr. Clare E. Hoffman, of Michigan, introduced a resolution[4] that proposed that

that the entire proceedings by which the remarks of Mr. Massingale with reference to another Member, be deleted from the Record, and that Mr. Massingale be permitted to revise and extend his remarks.

3. 84 CONG. REC. 6531, 76th Cong. 1st Sess.

4. H. Res. 208, 76th Cong. 1st Sess. (1939).

a committee ascertain from the reporters of the House whether Mr. Sam C. Massingale, of Oklahoma, had wrongfully withheld from the Record in revising his remarks the entire proceedings by which his remarks were taken down and ruled upon by the Speaker. The Speaker[5] asked Mr. Hoffman whether he desired to have the resolution referred to a committee. Mr. Hoffman responded that, in the discretion of the Speaker, he would like it referred to either a special committee or to any standing committee. The Speaker stated that the Committee on Rules would have jurisdiction over the resolution. The resolution was so referred.

§ 20. Extension of Remarks

The practice in the House of permitting Members to extend their remarks so as to insert in the Record speeches that were not delivered on the floor of the House and extraneous materials related to the subject under discussion is a long-standing one.[6] A Member must obtain the consent of the House to extend his remarks,[7] and authorizations to extend remarks in the Record are strictly construed.[8] The Speaker will only entertain requests for permission to extend remarks at certain times during the conduct of House business,[9] and such requests will be granted only to the individual whose remarks are to be inserted.[10] The Chairman of the Committee of the Whole may recognize a Member to extend his own remarks,[11] but the Committee of the Whole lacks the power to permit the inclusion of extraneous materials[12] or to permit insertions at a later date.[13] The insertion of unparliamentary remarks is prohibited, and violations of this rule give rise to a question of privilege of the House.[14]

5. William B. Bankhead (Ala.).

6. For a discussion of the reasons underlying the development of the practice, see 5 Hinds' Precedents §§ 6990–6996, 6998–7000.

7. See § 20.1, infra.

8. 8 Cannon's Precedents § 3479.

9. See § § 20.4 et seq., infra.

10. House Supplement to "Laws and Rules for Publication of the Congressional Record", effective Dec. 29, 1970. These rules are frequently reprinted in the daily edition of the *Congressional Record* in the section entitled "Laws and Rules for Publication of the Congressional Record", which precedes the section entitled "Daily Digest".

11. See § 20.12, infra.

12. See 20.13, infra.

13. See § 20.18, infra.

14. See § 20.19, infra; 8 Cannon's Precedents § 3495; 5 Hinds' Precedents

While the inclusion of extraneous materials is permitted, a Member must conform to the limitations imposed by statute and the rules of the Joint Committee on Printing. For example, only the Joint Committee on Printing, and not the House, can permit the insertion in the Record of maps, diagrams, or illustrations.[15] When permission is obtained to insert extraneous materials, the insertions must conform to the descriptions in the request for permission to which the House has consented.[16]

Under the rules of the Joint Committee on Printing,[17] a Member may not insert extraneous matter in excess of two printed Record pages, unless he announces coincident with the request for leave to print or extend the estimate in writing from the Public Printer of the probable cost of publishing the insertion, and the House agrees to permit its inclusion notwithstanding the cost. If a Member submits an extension of remarks containing extraneous matter in excess of two pages, it is the duty of the Public Printer to return the insertion with an estimate of cost.[18] In constructing the "Extensions of Remarks" section, the Public Printer is authorized to withhold any extensions of remarks which exceed economical press fill or exceed production limitations.[19]

The rules of the Joint Committee on Printing and the House Supplement to those rules delineate the types of insertions which are permitted in the body of the Record and those permitted only in the "Extensions of Remarks" section. The only extraneous materials permitted in the body of the Record are as follows: excerpts from letters, telegrams, or articles presented in connection with a speech delivered in the course of debate; communications from state legislatures; addresses or articles by the President and the members of his Cabinet, the Vice President, or a Member of Con-

§§ 7005–7008. Questions of privilege generally, see Ch. 11, infra.

15. 44 USC § 904 (1970).

16. See §§ 20.25, 20.26, infra; 8 Cannon's Precedents §§ 3462, 3479, 3480; 5 Hinds' Precedents § 7001.

17. Rule 12 of the Joint Committee on Printing, effective May 23, 1972.

18. For a discussion on the House floor of regulations concerning the inclusion of extraneous material, see 91 CONG. REC. 839–841, 79th Cong. 1st Sess., Feb. 6, 1945.

19. Rule 4, House Supplement to "Laws and Rules for Publication of the Congressional Record", effective Dec. 29, 1970. Extensions withheld for such reasons will be printed in succeeding issues, at the direction of the Public Printer.

gress.[20] Newspaper or magazine articles, or other matter not germane to the proceedings, may be inserted only in the "Extensions of Remarks" section, but this rule does not apply to quotations which form part of a speech of a Member, or to an authorized extension of his own remarks.[1] In addition, any extraneous matter which is inserted pursuant to permission granted to extend at this point in the Record, or pursuant to a request to address the House for one minute prior to the morning business of the House, may be printed only in the "Extensions of Remarks" section.[2]

There are several different circumstances in which requests are made for permission for more than one Member to extend remarks. Such requests may or may not be limited to certain subject matters. For example, prior to adjournment to a day certain,[3] or adjournment *sine die*,[4] all Members are permitted to extend their remarks.[5] Floor managers of specific legislation are permitted to request permission for all Members to insert their remarks relative to the legislation.[6] The House usually grants permission

20. Rule 12 of the Joint Committee on Printing, effective May 23, 1972. Section three of the same rule authorizes the official reporters of the House or the Public Printer to return to the Member any matter submitted for the *Congressional Record* which is in contravention of the provisions of this rule.

1. Rule 1 of House Supplement to "Laws and Rules for Publication of the Congressional Record", effective Dec. 29, 1970.

2. Rule 2 of House Supplement to "Laws and Rules for Publication of the Congressional Record", effective Dec. 29, 1970. One-minute speeches delivered during the morning business of Congress are not permitted to exceed 300 words. Statements exceeding this limit are printed following the business of the day.

3. § 20.32, infra.

4. § 20.36, infra.

5. With respect to extensions in the last edition of the Record for a session of Congress, no address, speech, or article delivered or released subsequent to the *sine die* adjournment of a session may be printed in the Record. Rule 1 of House Supplement to "Laws and Rules for Publication of the Congressional Record", effective Dec. 29, 1970. However, committee chairmen and ranking minority members frequently are permitted to insert reports concerning the activities of their respective committees in the last edition of the Record for a session. See § 20.37, infra.

6. Rule 3 of the House Supplement to "Laws and Rules for Publication of the Congressional Record", effective Dec. 29, 1970. Only matter pertaining to the specific legislation may be included pursuant to this request. Tables and charts pertinent to the legislation may be included, but not newspaper clippings and editorials.

for all Members to extend their remarks on the occasion of the death of a Member.[7]

The rules of the Joint Committee on Printing provide that a Member may withhold his extension of remarks for a period not exceeding 30 calendar days from the time he has obtained permission to extend.[8] Where the two Houses of Congress have, by concurrent resolution, authorized a special printing of material extracted from the Record, the Joint Committee sometimes extends the normal 30day limit for insertions in the Record.[9]

Extensions Requiring Consent of House

§ 20.1 A Member must have permission from the House to extend his remarks, but he may revise his own remarks without obtaining permission.[10]

§ 20.2 The extension of remarks in the Record by a Member without the permission of the House constitutes grounds for a question of the privilege of the House, and the House may expunge such remarks from the permanent Record.

On Aug. 27, 1940,[11] Mr. Jacob Thorkelson, of Montana, was recognized to state a question of privilege of the House. He introduced a resolution stating that on Aug. 14, 1940, Mr. Adolph J. Sabath, of Illinois, inserted in the *Congressional Record* remarks charging him with having inserted in the Record "scurrilous matter" and a forged letter. In addition, Mr. Thorkelson alleged in the resolution that the remarks had been inserted by Mr. Sabath without permission from the House. The House agreed by unanimous consent to permit Mr. Sabath to withdraw the word "scurrilous" from his extension of remarks,[12] and the Speaker[13] ruled that the statement of Mr. Sabath did not charge Mr. Thorkelson with having forged the letter or introduced it knowingly, and that the statement did not constitute a matter of privilege.[14]

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7. See § 20.33, infra.

8. Rule 7 of the Joint Committee on Printing, effective May 23, 1972.

9. The Joint Committee on Printing extended the deadline for the publication of eulogies to Dwight David Eisenhower. 115 CONG. REC. 18382, 91st Cong. 1st Sess., July 7, 1969.

10. A discussion of this rule appears in § 19.1, supra.

11. 86 CONG. REC. 11046–49, 76th Cong. 3d Sess.

12. *Id.* at p. 11048.

13. William B. Bankhead (Ala.).

14. 86 CONG. REC. 11048, 76th Cong. 3d Sess.

The Speaker stated that the only question of privilege remaining concerned whether Mr. Sabath had obtained the permission of the House to extend his remarks in the Record.[15] Mr. Sabath had previously stated that if any question remained, he would be willing to withdraw his remarks from the Record with the unanimous consent of the House.[16] Mr. Thorkelson, however, objected to that request, because he sought an opportunity to explain his position during the debate on the resolution. At the conclusion of debate, the resolution expunging the remarks from the Record of Aug. 14 was agreed to by the House.[17]

Consent of Member Yielding Floor

§ 20.3 A Member who has been yielded to for the purpose of asking a question may not, without the consent of the Member controlling the floor, and the House, extend his remarks by inserting an additional statement in such a way as to change the meaning of what was said.

On Mar. 27, 1935,[18] a discussion occurred on the floor of the House concerning the question of whether a Member, who has been yielded to for the purpose of asking a question, may extend his remarks so as to include statements not made on the House floor. Mr. Albert E. Carter, of California, stated that Mr. Charles Kramer, of California, had yielded to him for the purpose of asking a question during a floor debate several days earlier Mr. Carter subsequently obtained the unanimous consent of the House to revise and extend his remarks, but he did not inform Mr. Kramer that he intended to alter the colloquy that had occurred between them on the floor. Upon receiving the transcript of the proceedings for that day, Mr. Carter inserted in the Record several additional statements that he had not made on the floor. When the transcript was later submitted to Mr. Kramer, he realized that Mr. Carter had not made those statements during debate, and crossed them out before returning them to the printer. Mr.

15. 86 CONG. REC. 11156, 76th Cong. 3d Sess., Aug. 28, 1940.

16. *Id.* at 11153.

17. *Id.* at 11158. See 80 CONG. REC. 7019–21, 74th Cong. 2d Sess., May 11, 1936, for an example of an occasion on which the House refused to agree to a resolution to expunge from the Record remarks which the proponent contended had been inserted in the Record without the permission of the House.

18. 79 CONG. REC. 4541, 74th Cong. 1st Sess.

Carter contended that Mr. Kramer had no right to delete those remarks from the Record because they had been inserted as a result of his having received the unanimous consent of the House to revise and extend his remarks. Mr. Kramer then requested the opinion of the Chair as to whether a Member who was yielded to for the purpose of asking a question is permitted to extend his remarks so as to include additional statements. The Speaker[19] responded as follows:

> He must have the consent of the Speaker and of the Member, if he is undertaking to change the Import of what a Member said who had addressed the House. The Chair states that a Member making a revision must have the consent of the Member who has yielded to him in order to make the correction, especially if the correction is such as to change the import of the question which he has asked.

The Speaker, in response to a further parliamentary inquiry, stated that a Member who has yielded may not, however, strike out remarks that were actually made on the floor by a Member to whom he had yielded.

Requests to Extend

§ 20.4 The Speaker will not entertain unanimous-consent requests to insert materials in the Record prior to the reading and approval of the Journal.

On Sept. 19, 1962,[20] prior to the completion of the reading of the Journal, Mr. Carl Albert, of Oklahoma, requested unanimous consent to insert in the appendix of the Record his own remarks and a letter from the Secretary of State addressed to the Speaker of the House. The Speaker[1] refused to entertain such a request until after the Journal had been read and acted upon.

§ 20.5 Brief remarks of a Member, who receives permission from the House to extend his remarks following the approval of the Journal, will be placed in the Record before the business of the day, but not necessarily immediately following the approval of the Journal.

On Oct. 25, 1967,[2] the House agreed to a unanimous-consent request that Mr. Philip Burton, of California, be permitted to extend his remarks following the approval of the Journal. The fol-

19. Joseph W. Byrns (Tenn.).

20. 108 CONG. REC. 19940, 87th Cong. 2d Sess.

1. John W. McCormack (Mass.).

2. 113 CONG. REC. 30022, 90th Cong. 1st Sess.

lowing proceedings then occurred concerning that request:

> MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE:[3] The gentleman will state his parliamentary inquiry.
>
> MR. HALL: A most unusual request has been granted, I full well agree, by unanimous consent, for a gentleman to extend his remarks after the reading of the Journal. Does that mean anywhere after the Journal for this date certain?
>
> THE SPEAKER PRO TEMPORE: After the approval of the Journal.
>
> MR. HALL: My inquiry is, was the gentleman granted unanimous consent to insert his remarks today in the Record, which will be delivered tomorrow, at any time after the reading of the Journal today?
>
> THE SPEAKER PRO TEMPORE: It was a 1-minute speech, and it will be printed in the Record after approval of the Journal.
>
> MR. HALL: I thank the Chair.

The remarks of Mr. Burton were printed in the Record for Oct. 25, 1967,[4] following a number of other one-minute speeches. This group of one-minute speeches was printed subsequent to the approval of the Journal and messages from the President and the Senate, and prior to the business of the day.

Parliamentarian's Note: Extensions of remarks which exceed the 300-word limitation appear following the business of the day in the portion of the Record devoted thereto.

§ 20.6 The Speaker has recognized Members to extend their remarks "at this point in the Record" regardless of the number of words on those occasions when there was no legislative program for the day.

On Feb. 6, 1945,[5] the following parliamentary inquiry and response by the Speaker[6] occurred:

> MR. [ROBERT F.] RICH [of Pennsylvania]: I wish to ask the Chair how it is that if a Member on this side asks for a minute in which to address the House he is permitted to insert 300 words or less, but that when some Members on the other side of the aisle make similar requests they are permitted to put in 7½ pages, or some 8,000 words? How does the discrimination come about?
>
> THE SPEAKER: There is no discrimination because there was no legislative program on yesterday and anyone had the right to extend his remarks "at [that] point" in the Record.

§ 20.7 The Speaker, while a motion to discharge a committee is pending, declines to recognize a Member who

3. Roman C. Pucinski (Ill.).
4. 113 CONG. REC. 29915, 90th Cong. 1st Sess.
5. 91 CONG. REC. 839, 79th Cong. 1st Sess.
6. Sam Rayburn (Tex.).

wishes to request unanimous consent to extend his remarks.

On June 11, 1945,[7] the House was considering a motion to discharge the Committee on Rules from further consideration of a resolution[8] providing for the consideration of a bill[9] making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary' or other election for national officers. After the Clerk read the resolution, Mr. John E. Rankin, of Mississippi, requested unanimous consent to extend his remarks at that point in the Record. The Speaker[10] replied that the Chair could not recognize Members to extend their remarks until the pending motion to discharge the Committee on Rules had been disposed of.

§ 20.8 The Speaker, while a motion to suspend the rules was pending, refused to recognize a Member who wished to request permission from the House to insert materials in the Record.

On July 21, 1947,[11] the House was considering a motion to suspend the rules and pass a bill[12] to make unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers. During the debate on the motion Mr. Thomas Pickett, of Texas, sought recognition for the purpose of making a unanimous-consent request to insert materials in the Record.[13] The Speaker[14] refused to recognize Mr. Pickett for such a purpose at that time, and stated that the request should be made immediately following the vote on the motion to suspend the rules.

§ 20.9 Immediately subsequent to the agreement by the House to a motion to discharge a committee from the consideration of a bill, the Speaker announced the intention of the Chair to entertain unanimous-consent requests for extensions of remarks, without interfering with the right of a Member to move that the House resolve itself into the Committee of the Whole.

7. 91 Cong. Rec. 5892, 79th Cong. 1st Sess.
8. H. Res. 139, 79th Cong. 1st Sess. (1945).
9. H.R. 7, 79th Cong. 1st Sess. (1945).
10. Sam Rayburn (Tex.).
11. 93 Cong. Rec. 9522, 80th Cong. 1st Sess.
12. H.R. 29, 80th Cong. 1st Sess. (1947).
13. 93 Cong. Rec. 9525, 80th Cong. 1st Sess.
14. Joseph W. Martin, Jr. (Mass.).

On Apr. 26, 1948,[15] the House agreed to a motion to discharge the Committee on Agriculture from further consideration of a bill to repeal the tax on oleomargarine.[1] Immediately after the vote the Speaker, Joseph W. Martin, Jr. of Massachusetts, made the following announcement:

> Without interfering with the rights of the gentleman from South Carolina to move to go into the Committee of the Whole, the Chair will entertain consent requests for extensions of remarks only.

§ 20.10 The Chairman of the Committee of the Whole may recognize a Member who has spoken to revise and extend his own remarks.[2]

Motions to Extend

§ 20.11 A motion to permit a Member to extend his remarks in the Record is not a privileged motion.

On Feb. 8, 1950,[3] the following parliamentary inquiry was made:

> MR. [CLARE E.] HOFFMAN of Michigan: If I object to a unanimous-consent request that a Member be permitted to extend his remarks in the Record, is it proper to move that he be permitted to extend his remarks?

The Speaker[4] replied that the motion to permit an extension of remarks is not a privileged motion.

In Committee of the Whole

§ 20.12 The Committee of the Whole lacks the power to permit the inclusion of extraneous materials in an extension of remarks.

§ 20.13 The Committee of the Whole can permit a Member to revise and extend only his own remarks, and excerpts from other materials are considered extraneous and not part of the Member's own remarks even though they may be relevant to the subject under consideration.

On Apr. 14, 1937,[5] during the debate on a bill[6] to amend the Interstate Commerce Act, the following exchange occurred concerning a unanimous-consent request:

> MR. [WALTER M.] PIERCE [of Oregon]: Mr. Chairman, I ask unanimous

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15. 94 CONG. REC. 4841, 80th Cong. 2d Sess.

1. H.R. 2245, 80th Cong. 2d Sess. (1948).

2. See § 20.14, infra.

3. 96 CONG. REC. 1661, 81st Cong. 2d Sess.

4. Sam Rayburn (Tex.).

5. 81 CONG. REC. 3463, 75th Cong. 1st Sess.

6. H.R. 1668, 75th Cong. 1st Sess. (1937).

consent that I may have the privilege of revising and extending my remarks and including therein such letters and telegrams as I have here denying or repudiating their appearance as proponents of the Pettengill bill.

THE CHAIRMAN:[7] The Chair will remind the gentleman from Oregon that the request to extend his own remarks to include extraneous matter must be submitted in the House and not in Committee of the Whole.

MR. [ALFRED L.] BULWINKLE [of North Carolina]: Mr. Chairman, a point of order. Is this extraneous matter? It is matter that is very pertinent, in the opinion of the majority.

THE CHAIRMAN: It is the understanding of the Chair that in Committee of the Whole a Member may extend his own remarks but may not include therein any extracts from other matters than his own particular remarks.

MR. BULWINKLE: Except what he has read?

THE CHAIRMAN: Of course, what he has already read is in the Record, or supposed to be.

MR. BULWINKLE: I wish to call attention to the fact that this is not extraneous matter, Mr. Chairman.

THE CHAIRMAN: It is the opinion of the Chair that the inclusion of telegrams, letters, or other writings other than those actually read in Committee of the Whole will have to be inserted in the Record with the consent of the House and not the Committee of the Whole.

§ 20.14 The Chairman of the Committee of the Whole will entertain a unanimous-consent request by a Member to revise and extend his own remarks, but a request to include an article, even one written by another Member, is in order only in the House and not in the Committee of the Whole.

During the debate on the Legislative Reorganization Act of 1970[8] in the Committee of the Whole, Mr. Frederick Schwengel, of Iowa, requested unanimous consent to insert in the Record an article written by a House colleague on the subject of minority staffing.[9] At this point in the debate the following exchange occurred:

THE CHAIRMAN [William H. Natcher, of Kentucky]: Is the statement that the gentleman is requesting to be printed in the Record his own statement?

MR. SCHWENGEL: Yes.

7. J. Mark Wilcox (Fla.).

8. H.R. 17654, 91st Cong. 2d Sess. (1970). See for debate 116 CONG. REC. 24586, 91st Cong. 2d Sess., July 16, 1970.

9. The text of the proceedings surrounding this unanimous-consent request by Mr. Schwengel was printed in the daily edition of the Record for July 16, 1970. Permission to insert the article was obtained at a later time in the House, and the permanent edition of the Record contains a reprint thereof. 116 CONG. REC. 24591, 91st Cong. 2d Sess., July 16, 1970.

THE CHAIRMAN: Without objection, it is so ordered.

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman from Ohio will state his parliamentary inquiry.

MR. HAYS: I thought the gentleman said that it was the statement of somebody else.

MR. SCHWENGEL: It is.

THE CHAIRMAN: The Chair inquired of the gentleman if it was his own statement. Is it the statement of the gentleman in the well?

MR. SCHWENGEL: It is not.

THE CHAIRMAN: Then the gentleman from Iowa will have to request permission for that statement to be printed in the Record when we go back in the House.

MR. SCHWENGEL: At the proper time I will make that request.

§ 20.15 A unanimous-consent request to extend remarks in the Record by incorporating extraneous materials, by a Member who has not spoken on the bill under consideration in the Committee of the Whole, is in order only in the House and not in the Committee of the Whole.

On Jan. 23, 1936,[10] during the consideration of the Supplemental Appropriations Bill of 1936,[11] the following proceedings occurred:

MR. [FRANCIS D.] CULKIN [of New York]: Mr. Chairman, I ask unanimous consent to extend my remarks in the Record, if the request is in order at this time, and to include in the extension copies of resolutions of various agricultural bodies and other organizations of the United States protesting against these reciprocal tariff treaties.

MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Chairman, I make the point that cannot be done in Committee.

THE CHAIRMAN:[12] The Chair will invite the gentleman's attention to the fact he has not spoken on the bill, and such permission would have to be granted in the House rather than in Committee of the Whole.

§ 20.16 Although a Member may not obtain permission in the Committee of the Whole to extend his remarks so as to include extraneous materials, he may be permitted to read those extraneous materials if he is yielded time and the Committee consents.

On Apr. 18, 1944,[13] during the debate in the Committee of the Whole on a bill to extend lend lease,[14] Mr. Clare E. Hoffman, of Michigan, requested permission from the Committee to extend his remarks and insert several letters in the Record. The Chairman[15]

10. 80 CONG. REC. 950, 74th Cong. 2d Sess.

11. H.R. 10464, 74th Cong. 2d Sess. (1936).

12. Jere Cooper (Tenn.).

13. 90 CONG. REC. 3558, 78th Cong. 2d Sess.

14. H.R. 4254, 78th Cong. 2d Sess. (1944).

15. Warren G. Magnuson (Wash.).

refused Mr. Hoffman's request, and stated that such permission would have to be obtained from the House. Mr. Hoffman then requested the opinion of the Chairman as to whether he could read those letters into the Record. The Chairman replied that if Mr. Hoffman were yielded time the letters could be read with the consent of the Committee of the Whole.

§ 20.17 The Committee of the Whole agreed by unanimous consent to permit a Member to insert in the Record as part of his remarks the text of an amendment he had drafted, but which could not be submitted for consideration under a closed rule.

On Aug. 31, 1965,[16] during the consideration of a bill providing for the implementation of the Automotive Products Trade Act of 1965,[17] the following exchange occurred concerning a unanimous-consent request:

> MR. [ROBERT] MCCLORY [of Illinois]: . . . Now, Mr. Chairman, I had intended to offer an amendment, if the rule were an open rule and if we had the opportunity to offer such an amendment.
>
> However, I do ask leave to attach at the conclusion of my remarks the amendment that I would offer if I had the opportunity to do so at the appropriate time. . . .
>
> Therefore, Mr. Chairman, I ask unanimous consent to attach my proposed amendment as a part of my remarks.
>
> THE CHAIRMAN:[18] The Chair wishes to inquire if the statement is the gentleman's own statement?
>
> MR. MCCLORY: Yes; it is my own statement. It relates to an amendment that I would offer if I had an opportunity to offer it. It merely qualifies the acquiescence of the Congress with respect to this legislation, with the proviso that is contained in the proposed amendment, which I have explained.

The unanimous-consent request was agreed to by the Committee of the Whole, and the text of the amendment was printed in the Record following the remarks of Mr. McClory.[19]

§ 20.18 A unanimous-consent request to permit all Members five days to revise and extend their remarks on a particular subject is not in order in the Committee of the Whole.

On Sept. 19, 1967,[20] during the debate on a bill[1] to amend the

16. 111 CONG. REC. 22385, 89th Cong. 1st Sess.
17. H.R. 9042, 89th Cong. 1st Sess. (1965).
18. Harold D. Donohue (Mass.).
19. 111 CONG. REC. 22385, 89th Cong. 1st Sess.
20. 113 CONG. REC. 26032, 90th Cong. 1st Sess.
1. H.R. 6418, 90th Cong. 1st Sess. (1967).

Public Health Service Act, the following exchange occurred:

> MR. [ANDREW] JACOBS [Jr., of Indiana]: Mr. Chairman, I detect a strange change in the nature of debate on this subject today from the one that took place a few days ago. . . . I am wondering if this is not because the subject has come up suddenly as an amendment rather than as a bill that was announced ahead of time. . . . Therefore, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend. . . .
>
> MR. [BURT L.] TALCOTT [of California]: Mr. Chairman, I object.
>
> THE CHAIRMAN:[2] That request is properly made in the House and not in the Committee of the Whole. Objection is not necessary.

Unparliamentary Insertions

§ 20.19 The insertion in the Record of unparliamentary remarks is sufficient to raise a question of the privilege of the House.

This ruling, which was rendered on Sept. 5, 1940, is discussed elsewhere in this chapter.[3]

§ 20.20 A Member cannot extend his remarks so as to insert in the Record anything that could not be stated on the House floor.

On July 3, 1946,[4] the Speaker[5] called to the attention of the House the fact that several Members had recently extended their remarks so as to insert language that reflected adversely on a Member or Members of the Senate. The following parliamentary inquiry was then made:

> MR [JOHN W.] MCCORMACK [of Massachusetts]: In other words, Mr. Speaker, under the rules no Member can insert in the Appendix of the Record under Extension of Remarks that which could not be stated on the floor of the House.

The Speaker responded affirmatively to the parliamentary inquiry.

§ 20.21 It is a violation of the rule of comity between the two Houses for a Member to insert in the Record an editorial critical of a Member of the Senate.

On June 25, 1956,[6] Speaker Sam Rayburn, of Texas, made the following announcement:

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2. Jack B. Brooks (Tex.).

3. See § 17.1, supra. See § 17.4, supra, for an occasion on which Speaker Sam Rayburn (Tex.) declined to rule on a question of personal privilege arising from the insertion in the Record of allegedly unparliamentary remarks because the transcript of the insertion had not been submitted for his inspection.

4. 92 CONG. REC. 8299, 79th Cong. 2d Sess.

5. Sam Rayburn (Tex.).

6. 102 CONG. REC. 10924, 84th Cong. 2d Sess.

There has always existed complete comity between the Senate and the House of Representatives. The rules of the House provide that no Member of the House shall criticize a Senator on the floor of the House. It has been called to the attention of the Chair that in recent days editorials highly critical of Members of the other body have been placed in the Record. That is a violation of the rules. As far as the present occupant of the Chair is concerned, he is not going to tolerate it any more.

§ 20.22 The Speaker announced that extensions of remarks should be submitted to the Chair if there is any question as to whether they refer adversely to Members of the Senate.

On July 3, 1946,[7] the Speaker[8] made the following announcement:

The Chair has had called to his attention in the last few days some extensions of remarks by Members of the House that the Chair thinks are a reflection on a Member or Members of the Senate. The Chair trusts that that does not happen any more. If there is any question as to whether or not an extension of remarks refers to a Member of the Senate in any way that might be offensive to him, the Chair hopes the matter will be submitted to the Chair before the remarks go to the printer.

7. 92 CONG. REC. 8299, 79th Cong. 2d Sess.

8. Sam Rayburn (Tex.).

Limitations on Extraneous Matter

§ 20.23 A Member who has secured unanimous consent to address the House for one minute and revise and extend his remarks may not without the consent of the House include in such remarks extraneous matter such as a speech made by another person.

On Jan. 18, 1946,[9] Mr. Emerson H. De Lacy, of Washington, requested and received unanimous consent to address the House for one minute, and to revise and extend his remarks. At the conclusion of his remarks on the House floor, Mr. De Lacy requested unanimous consent to insert a speech delivered by an Under Secretary of Commerce. When this request was objected to, Mr. John J. Cochran, of Missouri, made the following point of order:

Mr. Speaker, a point of order. The gentleman from Washington arose and asked permission of the Chair to speak for 1 minute and to revise and extend his remarks. That permission was granted. I take the position that under that request to address the House for 1 minute and to revise and extend his remarks the gentleman has a right to include what he desires in the Record.

9. 92 CONG. REC. 129, 79th Cong. 2d Sess.

The Speaker pro tempore[10] ruled as follows:

> The Chair is of the opinion that the unanimous-consent request to speak for 1 minute and to revise and extend his remarks related to the remarks that the gentleman from Washington might make during the period that he addressed the House and that it did not include any specific extraneous matter which might be in addition to what he said himself or what he might add as his own remarks. The Chair, of course, was hopeful that the unanimous-consent request to include this specific matter would not be objected to. With reference to the point of order made by the gentleman from Missouri, the Chair must rule that . . . the unanimous-consent request of the gentleman from Washington did not include the specific matter which has previously been referred to.

§ 20.24 A Member who extends his remarks pursuant to an expression of unanimous consent by the House permitting Members to extend their own remarks on a specific bill, must confine his remarks to the subject matter of the bill and must not include extraneous materials such as letters, editorials or articles.

In the 74th Congress, debate on the Revenue Bill of 1936 was conducted in the Committee of the Whole pursuant to a special order that limited debate to the subject matter of the bill.[11] The House had agreed to a unanimous-consent request permitting all Members to have five legislative days in which to extend their own remarks in the Record on the bill. On Apr. 27, 1936,[12] an inquiry was made in the House concerning the extent to which a Member who extends his remarks on the bill in the Committee of the Whole pursuant to the unanimous-consent request can deviate from the subject matter of the bill and whether extraneous materials such as letters, editorials, or articles can be inserted. The proceedings were in part as follows:

> MR. [CARL E.] MAPES [of Michigan]: . . . My inquiry is, is there any limitation upon the right of a Member to extend his remarks made in the Committee of the Whole on any subject or in any way he sees fit, and if there is, what the limitation is, keeping in mind the special order of the House that debate be confined to the bill, which I assume carries with it the assumption that extensions of remarks shall also be confined to the bill? . . .
>
> THE SPEAKER:[13] After all, the Chair must be guided by the rule of reason. Under the circumstances under which the bill is being considered, if we ad-

10. John W. McCormack (Mass.).

11. See 80 CONG. REC. 6204, 74th Cong. 2d Sess., Apr. 27, 1936.

12. *Id.*

13. Joseph W. Byrns (Tenn.).

here to the orders of the House debate must be confined to the subject matter of the bill, and any debate which does not confine itself to the subject matter of the bill or which is not in some way related to the tax matters under consideration would not be in order.

The Chair does not think the Committee of the Whole House on the state of the Union, under the orders previously made, and to which the gentleman from Michigan [Mr. MAPES] has referred, would have the right to permit the inclusion of articles, editorials in newspapers, or magazine articles as a part of one's remarks, unless specific permission has been obtained from the House for that purpose.

Under the [unanimous-consent] request . . . all Members of the House have 5 legislative days within which to extend their own remarks in the Record. The Chair calls attention of the House to the fact that the request was so worded and so granted, as appears in the Record, so as to limit such extensions to the subject of the tax bill. It is clear to the Chair that if any Member desires to insert editorials, articles in newspapers and magazines, or any matter other than the remarks uttered by him on the floor he would have to secure that permission from the House. The Committee of the Whole has no power to authorize the extension of matters which do not in some way relate to the tax bill under discussion.

Does that answer the gentleman's parliamentary inquiry?

MR. MAPES: Mr. Speaker, I think the Chair has answered the question as definitely as it can be answered. I take the answer of the Chair to mean that matters that are clearly extraneous to the tax bill cannot be included in extension of remarks, even though they are the Member's own statements.

THE SPEAKER: That is true. Of course, as the Chair intimated at the outset, it is largely a matter of common sense in the application of the rule and its construction.

§ 20.25 A Member who has obtained permission from the House by unanimous consent to extend his remarks in the Record cannot insert extraneous materials that were not designated in the request.

On Feb. 21, 1936,[14] Mr. Bertrand H. Snell, of New York, made a motion to expunge from the Record materials that had been inserted in the Record on Feb. 19, 1936, by Mr. Marion A. Zioncheck, of Washington, and which had not been specified in the unanimous-consent request to extend that had been agreed to by the House. Two days earlier, Mr. Zioncheck made three unanimous-consent requests to extend his remarks and to include the text of certain House resolutions. An objection was raised each time.[15]

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14. 80 CONG. REC. 2537, 74th Cong. 2d Sess.

15. 80 CONG. REC. 2372, 2400, 74th Cong. 2d Sess.

Subsequently Mr. Zioncheck made the following request:

> Then Mr. Speaker. I ask unanimous consent to extend my own remarks in the Record.

To that request no objection was made. Mr. Zioncheck, however, in extending his remarks in the Record, did include a quotation from one of the resolutions to which he had referred in the three earlier requests that had been objected to.

The Speaker,[16] prior to submitting the motion to a vote, cited the well-established principle that authorizations to extend remarks in the Record are strictly construed. He added that it is not in order under leave to print to insert other material than that designated in the request,[17] and commented:

> The Chair thinks the request for permission to extend remarks should and must apply only to the remarks of the gentleman who makes the request, and that it does not authorize the insertion of newspaper articles or any other matter outside of his own remarks. If a Member desires to quote or to include in his remarks statements of the kind referred to, specific authority should be asked of the House and should be obtained before that insertion is made.

§ 20.26 A Member who has obtained permission from the House by unanimous consent to extend his remarks in the Record and include a newspaper article cannot insert a letter, and such an unauthorized insertion gives rise to the question of privilege.

On July 6, 1942,[18] Mr. Sol Bloom, of New York, received permission from the House to extend his remarks and include therein a newspaper article. The extension of remarks by Mr. Bloom that appeared in the appendix to the daily edition of the *Congressional Record* for July 9, 1942, however, contained a letter from a constituent, which was not mentioned in the unanimous-consent request. On July 13, 1942,[19] Mr. John E. Rankin, of Mississippi, who had been recognized on a question of the privileges of the House, offered a resolution to strike the remarks of Mr. Bloom from the permanent edition of the Record, and to prohibit the Public Printer from

16. Joseph W. Byrns (Tenn.).

17. 8 Cannon's Precedents § 3479. For several more recent examples of this principle see 95 CONG. REC. 12344, 81st Cong. 1st Sess., Aug. 26, 1949; 89 CONG. REC. 10958, 78th Cong. 1st Sess., Dec. 21, 1943; 80 CONG. REC. 9250, 74th Cong. 2d Sess., June 8, 1936.

18. 88 CONG. REC. 5991, 77th Cong. 2d Sess.

19. 88 CONG. REC. 6102, 77th Cong. 2d Sess.

issuing copies thereof from the daily edition of the Record.[20] The House agreed to the resolution.[1]

§ 20.27 The Public Printer refused to print a Member's extension of remarks in the Record because those remarks included a newspaper editorial that had been printed in the Record as part of the remarks of another Member.

On Sept. 26, 1949,[2] Mr. Henry D. Larcade, Jr., of Louisiana, and Mr. Clare E. Hoffman, of Michigan, received the unanimous consent of the House to extend their remarks and include a newspaper editorial. The remarks of Mr. Larcade along with a newspaper editorial appeared in the appendix of the Record of Sept. 26, 1949. The remarks of Mr. Hoffman, however, did not appear in the Record of that date, and were returned to Mr. Hoffman by the Public Printer along with a letter explaining that his remarks had not been printed in the Record because they contained the same editorial that had been reprinted as part of the remarks of Mr. Larcade.[3]

The following day Mr. Hoffman made a parliamentary inquiry in which he expressed dissatisfaction with the policy that permitted the Public Printer to exclude from the Record three pages of his own remarks because they contained an editorial previously printed, and requested the opinion of the Chair as to what might be done about that policy. The Speaker[4] advised Mr. Hoffman that the matter was entirely within the jurisdiction of the Joint Committee on Printing, and that it should be taken up there.[5]

§ 20.28 The Speaker will decline to recognize a Member who wishes to obtain permission to insert in the Record materials for which such permission has already been obtained from the House by another Member, but which have not as yet appeared in the Record.

On Nov. 17, 1943,[6] the following proceedings occurred:

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20. H. Res. 518, 77th Cong. 2d Sess. (1942).

1. For further illustrations of this principle, see 8 Cannon's Precedents § 3479 and 5 Hinds' Precedents § 7001.

2. 95 Cong. Rec. 13273, 81st Cong. 1st Sess.

3. The letter from the Public Printer to Mr. Hoffman is reprinted at 95 Cong. Rec. 13361, 81st Cong. 1st Sess., Sept. 27, 1949.

4. Sam Rayburn (Tex.).

5. 95 Cong. Rec. 13361, 81st Cong. 1st Sess., Sept. 27, 1949.

6. 89 Cong. Rec. 9626, 78th Cong. 1st Sess.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, I ask unanimous consent to extend my remarks in the Record and to print therewith a radio address delivered by the gentleman from Texas [Mr. Patman] on Monday night.

THE SPEAKER:[7] That has already been printed.

MR. HOFFMAN: It has not been printed in the Record.

THE SPEAKER: Consent has been given, and the Chair would not like to entertain a request to reprint it.

MR. HOFFMAN: I do not want to reprint it. With all due deference, Mr. Speaker, we were expecting to get that radio address today. I had it yesterday.

THE SPEAKER: The gentleman from Texas [Mr. Patman] has asked unanimous consent to place it in the Record.

MR. HOFFMAN: But he did not print it.

THE SPEAKER: That is in the hands of the gentleman from Texas.

Appeals

§ 20.29 An appeal from a ruling of the Joint Committee on Printing prohibiting the insertion in the Record of a government document which has already been printed is within the jurisdiction of the Joint Committee and not the House.

On Mar. 29, 1949,[8] a parliamentary inquiry was made concerning the appropriate procedure to be followed in appealing a ruling of the Joint Committee on Printing. The proceedings were as follows:

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[9] The gentleman will state it.

MR. RANKIN: On yesterday I asked and received unanimous consent to extend my remarks in the Record and to include a very fine and a very valuable report on spies issued by the Committee on Un-American Activities. The Government Printing Office informs me that there is a ruling by the Joint Committee on Printing that Government documents which have already been printed cannot go into the Record.

I wish to know if it is necessary to take any steps other than to appeal to the Joint Committee on Printing. There is nothing the House can do about it, as I understand.

THE SPEAKER: The Chair understands that is the proper procedure.

MR. RANKIN: To appeal to the Joint Committee on Printing?

THE SPEAKER: Yes.

MR. RANKIN: I thank the Speaker.

§ 20.30 Appeals from a decision by the Public Printer not to print a Member's remarks because those remarks included an editorial previously printed in the Record are within the sole jurisdic-

7. Sam Rayburn (Tex.).

8. 95 CONG. REC. 3396, 81st Cong. 1st Sess.

9. Sam Rayburn (Tex.).

tion of the Committee on Printing, and not the House.

On Sept. 27, 1949,[10] Mr. Clare E. Hoffman, of Michigan, rose to a parliamentary inquiry. He stated that although he had, on the previous day, secured permission from the House to extend his own remarks in the Record and insert a newspaper editorial, those remarks had not been printed in the Record. He read to the House a letter he had received from the Public Printer stating that his remarks had not been printed in the Record because they included an editorial which had already been printed in conjunction with the remarks of another Member. Mr. Hoffman then continued his remarks as follows:

> That course is commendable where the second extension is merely a duplication, but in this particular case, Mr. Speaker, I had three pages of my own remarks. Now, just because I quote from an editorial, or use something that someone else has used, is no reason why a gentleman down in the Printing Office should take it upon himself to censor or exclude a part of my remarks from the Record.
>
> My parliamentary inquiry . . . is, what do I do about this situation?

The Speaker[11] responded as follows:

> The matter is entirely up to the Joint Committee on Printing. The Chair would suggest that the gentleman take it up with the Joint Committee on Printing, because they are the policy makers with reference to matters of this kind.

§ 20.31 Under the rules of the Joint Committee on Printing, a Member who requests the unanimous consent of the House to insert in the Record remarks including extraneous matter in excess of two printed Record pages, must submit coincident with that request the estimate in writing from the Public Printer of the probable cost of publishing those remarks.

On Apr. 18, 1939,[12] Mr. John M. Houston, of Kansas, stated that he had in his possession an estimate of the probable cost of printing an address by a former Member of the House, and requested unanimous consent that he be permitted to insert it in the Record notwithstanding the estimate of cost, and the fact that its length exceeded two printed Record pages. The Speaker, William B. Bankhead, of Alabama, after quoting from the rules of the Joint Committee on Printing,[13]

10. 95 Cong. Rec. 13361, 81st Cong. 1st Sess.

11. Sam Rayburn (Tex.).

12. 84 Cong. Rec. 4403, 76th Cong. 1st Sess.

13. The current rule 12 of the Joint Committee on Printing, which is

called for any objections. There was no objection.

During Adjournment to Day Certain

§ 20.32 The House frequently agrees by unanimous consent to permit Members to extend their remarks and make insertions in the section of the Record entitled "Extensions of Remarks" in those editions of the Record scheduled for publication during an adjournment of Congress to a day certain.

On Apr. 10, 1968,[14] the House agreed to a unanimous-consent request which was similar[15] to those frequently agreed to just prior to an adjournment to a day certain:

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that notwithstanding the adjournment of the House until April 22, 1968, all Members of the House shall have the privilege to extend and revise their own remarks in the Congressional Record on more than one subject, if they so desire, and may also include therein such short quotations as may be necessary to explain or complete such extension of remarks; but this order shall not apply to any subject matter which may have occurred or to any speech delivered subsequent to the said adjournment.

On Occasion of Death of Member

§ 20.33 The House, on the occasion of the death of a Member, frequently agrees by unanimous consent to permit all Members who desire to do so to revise and extend their remarks and include extraneous material in the Record and in the section entitled "Extension of Remarks."

On Mar. 2, 1970,[16] the House, as it has on other occasions after

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similar to the rule in effect at the time of this unanimous-consent request, reads in part as follows: "No extraneous matter in excess of two printed Record pages, whether printed in its entirety in one daily issue or in two or more parts in one or more issues, shall be printed in the Congressional Record unless the Member announces, coincident with the request for leave to print or extend, the estimate in writing from the Public Printer of the probable cost of publishing the same." Rule 12 of the Joint Committee on Printing, effective May 23, 1972.

14. 114 CONG. REC. 9621, 90th Cong. 2d Sess.

15. For other recent examples see 116 CONG. REC. 36650, 91st Cong. 2d Sess., Oct. 14, 1970; 116 CONG. REC. 28919, 91st Cong. 2d Sess., Aug. 14, 1970; and 114 CONG. REC. 25065, 90th Cong. 2d Sess., Aug. 2, 1968.

16. 116 CONG. REC. 5456, 91st Cong. 2d Sess.

the death of a Member,[17] agreed to the following unanimous-consent request:

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that all Members who desire to do so may have permission today to revise and extend their remarks and include extraneous material in the Record and also in that portion of the Record entitled "Extensions of Remarks."

§ 20.34 The rule of the Joint Committee on Printing that requires a Member to submit an estimate of the cost of printing an insertion exceeding two pages in length has been applied to remarks inserted in the Record on a day devoted to eulogies for deceased Members.

On Oct. 9, 1962,[18] a day devoted to eulogies for a deceased Member, Mr. Carl Albert, of Oklahoma, requested the unanimous consent of the House that all Members be permitted to extend their remarks in the Appendix of the Record and include extraneous matter. In addition, Mr. Albert made a special request that Mr. John R. Pillion, of New York, be permitted to extend his remarks and include extraneous matter, notwithstanding the fact that it exceeded the two-page limit and was estimated by the Public Printer to cost $270. The House agreed to both aspects of the request.

§ 20.35 On one occasion, when the House adjourned out of respect to a deceased Member, in addition to granting the customary permission for all Members to extend their remarks in the Appendix of the Record, the House agreed, by unanimous consent, to permit Members who had obtained special orders to extend their remarks in the body of the Record, and to permit Members who had spoken on legislative matters that day to revise and extend their remarks and include extraneous matters.

On Sept. 16, 1961,[19] a day on which the House adjourned out of respect to a deceased Member, the House agreed, by unanimous consent, to permit all Members to extend their remarks in the Appendix of the Record and to include extraneous matters. The House also agreed to a request by the Speaker pro tempore[20] that

17. For a recent example see 108 CONG. REC. 8, 87th Cong. 2d Sess., Jan. 10, 1962.

18. CONG. REC. (daily ed.), 87th Cong. 2d Sess.

19. 107 CONG. REC. 19812, 87th Cong. 1st Sess.

20. John W. McCormack (Mass.).

those Members who had obtained special orders to speak on the floor would be permitted to insert their remarks in the body of the Record, and to the following unanimous-consent request made by Mr. Carl Albert, of Oklahoma:

> Mr. Speaker, I ask unanimous consent that all Members who spoke today on the various conference reports and other legislative matters may have permission to revise and extend their remarks and, if they desire to include extraneous matter, they may have that permission; also that all Members may have 5 legislative days in which to extend their remarks in the Record.

In Final Issue of Session

§ 20.36 The House, just prior to adjournment at the end of a session of Congress, frequently agrees by unanimous consent to permit each Member to extend his remarks in the Record on any subject occurring prior to adjournment, until the publication of the last edition of the Record.

On Oct. 14, 1968,[1] the House agreed to a unanimous-consent request similar[2] to those generally adopted near the end of a session of Congress:

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that all Members of the House have the privilege of inserting their own remarks in the Extensions of Remarks section of the Congressional Record and to include therewith brief related extraneous material on one or more subjects; this order to be effective until publication of the last edition of the Record authorized by the Joint Committee on Printing, but it shall not apply to any subject matter which may have occurred, or to any speech delivered after adjournment of Congress.

§ 20.37 The House, prior to the final adjournment at the conclusion of a session of Congress, frequently agrees by unanimous consent to permit the chairman and a ranking minority member of each standing committee and subcommittee to extend their remarks in the Record and to include separate summaries of the work of their committees, up until the publication date of the last volume of the Record.

On Jan. 2, 1971,[3] the House agreed to a unanimous-consent re-

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1. 114 CONG. REC. 31313, 90th Cong. 2d Sess.

2. For other recent examples see 116 CONG. REC. 44599, 44600, 91st Cong. 2d Sess., Jan. 2, 1971; 113 CONG. REC. 37190, 90th Cong. 1st Sess., Dec. 15, 1967; and 112 CONG. REC. 28893, 89th Cong. 2d Sess., Oct. 22, 1966.

3. 116 CONG. REC. 44600, 91st Cong. 1st Sess.

quest similar[4] to those frequently adopted at the final meeting of a session of Congress:

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that the Chairmen of all the standing committees and the subcommittees of the House may extend their remarks up to and including the publication of the last Record and to include a summary of the work of their committees; also that the ranking minority Member of such standing committee or any subcommittee may have the same permission to extend their remarks and to include a summary, if they desire, from their point of view, separately from that of the Chairman.

4. For other recent examples see 115 CONG. REC. 40982, 91st Cong. 1st Sess., Dec. 23, 1969; 114 CONG. REC. 31313, 90th Cong. 2d Sess., Oct. 14, 1968; and 111 CONG. REC. 28564, 89th Cong. 1st Sess., Oct. 22, 1965.

CHAPTER 6

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Officers, Officials, and Employees

A. THE SPEAKER

§ 1. Introductory

The Speaker of the House of Representatives is the central political leader in the House and one of the most powerful and influential institutional figures in the United States government.

This subchapter describes the nature of the office of the Speaker, outlines his jurisdiction and duties, and illustrates various limitations on the Speaker's powers.

Throughout the subchapter, appropriate cross references are given to other chapters wherein fuller treatment of the various substantive areas are found.

Certain precedents involving the Chairman of the Committee of the Whole have been included herein where they appear to be applicable, by way of analogy, to the Speaker.

§ 2. Definition and Nature of Office

Article I, section 2, of the U.S. Constitution provides that "the House of Representatives shall chuse their Speaker."[1] The Member elected by the House as Speaker is almost invariably the Member chosen in the caucus or conference of the majority party in the House.[2]

The term of office of the Speaker begins upon his election and taking of his oath of office. The term ends upon the expiration of the Congress to which the Member was elected Speaker, unless the Speaker has resigned, died, or been removed by the House.[3]

The Member chosen as the Speaker is the presiding officer of the House, charged with numerous duties and responsibilities by law and by House rules as will be ex-emplified in this subchapter;[4]

---

1. See Ch. 1, supra, for treatment of the election of the Speaker.
2. See Ch. 3, supra, for treatment of the party caucus or conference procedures to select a nominee for Speaker.
3. "A Speaker may be removed at the will of the House. . . ." Jefferson's *Manual, House Rules and Manual* § 315 (1973). *Parliamentarian's Note:* The House has never removed a Speaker, however.
4. See §§ 3, 5–8, infra.

but he is not unlimited in the exercise of his various powers.[5] In one sense, he represents the House as one body of Congress. For example, he signs all acts and joint resolutions for the House.[6] In another sense he represents the House as a single entity acting separately from any Senate action. For example, he has a formal part in initiating contempt of House proceedings against recalcitrant witnesses.[7] In still another sense he represents all of the individual Members of the House.[8] The Member elected Speaker also represents the membership in such matters as accepting service of subpena in his official capacity.[9]

The Speaker also serves as the official recipient of numerous reports made to Congress pursuant to law. For instance, he receives reports concerning various matters from the President,[10] and from various department heads and Cabinet Secretaries, including the Secretaries of the Treasury,[11] Agriculture,[12] Defense,[13] and Interior,[14] as well as the Board of Governors of the Federal Reserve System.[15] Pursuant to House rules[16] the Speaker is provided a list of such reports to be made to the Congress[17] and, although the reports may not under law be specifically required to be addressed to him, in practice all such reports are addressed to the Speaker for his reference to appropriate House committees, a function he may delegate to the House Parliamentarian.

The Member chosen as Speaker also serves in such capacities as an ex officio member of the Presidential Election Campaign Fund Advisory Board.[18]

5. See § 4, infra.

6. Rule I clause 4, *House Rules and Manual* §§ 624 and 625 (1973). See Ch. 24, infra, for fuller treatment of the Speaker's role in the signing of bills, joint resolutions, etc.

7. See § 3.41, infra.

8. See Ch. 29, infra, for fuller treatment of the Speaker's role in the House's consideration and debate of legislative measures.

9. See § 3.39, infra. See Ch. 11, infra, for treatment of the Speaker's's role with respect to service of subpenas on the House, Members, and House officers and employees.

10. See 7 USC § 1703; 22 USC §§ 1853, 2261, 2318, and 2753. See Ch. 35, infra, for treatment of communications to or from the executive branch.

11. See 6 USC § 14 and 16 USC § 1081.

12. See 7 USC § 2155.

13. See 10 USC § 2358 note.

14. See 16 USCA § 469e.

15. See 12 USCA § 247.

16. Rule III clause 2, *House Rules and Manual* § 640 (1973).

17. See for example H. Doc. No. 93–21, 93d Cong. 1st Sess. (1973).

18. 26 USCA § 9021.

The Speaker's compensation is fixed by law.[19] Statutes provide the Speaker with an expense allowance,[20] a postage allowance,[1] a mileage allowance for travel to and from each regular session,[2] a stationery allowance,[3] telephone, telegraph, and radiotelegraph allowances,[4] clerk-messengers,[5] and additional compensation for personal services in his office.[6]

The amounts of allowances to the Speaker for clerk hire,[7] postage stamps, stationery, telephone and telegraph, office space, and official office expenses in his home district and for similar items in his Washington office may from time to time be adjusted by the Committee on House Administration.

The Member chosen as Speaker retains his status as a Member, and thus, for example, may introduce legislation as a Member.[8] But he also attains a new status along with his additional duties. Most significantly, he enters into the line of succession to the Presidency. When, by reason of death, resignation, removal from office, inability, or failure to qualify, there is neither a President nor a Vice President, the Speaker, upon his resignation as Speaker and as a Representative, becomes the acting President of the United States.[9] Thus the Speaker is subject to being protected by the United States Secret Service.[10]

Former Speakers of the House have been provided clerk hire, administrative assistants,[11] the use of an automobile,[12] and federal office space and related allowances and expenses for a prescribed time limit after retirement.[13]

Upon the death of a Speaker holding office, the flag of the United States is flown at half staff.[14]

Speaker as Representative of the Members

§ 2.1 House rules[15] and practice dictate that Members

19. See 2 USC § 31. See Ch. 7, infra, for treatment of Members' compensation and allowances.
20. See 2 USC § 31b.
1. See 2 USC §§ 42, 42c, and 42d.
2. See 2 USC §§ 43, 43b, and 43b–1.
3. See 2 USC § 46b.
4. See 2 USC §§ 46g and 46g–1.
5. See 2 USC § 74–2.
6. See 2 USC § 74–1.
7. See 2 USC § 57.
8. See § 2.2, infra. See Ch. 16, infra, for treatment of the introduction of bills, etc.
9. 3 USC § 19.
10. 18 USC § 3056.
11. See § 2.3, infra.
12. See § 2.4, infra.
13. See § 2.5, infra.
14. 36 USC § 175 note; Proc. No. 3044.
15. Rule XIV clause 1, House Rules and Manual § 749 (1973).

should address the Speaker in debate, and no other persons, inasmuch as the Speaker is said to represent all of the Members of the House for such purpose.

On Jan. 12, 1932,[16] Speaker John N. Garner, of Texas, discussed the proper way for a Member to preface his remarks to the House.

> THE SPEAKER: The Chair is in entire sympathy with the remarks made by the gentleman from Massachusetts [Mr. Luse]. It is supposed to be a slight upon the Chair, according to the expressions of former Speakers of the House, when Members address the Chairman of the Committee of the Whole or the Speaker and then address the Members on the floor en masse. The Speaker represents the House of Representatives in its organization, and by addressing the Chair gentlemen address the entire membership of the House.

Sponsorship of Bills

§ 2.2 Although traditionally the Speaker refrains from sponsoring public bills containing subject matter of a general import, he has on occasion introduced a public bill pertaining solely to a matter within his congressional district.

On May 21, 1970,[17] a public bill was introduced by Speaker John W. McCormack, of Massachusetts:

> Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows: . . .
>
> By Mr. McCormack:
>
> H.R. 17750. A bill to declare the tidewaters in the waterway of the Fort Point Channel lying between the northeasterly side of the Summer Street highway bridge and the easterly side of the Dorchester Avenue highway bridge in the city of Boston nonnavigable tidewaters, to the Committee on Interstate and Foreign Commerce. . . .

Former Speakers' Benefits

§ 2.3 Former Speakers have been provided clerk hire and administrative assistants through the contingent fund of the House.

On Jan. 12, 1959,[18] a resolution was adopted regarding benefits for former Speakers of the House.

> *Resolved*, That effective January 7, 1959, there shall be payable from the contingent fund of the House, until otherwise provided by law, for any Member of the House who has served as Speaker of the House, an additional $5,000 basic per annum for clerk hire,

16. 75 CONG. REC. 1815, 72d Cong. 1st Sess.

17. 116 CONG. REC. 16643, 91st Cong. 2d Sess.

18. 105 CONG. REC. 559, 86th Cong. 1st Sess.

and in addition an administrative assistant at the basic rate of $8,880 per annum.

THE SPEAKER:[19] Without objection, the resolution is agreed to.

There was no objection.

§ 2.4 Former Speakers have been provided the use of automobiles through the contingent fund of the House.

On Jan. 12, 1959,[20] a resolution was adopted regarding benefits for former Speakers of the House.

Resolved, That there shall be paid out of the contingent fund of the House, until otherwise provided by law, expenses necessary for the purchase, maintenance, operation, and driving of an automobile for the use of any Member of the House who has served as Speaker of the House.

THE SPEAKER[21] Without objection, the resolution is agreed to.

There was no objection.

A motion to reconsider was laid on the table.

§ 2.5 Upon retirement, a former Speaker was provided with federal office space and related expenses and allowances.

On Dec. 22, 1970,[22] a resolution was called up providing that upon its enactment the Speaker of the 91st Congress, Mr. John W. McCormack, of Massachusetts, would upon his retirement be entitled to, among other things: (1) federal office space, (2) an office expense of $100 per month, (3) frank mail privileges, (4) a local telephone allowance, (5) salaries for two secretaries, and (6) a stationery allowance without cash withdrawal, all to be financed from the contingent fund of the House. After some debate, the resolution was passed.

§ 3. Jurisdiction and Duties

The Speaker's jurisdiction and duties are found in numerous statutes and, of course, throughout the House rules.

Generally speaking, the Speaker's jurisdiction and duties relate to the House rules, the Members, and the dignity and prerogatives of the House.[1]

At the beginning of a Congress, the Speaker normally administers the oath of office to the new Members.[2] When a Speaker pro tem-

19. Sam Rayburn (Tex.)

20. 105 CONG. REC. 559, 86th Cong. 1st Sess.

21. Sam Rayburn (Tex.).

22. 116 CONG. REC. 43313, 43314, 91st Cong. 2d Sess.

1. See § 3.1. infra.

2. See § 3.2, infra, and 2 USC § 25 (1973). See Ch. 1, supra, for treatment of the Speaker's role in the assembly of Congress.

pore is elected or designated and approved, the Speaker, if he is present, also administers the oath of office to the Speaker pro tempore.[3] In addition, the Speaker has the power to administer oaths to witnesses.[4]

Under various House rules the Speaker presides over all regularly scheduled House business:

(1) He calls the Members to order at the beginning of each daily session.[5] Under the constitutional provisions dealing with quorums[6] the Speaker then proceeds unless objection is raised that a quorum is not present.[7]

(2) If a quorum is present, the Speaker, having examined the House Journal, may announce his approval of it. It is ordinarily not read unless such is insisted upon.[8]

(3) The next item of business under the rules—though infrequently applied—is the reference[9] or correction of reference of bills, joint resolutions, etc., to appropriate committees.[10] In this regard, the Speaker may defend his reference of measures should they be challenged.[11]

(4) The Speaker next disposes of business on the Speaker's table. Such business includes Presidential messages, communications from department heads, and measures sent to the House by the Senate.[12]

(5) The Speaker then proceeds to unfinished business.[13] Under the rules, then comes the morning hour for the consideration of bills called up by committees;[14] how-

3. See § 3.3, infra.

4. 2 USC § 191. See Ch. 15, infra, for treatment of the Speaker's role in House investigations and inquiries.

Parliamentarian's Note: This statutory power has rarely been used by Speakers in modern times.

5. Rule I clause 1, *House Rules and Manual* § 621 (1973). See Ch. 20, infra, for the Speaker's role in the call of the House.

6. U.S. Const. art I, § 5.

7. See Ch. 20, infra, for treatment of the Speaker's role in determining the presence of a quorum.

8. Rule I clause 1, *House Rules and Manual* § 621 (1973). See Ch. 5, supra, for treatment of the Speaker's duties with regard to the House Journal.

9. See § 3.5, infra. See also § 4.3, infra. See Ch. 16, infra, for fuller treatment of the Speaker's role in the reference of bills, etc., to committees.

10. See § 3.6, infra.

11. See § 3.7, infra. See Ch. 29, infra, for fuller treatment of the Speaker's participation in debate.

12. Rule XXIV clauses 1 and 2, *House Rules and Manual* § 878, et seq. (1973. See also § 2, supra, for examples of reports cleared through the Speaker's office.

13. Rule XXIV clauses 1 and 3, *House Rules and Manual* §§ 878 and 885–888 (1973)

14. Rule XXIV clauses 1 and 4, *House Rules and Manual* §§ 889, 890 (1973).

ever, this procedure is not followed under present House practices, since the House proceeds to business under other provisions of the rules.

(6) Next under the House rules, the Speaker is required to allow up to one hour for the call of the committees under the regular order before a motion can be entertained to go into the Committee of the Whole House on the state of the Union.[15] Again, this is largely an obsolete procedure, since by resolutions from the Committee on Rules the House normally prescribes a different order of business.

When a motion is made for the House to resolve itself into the Committee of the Whole, the Speaker appoints the Chairman of the Committee.[16]

(7) When the Committee of the Whole finally rises to report back to the House, the Speaker resumes the Chair and proceeds to the orders of the day.[17]

During a daily session if the Speaker desires to be absent from the Chair momentarily, he has the right under the House rules to designate a Speaker pro tempore.[18] He may also designate a Speaker pro tempore for longer periods, or even invite the election of one, under certain circumstances.[19] When the Speaker is criticized during debate, it is considered proper for him to designate a Speaker pro tempore to rule on whether the criticism is unparliamentary.[20]

Many more or less routine functions of the Speaker are of course accomplished off of the floor of the House. Examples of these are:

(1) The Speaker certifies the salary and mileage accounts of Members as required by statute.[1]

(2) The Speaker has the statutory duty to certify to the appropriate U.S. District Attorney the names of persons found to be in contempt of House committees for prosecution[2] when the House has formally authorized such ac-

15. Rule XXIV clause 5, *House Rules and Manual* §§ 891, 892 (1973).

16. Rule XXIII clause 1, *House Rules and Manual* § 861 (1973). See also §§ 6.1 and 6.2, infra. See Ch. 19, infra, for fuller treatment of the Speaker's role in relation to the Committee of the Whole.

17. Rule XXIV clause 1, *House Rules and Manual* § 878 (1973). See also Jefferson's Manual, *House Rules and Manual* § 384 (1973).

18. Rule I clause 7, *House Rules and Manual* § 633 (1973).

19. See §§ 9 et seq., infra, for treatment of Speakers pro tempore.

20. See 3.11, infra.

1. 2 USCA § 48. See Ch. 7, infra, for treatment of the compensation, allowances, perquisites, and emoluments of Members.

2. 2 USC § 194.

tion.[3] Likewise, he certifies names of persons who have purged themselves of the contempt charges to the U.S. District Attorneys after formal House authorization.[4]

(3) Whenever a vetoed measure is approved by two-thirds of both Houses of Congress, the Speaker sends the original measure to the General Services Administration for promulgation, if the House was the last body to act on the measure.[5]

The Speaker generally informs the House of actions taken pursuant to House authorization. For instance, the Speaker will inform the House when he has signed enrolled bills during an adjournment of the House,[6] or when, acting in his official capacity as spokesman of the House, he has accepted a subpena served on the House.[7] It is also considered the Speaker's duty to inform the House when a Speaker pro tempore has acted for him during an adjournment.[8]

In certain unusual circumstances, the Speaker is considered to have the inherent power to act on the Members' behalf without House authorization. For example, in emergency situations, the Speaker is considered to have the inherent power to declare the House in recess, subject to the call of the Chair.[9]

During the consideration of the various measures, the Speaker normally assumes the primary responsibility on the part of the House for enforcing the customary rules of comity between the two Houses of Congress.[10]

To facilitate the consideration of measures, the House rules provide the Speaker with three major functions: (1) recognizing Members who seek to address the House,[11] (2) construing and applying the House rules,[12] and (3) putting the question to or stating a motion for the Members for their vote.[13]

The Speaker has held that in construing the rules he may look

3. See § 3.40, infra.

4. See § 3.43, infra.

5. 1 USC § 106a.

6. See § 3.9, infra.

7. See § 3.39, infra.

8. See § 3.10, infra.

9. See § 3.44, infra. See Ch. 39, infra, for treatment of House recesses.

10. See 3.45. infra.

11. Rule XIV clause 1, *House Rules and Manual* §§ 749 et seq. (1973).

12. See Rule I clause 4, *House Rules and Manual* §§ 624, 627 (1973).

13. Rule I clause 5, *House Rules and Manual* § 629 (1973). See also the forms of putting the question, *House Rules and Manual* §§ 960–965 (1973). See Ch. 29, infra, for fuller treatment of the Speaker's power of recognition.

to all pertinent facts concerning the matter to which the rules would be applied.[14] In ruling on a matter brought to his attention by a point of order, the Speaker normally will wait until the matter is completely before him.[15]

In certain circumstances the presiding officer may make inquiries of a Member having the floor.[16] But it is the more frequent case that the Speaker answers inquiries from the Members. For example, he answers questions regarding the applicability of the House rules to standing committees.[17] However, he does not answer hypothetical inquiries or general questions relating to committee procedure.

The Speaker may decline to answer immediately a parliamentary inquiry[18] or he may simply ask a Member to withhold his inquiry until the Speaker has sufficient time to ascertain certain facts.[19]

Duties Generally

§ 3.1 In general, as the elected presiding officer of the House, the Speaker has duties relating to the House rules, to the Members, and to the dignity and prerogatives of the House.

On Jan. 10, 1962,[20] Speaker elect John W. McCormack, of Massachusetts, addressed the House from the Chair regarding his duties as Speaker of the House.

> THE SPEAKER: Members of the House of Representatives . . . [in] the exercise and performance of the powers and duties of the Speaker, parliamentary or otherwise, I shall perform such duties impartially with fair treatment to all Members in interpreting and enforcing the rules, but above all protecting the rights of all Members without regard to party affiliation.
>
> While as leader in this body of my party, I have my political responsibilities, in the performance of my duties as Speaker, my responsibility is to the House itself and to all of its Members.
>
> As majority leader I always considered that one of my primary duties was to protect the rights, under the rules and also in accordance with the customs of the House, of the minority party. I shall follow that course as Speaker. . . .
>
> I will continue to maintain the dignity of the House of Representatives, protecting its prerogatives and maintaining the right and privileges of its members.

Administering Oaths

§ 3.2 It is the normal practice for the Speaker to admin-

14. See § 3.29, infra.
15. See § 3.30, infra.
16. See § 3.32, infra.
17. See § 3.33, infra.
18. See § 3.34, infra.
19. See § 3.35, infra.
20. 108 CONG. REC. 6, 87th Cong. 2d Sess.

ister the oath of office to Members at the opening of a session of Congress.

On Jan. 3, 1945,[1] the following procedure regarding the swearing in of Members took place.

THE SPEAKER [Sam Rayburn, of Texas]: The Chair understands that two or three Members with certificates on file with the Clerk were not here when the other Members were sworn in, were unable to get here at the hour of meeting on account of late trains. At least two such Members are here now.

MR. [KARL E.] MUNDT [of South Dakota]: Mr. Speaker, I am one of those detained by late trains. I took the oath of office but I was not here in time to answer to the first roll call.

THE SPEAKER: The statement of the gentleman from South Dakota will stand.

The Members who have not taken the oath of office will present themselves in the well of the House and all others will clear the well of the House.

Mr. Gorski and Mr. Stefan appeared at the bar of the House and took the oath of office.

§ 3.3 If the Speaker is present when the House has elected a Speaker pro tempore, it is normally the Speaker who administers the oath of office to the Speaker pro tempore.

On Aug. 26, 1949,[2] a resolution was introduced as follows:

MR. [J. PERCY] PRIEST [of Tennessee]: Mr. Speaker, I offer a resolution (H. Res. 351) and ask for its immediate consideration.

The Clerk read as follows:

Resolved, That Hon. E.E. Cox, a Representative from the State of Georgia, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. E.E. Cox as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to.

THE SPEAKER [Sam Rayburn, of Texas]: The gentleman from Georgia [Mr. Cox] will present himself at the bar of the House and take the oath.

Mr. Cox appeared at the bar of the House and took the oath of office.

Meeting Time and Place

§ 3.4 When the House is to meet in a place other than the House Chamber, the Speaker normally is the one who informs the Members of the time and place of the meeting.

On July 1, 1949,[3] Speaker Sam Rayburn, of Texas, made an announcement concerning the time and place of the meeting of the House.

THE SPEAKER: Pursuant to House Resolution 271, the House stands ad-

1. 91 CONG. REC. 14, 79th Cong. 1st Sess.
2. 95 CONG. REC. 12344, 81st Cong. 1st. Sess.
3. 95 CONG. REC. 8808, 81st Cong. 1st Sess.

journed to meet on Tuesday, July 5, 1949, at 12 o'clock noon, in the caucus room in the New House Office Building.[4]

Referring Measures to Committees

§ 3.5 The Speaker examines and refers to committees all bills and resolutions introduced by Members of the House.

On Jan. 10, 1967,[5] Speaker John W. McCormack, of Massachusetts, indicated the procedure by which bills introduced on the opening day of a Congress are examined and referred to committees.

> THE SPEAKER: The Chair would like to make a statement concerning the introduction and reference of bills today.
>
> As Members are aware, they have the privilege today of introducing bills. Heretofore on the opening day of a new Congress several thousand bills have been introduced. It will be readily apparent to all Members that it may be a physical impossibility for the Speaker to examine each bill for reference today. The Chair will do his best to refer as many bills as possible, but he will ask the indulgence of Members if he is unable to refer all the bills that may be introduced. Those bills which are not referred and do not appear in the Record as of today will be included in the next day's Record and printed with a date as of today.[6]

§ 3.6 Having the authority to refer Presidential messages and bills to committees, a Speaker may change a reference to another committee if appropriate.

On Jan. 27, 1958,[7] Speaker Sam Rayburn, of Texas, announced a change of reference of matters from one committee to another:

> THE SPEAKER: After further examination of the President's message and the recommendations made therein, the Chair believes that the proper committee to which to refer the President's message is the Committee on Education and Labor instead of the Committee on Interstate and Foreign Commerce, because on the Science Foundation no new law is suggested, simply more appropriations. The other part of the President's message deals with education. Therefore the Chair is going to change the reference of the President's message and whatever bills are introduced on that subject, to the Committee on Education and Labor.

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4. *Parliamentarian's Note:* The House moved to the New House Office Building pending remodeling of the House Chamber in the Capitol caused by an insecure ceiling.

5. 113 CONG. REC. 34, 90th Cong. 1st Sess.

6. *Parliamentarian's Note:* On the opening day of the first session of the 90th Congress a total of 2,247 bills and resolutions were introduced.

7. 104 CONG. REC. 1112, 85th Cong. 2d Sess.

§ 3.7 Although the Speaker has the power to refer bills to proper committees in the first instance, such references may later be challenged and the Speaker may defend his decision.

On Mar. 2, 1966,[8] Speaker John W. McCormack, of Massachusetts, took the floor in the Committee of the Whole to indicate his responsibility regarding the reference of public bills to proper committees.

MR. MCCORMACK: . . . Mr. Chairman, in view of the remarks by the gentleman from New Hampshire [Mr. Cleveland] about the reference of this bill, and overhearing them and confining myself to that aspect of his remarks, I simply want to advise the Members of the House that in my judgment as the Speaker, this bill was properly referred to the Committee on Public Works.

In the original bill, the bill calls for the participation in the 1967 exposition, jointly with the State of Alaska through economic development projects such as industrial, agricultural, educational, research, or commercial facilities, and so forth.

Mr. Chairman, I thoroughly respect the views of my friend, the gentleman from New Hampshire [Mr. Cleveland], but I cannot be on the floor and listen to one challenge the reference of a bill that I made. I realize that I might make mistakes occasionally, but I will always make the reference of a bill that the rules call for. In my clear judgment this bill was properly referred to the Committee on Public Works.[9]

Informing the House of Actions Taken

§ 3.8 The Speaker informs the House when he has accepted a resignation and appointed a successor to a committee during an adjournment.

On Jan. 3, 1957,[10] Speaker Sam Rayburn, of Texas, made the following announcement concerning a committee appointment:

THE SPEAKER: The Chair desires to announce that pursuant to the provisions of House Concurrent Resolution 244, 84th Congress, and the order of

8. 112 CONG. REC. 4579, 4580, 89th Cong. 2d Sess.

9. *Parliamentarian's Note:* As introduced the bill in question was primarily an economic development measure. In this form, the bill was primarily within the jurisdiction of the Committee on Public Works. As reported, however, the primary emphasis of the bill was federal recognition of and participation in the centennial celebration of the Alaska purchase. In this form, the bill was similar to centennial bills that have been traditionally, under the precedents, referred to the Committee on the Judiciary.

Reference generally, see Ch. 16, infra.

10. 103 CONG. REC. 47, 85th Cong. 1st Sess.

the House of July 27, 1956, empowering him to accept resignations and to appoint commissions . . . he did, on September 8, 1956, appoint as a member of the joint committee to represent the Congress at the unveiling of the Commodore John Barry Memorial at Wexford, Ireland . . . the gentleman from Pennsylvania . . . to fill a vacancy caused by the resignation of the gentleman from New York.

§ 3.9 The Speaker informs the House when he has signed enrolled bills during an adjournment pursuant to authority granted him.

On July 26, 1948,[11] Speaker Joseph W. Martin, Jr., of Massachusetts, announced his signing of certain enrolled bills subsequent to adjournment.

> The Speaker, pursuant to the provisions of House Concurrent Resolution 219, Eightieth Congress, announced his signature to enrolled bills and joint resolutions of the Senate as follows:
>
> On June 22, 1948:
>
> S. 418. An act to provide for water-pollution-control activities in the Public Health Service of the Federal Security Agency and in the Federal Works Agency, and for other purposes. . . .
>
> And on June 23, 1948, enrolled bills of the Senate as follows:
>
> S. 165. An act for the relief of Doris E. Snyder. . . .

On June 10, 1968,[12] Speaker John W. McCormack, of Massachusetts, made an announcement to the House:

> THE SPEAKER: The Chair desires to announce that pursuant to the authority granted him on Thursday, June 6, 1968, he did on June 7, 1968, sign the following enrolled bills of the House:
>
> H.R. 6087. An act to assist State and local governments in reducing the incidence of crime, to increase the effectiveness, fairness, and consideration of law enforcement and criminal justice systems at all levels of government, and for other purposes

§ 3.10 The Speaker informs the House when an elected Speaker pro tempore has signed enrolled bills during an adjournment of the House pursuant to authority granted.

On July 14, 1958,[13] Speaker Sam Rayburn, of Texas, announced that during an adjournment the elected Speaker pro tempore had signed certain enrolled bills pursuant to authority granted.

Procedure When Speaker Criticized

§ 3.11 When the Speaker is the subject of criticism in debate and a point of order is raised against such criticism, it is customary for the Speaker to

11. 94 CONG. REC. 9363, 80th Cong. 2d Sess.

12. 114 CONG. REC. 16381, 90th Cong. 2d Sess.

13. 104 CONG. REC. 13695, 13696, 85th Cong. 2d Sess.

appoint a Speaker pro tempore to rule on whether the words spoken were parliamentary.

On Feb. 7, 1935,[14] the following remarks were made:

MR. [THOMAS L. BLANTON [of Texas]: Mr. Chairman, a point of order.

Mr. Chairman, I ask that the words of the gentleman from Massachusetts [Mr. Tinkham] about former Speaker Rainey and Speaker Byrns be taken down. If he has no respect for the living, he ought to have some respect for the dead. I ask that his words be taken down. We will call the gentleman down on that now. . . .

The Chairman [William N. Rogers, of New Hampshire]: The Clerk will report the words objected to.

The Clerk read to the Committee the words objected to.

THE CHAIRMAN: The Committee will rise.

Accordingly the Committee rose; and the Speaker . . . resumed the chair.

THE SPEAKER [Joseph W. Byrns, of Tennessee]: The Clerk will report the words.

The Clerk read the words objected to.

THE SPEAKER: The Chair feels some delicacy in ruling on the language inasmuch as he is involved, and the Chair will ask the gentleman from New York [Mr. O'Connor] to take the chair.

Mr. O'Connor assumed the chair as Speaker pro tempore.

14. 79 CONG. REC. 1680, 1681, 74th Cong. 1st Sess.

Controlling the Record

§ 3.12 It has been held that the Speaker may direct the official House reporters of debates to refrain from inserting in the Congressional Record notations concerning applause and other demonstrations by Members in the House.

On Mar. 6, 1945,[15] Speaker Sam Rayburn, of Texas, responded to a parliamentary inquiry concerning Congressional Record coverage of demonstrations in the House.

MR. [JOHN E.] RANKIN [of Mississippi]: . . . I propound another parliamentary inquiry at this time. Some time ago the Official Reporters of Debates ceased to take down the demonstrations that are made in the course of debate, the only parliamentary body in the world that prints a Record in which that has been done, that I have been able to find. I occasionally get the Record of the British House of Parliament. I read it and in these trying times there is applause, cheers, their cries of "hear, hear" laughter, and other demonstrations that are made. You get the Record of the United States Senate and, as a rule, they do not have probably so many there to applaud, but when there is applause or a demonstration, it is placed in the Record. Our demonstrations have been cut out of our Record

15. 91 CONG. REC. 1789, 79th Cong. 1st Sess.

and I think it is a serious mistake because now a man can make a speech and extend his remarks and you have no indication as to where his speech left off and where his extension of remarks begins. I know it has been contended by a few Members in the House that the extension of those demonstrations in the Record have been abused. But that was done very seldom, and where the Member did abuse that privilege by inserting laughter or applause he has been subjected to the most drastic criticism and ridicule and, as a rule, has never attempted it again. . . .

THE SPEAKER: The Chair does not intend to be facetious, but the Chair would like to give the House his reaction to the expressions "Hear! Hear!" and "Applause" in the Record. When I came here 32 years ago on Sunday last, a gentleman had been elected by a split in the Republican Party in a particular State, and he had come here with Democratic and Progressive votes. He made a speech in the House. Whether it went into the permanent Record I do not know, but I know it went into the temporary Record. It closed in this fashion: "Loud and prolonged applause among Democrats and Progressives, followed by much handshaking."

In times past there appeared in the Record the word "Applause" where a Member spoke. In another place there was "Loud applause." In another place there was "Loud and prolonged applause." In another place there was "Loud and prolonged applause, the Members rising." If I had made a speech and had received "applause," and some Member had followed me immediately and had received "loud and prolonged applause, the Members rising," my opponent in the next primary might have called attention to how insignificant I was because I only received "applause" and the other Member had received "loud and prolonged applause, the Members rising."

The Chair has held that demonstrations in the House are not a part of the Record, and shall continue to hold that until the rules of the House are changed.

§ 3.13 Although it has been held that it is within the authority and normally the duty of the Speaker to order stricken from the notes of the official House reporters remarks made by Members not legitimately having the floor, it has also been held that it is within the Speaker's power to allow an exception in unusual circumstances.

On Apr. 19, 1937,[16] Speaker William B. Bankhead, of Alabama, responded to a parliamentary inquiry concerning remarks of Members, not legitimately having the floor, being reflected in the *Congressional Record*.

MR. [EDWARD W.] CURLEY [of New York]: I rise to propound a parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

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16. 81 CONG. REC.. 3588, 3589, 75th Cong. 1st Sess.

MR. CURLEY: Last Thursday, April 15, during the discussion of the antilynching bill, I submitted two questions to the gentleman from New York [Mr. Wadsworth]. Upon reading the Congressional Record the following day I found they were omitted. In the course of the extension of my own address on the following page in the Record that fact is mentioned in my own address; so that on a checkback it will be found that these two questions have been omitted, and we find that they were omitted inadvertently by the reporter. The reporter has informed me of the fact that that is the truth.

What I wish to know, Mr. Speaker, is whether or not I can have the permanent Record corrected so as to include the two questions and the offside remark that went with them. . . .

THE SPEAKER: Did the gentleman from New York address the Chair and ask whether or not the gentleman from New York [Mr. Wadsworth], then occupying the floor, would yield?

MR. CURLEY: I did, Mr. Speaker. I think the gentleman from New York [Mr. O'Connor] was presiding on both occasions.

THE SPEAKER: Did the gentleman from New York [Mr. Wadsworth] yield?

MR. CURLEY: The gentleman from New York [Mr. Wadsworth] did not yield, and so stated. But not long thereafter the gentleman from New York [Mr. Gavagan] asked the same questions, received the same reply, that the gentleman from New York [Mr. Wadsworth] did not yield; yet the questions and remarks of the gentleman from New York [Mr. Gavagan] are incorporated in the Congressional Record.

THE SPEAKER: This is a rather important inquiry that the gentleman from New York [Mr. Curley] has submitted. It has not been raised, so far as the Chair recalls, during the present session of Congress. In order that the rights of Members may be protected, and that the Members may know what the rules and precedents are with respect to this proposition, the Chair will read from section 3466, volume 8, of Cannon's Precedents of the House of Representatives. . . .

The Chair may say that in conformity with this precedent, and what the Chair conceives to be sound procedure, the rule should be reiterated that when a Member is occupying the floor and a Member after addressing the Chair and asking the Member then occupying the floor if he will yield for a question or for an interruption, and the gentleman then speaking declines to yield, it is not proper for a Member nevertheless to interject into the Record some remark which he desires to make.

Under the particular circumstances now raised by the gentleman from New York [Mr. Curley], and in view of the fact the question has not heretofore been presented at this session of the Congress, the Chair is of the opinion it may not be an injustice to instruct the reporter to incorporate in the permanent Record in this instance the statement made by the gentleman from New York [Mr. Curley].

The Chair may say, however, that hereafter in conformity with this rule and what he regards as sound practice, the Chair instructs the reporters of debates where a Member declines to yield and notwithstanding another Member seeking to interrupt him per-

sists in talking, that those remarks shall not be incorporated in the Record.

Putting Unanimous-Consent Requests

§ 3.14 Unanimous-consent requests are put to the House by the Speaker, and a Member's objection to such a request is ineffective if it fails to follow immediately upon the Speaker's statement of the request.

On Sept. 4, 1940,[17] a unanimous-consent request was made as follows:

MR. [BEVERLY M.] VINCENT [of Kentucky]: Mr. Speaker, I ask unanimous consent to withdraw the last sentence of my statement.

MR. [HENRY C.] DWORSHAK [of Idaho]: I object, Mr. Speaker.

THE SPEAKER PRO TEMPORE [Jere Cooper, of Tennessee]: The gentleman from Kentucky asks unanimous Consent to withdraw the statement. Is there objection? The Chair hears none.

MR. [FREDERICK V.] BRADLEY [of Michigan]: I object, Mr. Speaker.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, a point of order and a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOFFMAN: Mr. Speaker, a moment ago certain words were uttered by the gentleman on the floor of the House which I demanded be taken down. No report was made of those words. I demand the regular order—the taking down of the words, the report of the words, and the reading by the Clerk.

THE SPEAKER PRO TEMPORE: Subsequently, unanimous consent was granted for the words to be withdrawn.

MR. HOFFMAN: Oh, no, Mr. Speaker; three Members were on their feet. I was one of them, and objecting to that.

THE SPEAKER PRO TEMPORE: That was the ruling of the Chair.

MR. HOFFMAN: I appeal from the ruling of the Chair then.

THE SPEAKER PRO TEMPORE: This is not a ruling, it is just an answer to a parliamentary inquiry.

Stating Motions for Votes

§ 3.15 The Speaker or Chairman of the Committee of the Whole states motions, and it has been held that it is his statement of the motion and not the motion as stated by a Member that is voted upon.

On Mar. 26, 1965,[18] the following motion was made:

MR. [ADAM C.] POWELL [of New York]: Mr. Chairman, I move that all debate and all amendments to section 203 close in 5 minutes, with one-half of the time reserved to the chairman.

THE CHAIRMAN [Richard Bolling, of Missouri]: The chairman of the committee moves that all debate and all amendments——

17. 80 CONG. REC.. 11516, 11517, 76th Cong. 3d Sess.

18. 111 CONG. REC. 6101, 89th Cong. 1st Sess.

MR. [PORTER] HARDY [Jr., of Virginia]: Mr. Chairman. a point of order.

THE CHAIRMAN: The gentleman will state his point of order.

MR. HARDY: He is moving that he is going to have half of the time. Is that a proper motion? I had understood it was not. I believe it can be done by unanimous consent.

THE CHAIRMAN: Will the chairman of the committee please restate his motion?

MR. HARDY: I understood the motion.

MR. POWELL: I withdraw the previous motion. I move all debate and all amendments on this title and this section close in 10 minutes.

MR. HARDY: Mr. Chairman, I ask that the original motion be read.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, a point of order. I want to know whether or not it takes unanimous consent to withdraw the motion.

THE CHAIRMAN: The gentleman from New York asks unanimous consent to withdraw the motion.

MR. POWELL: That is right. I withdraw it. I ask unanimous consent to withdraw it.

MR. ASHBROOK: Mr. Chairman, I object.

THE CHAIRMAN: Does the gentleman from New York desire a vote on his original motion?

MR. HARDY: Mr. Chairman, will the Chair state the motion as originally made?

MR. GERALD R. FORD [of Michigan]: Mr. Chairman, a parliamentary inquiry. At the time that the gentleman from New York made the motion his voice was inaudible. I strongly feel that the motion that he made should be reread and read loud.

THE CHAIRMAN: The Chair will attempt to state how he understood it. It may be in error.

MR. GERALD R. FORD: Mr. Chairman, I ask that the reporter read what the Chairman said so we can all hear it. It would be very helpful.

THE CHAIRMAN: The gentleman from Michigan, the distinguished minority leader, is putting the Chair in the same position he had him in a little while ago. This goes straight, head on, into all of the practices and procedures of the House to have the reporter re-report a motion.

MR. GERALD R. FORD: Mr. Chairman, I withdraw my request.

THE CHAIRMAN: The Chair will state the motion as the Chair understood it. The Chair will say frankly the Chair had a little difficulty hearing it, but my understanding of the motion was that the chairman of the committee moved that all debate and all amendments to section 203 be closed in 5 minutes.

MR. GERALD R. FORD: And time was reserved for the chairman.

THE CHAIRMAN: The Chair did not hear that.

MR. [CRAIG] HOSMER [of California]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HOSMER: In the event that the motion is carried, if put, would the motion carried be that which was actually made by the gentleman from New York, or according to the Record as reported, or would it be the motion as stated by the Chair?

THE CHAIRMAN: The motion will be as stated by the Chair, as was the case yesterday and is the case today.

The motion is that all debate on this section close in 5 minutes.

Power of Recognition

§ 3.16 Although the Speaker has discretion to recognize Members to have the floor, he is under no duty to announce in advance whom he might recognize in the future.

On Oct. 8, 1969,[19] a parliamentary inquiry was addressed to Speaker John W. McCormack, of Massachusetts:

MR. [JOHN D.] DINGELL [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. DINGELL: If the previous question is voted down, would it then be in order to offer an amendment to raise the sum for water pollution control grants to the States in the sum of $1 billion?

THE SPEAKER: The Chair will state that, if the previous question is voted down, it would be in order to offer an amendment. The Chair is not going to pass on the amount at the present time.

MR. DINGELL: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. DINGELL: Would I be recognized for that purpose? It would be my intent so to do.

THE SPEAKER: The Chair is not going to give a preliminary opinion as to whom the Chair might recognize.

§ 3.17 The Speaker has on occasion announced in advance that he would deny recognition to a Member under certain circumstances.

On Oct. 18, 1943,[20] the following parliamentary situation developed under which Speaker Sam Rayburn, of Texas, indicated he would deny recognition to a Member under certain circumstances.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I ask unanimous consent to proceed for 1 minute.

THE SPEAKER: Is there objection?

There was no objection.

MR. MCCORMACK: Mr. Speaker, I do this for the information of my colleagues, because this morning they received a letter from the Speaker in respect to a meeting to be held Wednesday morning, and in that letter it was stated that the meeting would be held in the Caucus Room of the old House Office Building, at which meeting General Marshall and other generals would appear in an off-the-record manner. The old Caucus Room has been looked over, as well as the auditorium of the Library of Congress. It is felt that the auditorium of the Library of Congress is a much more desirable place to hold the meeting, and I rise to announce that, instead of holding the

19. 115 CONG. REC. 29220, 91st Cong. 1st Sess.

20. 89 CONG. REC. 8433, 78th Cong. 1st Sess.

meeting in the old Caucus Room, it will be held in the auditorium of the Library of Congress. . . .

MR. [JOHN E.] RANKIN [of Mississippi]: Now, if we are going to hold executive sessions of the House, there is only one place that we are authorized by law to hold them, and that is in this Hall.

MR. MCCORMACK: This is not an executive session of Congress.

MR. RANKIN: It is going to be a secret session, and it ought to be, and it ought to be held in the Hall of the House of Representatives.

MR. MCCORMACK: This is not an executive session of Congress.

MR. RANKIN: It is unnecessary for the Congress of the United States to be going off to some other building to hear these leaders report on the war when we have the Hall of the House of Representative built and equipped for that purpose.

Will not the gentleman modify his request to have that meeting here in this Hall?

THE SPEAKER: The Chair would not recognize the gentleman for that purpose and the gentleman would not make such a request.

§ 3.18 The Speaker's power over recognition includes the power to ask for what purpose a Member rises without such request implying that the Speaker recognizes the Member for the purpose for which he has arisen.

On Apr. 13, 1946,[1] two Members rose seeking recognition from Speaker Sam Rayburn, of Texas:

MR. [DEWEY] SHORT [of Missouri]: Mr. Speaker.

MR. [EDWARD E.] COX [of Georgia]: Mr. Speaker.

THE SPEAKER: For what purpose does the gentleman from Missouri rise?

MR. SHORT: Mr. Speaker, I offer a motion to recommit.

THE SPEAKER: For what purpose does the gentleman from Georgia rise?

MR. COX: Mr. Speaker, it was my purpose to demand a reading of the engrossed copy of the bill.

MR. [MALCOLM C.] TARVER [of Georgia]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. TARVER: Mr. Speaker, may a demand be made for the reading of the copy of the engrossed bill after the proceedings which have just taken place and after the Clerk has read the bill which was considered engrossed?

THE SPEAKER: The bill was ordered to be engrossed and read a third time. The gentleman from Georgia was on his feet at the time.

Does the gentleman from Georgia insist upon his demand that the engrossed copy of the bill be read?

MR. COX: Mr. Speaker, my making demand that the engrossed copy of the bill be read does not indicate my opposition to the bill.

MR. SHORT: Mr. Speaker, I am opposed to the bill.

MR. COX: I was compelled to make the demand and I did make it.

THE SPEAKER: The gentleman from Georgia [Mr. Cox] demands the reading of the engrossed copy of the bill. The Chair will state that with the number of amendments agreed to, it

1. 92 CONG. REC. 3669, 79th Cong. 2d Sess.

would be impossible to have the engrossed copy of the bill this afternoon.

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, if I understood the situation correctly, the gentleman from Missouri [Mr. Short] was recognized to offer a motion to recommit.

THE SPEAKER: The gentleman from Missouri [Mr. Short] was not recognized. The Chair asked the gentleman for what purpose he rose, and then recognized the gentleman from Georgia.

§ 3.19 The Speaker's power of recognition includes the power to deny recognition to a Member for the purpose of making a motion which the Speaker determines to be in conflict with previous action of the House.

On Oct. 8, 1968,[2] Speaker John W. McCormack, of Massachusetts, heard a Member's motion before recognizing the Member to offer it.

MR. [ROBERT] TAFT [Jr., of Ohio]: Mr. Speaker—

THE SPEAKER: For what purpose does the gentleman from Ohio rise?

MR. TAFT: Mr. Speaker I have a privileged motion.

MR. [SIDNEY R.] YATES [of Illinois]: A point of order, Mr. Speaker. That is not in order until the reading of the Journal has been completed.

THE SPEAKER: Will the gentleman from Ohio state his privileged motion?

MR. TAFT: Mr. Speaker, my motion is on a point of personal privilege.

THE SPEAKER: Will the gentleman from Ohio state whether it is a point of personal privilege or a privileged motion?

MR. TAFT: It is a privileged motion, and a motion of personal privilege.

Under rule IX questions of personal privilege are privileged motions, ahead of the reading of the Journal.

THE SPEAKER: The Chair will advise the gentleman that a question of personal privilege should be made later after the Journal has been disposed of.

If the gentleman has a matter of privilege of the House, that is an entirely different situation.

MR. TAFT: I believe, Mr. Speaker, this involves not only personal privilege as an individual, but also as a Member of the House and also the privileges of all Members of the House.

THE SPEAKER: The Chair does not recognize the gentleman at this time on a matter of personal privilege.

But the Chair will, after the pending matter, the reading of the Journal has been disposed of, recognize the gentleman if the gentleman seeks recognition.

MR. TAFT: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state the parliamentary inquiry.

MR. TAFT: Mr. Speaker, is it not true in rule IX relating to questions of privilege it is stated that such questions shall have precedence over all other questions except motions to adjourn?

THE SPEAKER: Will the gentleman state the question of privilege.

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2. 114 CONG. REC. 30214–16, 90th Cong. 2d Sess.

MR. TAFT: Mr. Speaker, my motion is that I and all other Members in the Chamber who were here at the time of the last quorum call and answered "present" be permitted to leave the Chamber at their desire. . . .

THE SPEAKER: The Chair will state in response to the parliamentary inquiry that the action of the House has deprived—has caused the doors to be closed and has deprived temporarily the privilege that the gentleman refers to. That has been done by the action of the House.

MR. TAFT: Mr. Speaker, I was recognized to make a privileged motion and it was not a matter of a parliamentary inquiry. I have made that motion and I ask that the Chair rule on the motion.

THE SPEAKER: What is the motion?

MR. TAFT: I request that I be given time to discuss the motion as a matter of privilege.

THE SPEAKER: The gentleman will state his motion.

MR. TAFT: Mr. Speaker, my motion is that I and all other Members present on the floor who answered "present" at the time of the last quorum call shall be permitted to leave the House freely at their own desire.

THE SPEAKER: The Chair does not recognize the gentleman for the purpose of making such a motion because the Chair has already clearly indicated the House has already taken action and it is within the power of the House to take the action that it did. Therefore, the Chair does not recognize the gentleman to make such a motion.

Mr. Gerald R. Ford [of Michigan]: Mr. Speaker, it was my understanding that the gentleman from Ohio had been recognized for the purpose of offering the motion.

THE SPEAKER: The gentleman from Michigan is well aware of the fact that the question of recognition rests with the Chair. The gentleman did not make a motion which was in order by reason of the action heretofore taken by the House.

§ 3.20 It has been held that the presiding officer has the power to give or deny recognition to a Member who seeks to offer a perfecting amendment which would take precedence over another amendment.

On Dec. 15, 1937,[3] the Chairman of the Committee of the Whole, John W. McCormack, of Massachusetts, indicated the discretionary nature of his power to recognize Members in answer to the following parliamentary inquiries:

Mr. [Gerald J.] Boileau [of Wisconsin]: Mr. Chairman, reserving the right to object, and I do so to propound a parliamentary inquiry as to the order in which amendments are to be offered. The amendment offered by the gentlewoman from New Jersey is now pending. Would not perfecting amendments have priority of consideration over a substitute amendment?

THE CHAIRMAN: The Chair has no knowledge of what amendments may

3. 82 CONG. REC. 1590, 75th Cong. 2d Sess.

be offered; but ordinarily a perfecting amendment has precedence over a motion to substitute insofar as voting is concerned. If the unanimous-consent request is granted, it is the understanding of the Chair that amendments will be offered section by section.

MR. BOILEAU: Nevertheless, it is the amendment offered by the gentlewoman from New Jersey that would be before the House.

THE CHAIRMAN: That is before the Committee now.

MR. BOILEAU: Would not perfecting amendments have priority over an amendment to substitute?

THE CHAIRMAN: So far as voting is concerned, yes.

MR. BOILEAU: I appreciate that fact, but may I propound a further parliamentary inquiry, whether or not a Member rising in his place and seeking recognition would not have a prior right to recognition for the purpose of offering a perfecting amendment to the amendment now pending?

THE CHAIRMAN: It does not necessarily follow that such Member would have a prior right. Recognition is in the discretion of the Chair.

MR. BOILEAU: I recognize it does not necessarily follow, but I am trying to have the matter clarified. Therefore I ask the Chair whether or not a Member who qualifies as offering a perfecting amendment does not have prior right of recognition in offering such amendment?

THE CHAIRMAN: The Chair has tried to be as helpful as he could, but the Chair does not feel he should estop himself of his own discretion in the matter of recognitions.

MR. BOILEAU: Does the Chair then rule that is within the discretion of the Chair rather than a right of the Member?

THE CHAIRMAN: In answer to the gentleman's inquiry, the Chair is of the opinion it is within the province of the Chair whom the Chair will recognize, having in mind the general rules of the House.

§ 3.21 Where there are two matters of equal preference brought before the House at the same time, it is within the Speaker's discretion to recognize whichever matter he chooses to be considered first.

On Sept. 22, 1966,[4] an announcement was made concerning a change in the legislative program. A Member raised a parliamentary inquiry as a result of the change.

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

Under the rules of the House, as I understand them, this rule, House Resolution 1007, to bring up the so called House Un-American Activities Committee bill, is a privileged matter, and if it is not programed, then the gentleman handling the rule or any member of the Rules Committee, may call it up as a privileged matter. Is my understanding correct about that?

THE SPEAKER [John W. McCormack, of Massachusetts]: The gentleman's

4. 112 CONG. REC. 23691, 89th Cong. 2d Sess.

understanding is correct. Of course, the question of recognition is with the Chair, where there are two similar preferential matters, but the gentleman's understanding is correct that after 7 legislative days a member of the Rules Committee could call it up.

If it were a question of recognition, if the same preferential status existed at the same time, recognition rests with the Chair.

§ 3.22 It is within the Speaker's discretion to recognize a Member for a parliamentary inquiry regarding a resolution and, after such is stated and without answering the inquiry, recognize another Member for the purpose of withdrawing a pending resolution.

On Apr. 8, 1964,[5] Speaker John W. McCormack, of Massachusetts, indicated the nature of the Speaker's power of recognition during the consideration of two measures before the House. The Committee of the Whole had risen and reported to the House matters pertaining to a bill (H.R. 10222). Upon demand by a Member the bill was ordered to be engrossed and read a third time. While preparation of the engrossed copy of the bill was taking place, a Member called up House Resolution 665 by direction of the Committee on Rules and asked for its immediate consideration. After certain remarks on House Resolution 665 were made, the Speaker declared a recess pending the receipt of the engrossed copy of H.R. 10222. The recess having expired, the House was called to order by the Speaker and the proceedings were as follows:

THE SPEAKER: The unfinished business is the reading of the engrossed copy of H.R. 10222.

The Clerk will read the engrossed copy.

MR. OLIVER P. BOLTON [of Ohio]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. OLIVER P. BOLTON: Mr. Speaker, when the recess was called, it was my understanding that we were engaged in the consideration of [H. Res. 665]. Is it not the rule of the House that we must finish the consideration of that measure before we take up any other measure which has been passed over for parliamentary and mechanical reasons?

MR. [RICHARD] BOLLING [of Missouri]: Mr. Speaker——

THE SPEAKER: The gentleman from Missouri [Mr. Bolling].

MR. BOLLING: Mr. Speaker, under the rules I withdraw House Resolution 665.

MR. OLIVER P. BOLTON: Mr. Speaker, a parliamentary inquiry.

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, that takes unanimous consent, and I object.

THE SPEAKER: The Chair will state that it does not take unanimous con-

5. 110 CONG. REC. 7303, 7304, 88th Cong. 2d Sess.

sent to withdraw the resolution in the House.

MR. OLIVER P. BOLTON: Mr. Speaker, it is my understanding that the Speaker was addressing the Member now addressing the Chair and had not given an answer to my question. Therefore, the recognition of the Member from the other side, the gentleman from Missouri [Mr. Bolling] was out of order. Am I incorrect?

THE SPEAKER: The recognition of the gentleman from Missouri [Mr. Bolling] terminated the parliamentary inquiry.

MR. OLIVER P. BOLTON: In other words, the Speaker did not answer the parliamentary inquiry; is that correct?

THE SPEAKER: Since the resolution was withdrawn, the parliamentary inquiry was ended.

MR. OLIVER P. BOLTON: If the Speaker will respectfully permit, the gentleman from Ohio would suggest that the question had been asked before the resolution had been withdrawn.

THE SPEAKER: The Chair will state that the Chair has the power of recognition. Now that the resolution has been withdrawn, the unfinished business is the reading of the engrossed copy of H.R. 10222.

MR. OLIVER P. BOLTON: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. OLIVER P. BOLTON: The Speaker had recognized the gentleman from Ohio for a parliamentary inquiry. The parliamentary inquiry had been made. The parliamentary inquiry had not been answered and yet the Chair recognized the gentleman from Missouri.

THE SPEAKER: Which the Chair has the power to do.

The Clerk will read the engrossed copy of H.R. 10222

§ 3.23 The power of recognition vested in the presiding officer is not infringed upon if unanimous consent is requested and received to recognize a Member to speak at a certain time.

The Chairman of the Committee of the Whole, being also a Member, may invoke his right to object to a unanimous-consent request.

On Dec. 9, 1947,[6] the Chairman of the Committee of the Whole, Earl C. Michener, of Michigan, responded to an inquiry concerning possible infringement on the power of recognition by unanimous consent being given a Member to speak:

THE CHAIRMAN: As the Chair understands the rule, the presiding officer in the Committee is in a dual capacity. First, he is selected to be the presiding officer during the consideration of the bill. But by accepting such appointment he does not lose his right to vote and object as any other Member. That is, his district is not deprived of its rights by virtue of the Chairman selection. That being true, the Chair not making any objection, I cannot see how the rights of the Chair are infringed upon if the Committee, by unanimous consent, wants to provide that a certain individual may speak at a certain

6. 93 CONG. REC. 11231, 80th Cong. 1st Sess.

hour during the Committee consideration. If the Chair is agreeable and all Members are agreeable.

Controlling Scope of Debate

§ 3.24 The scope of debate in the House is generally a matter of relevancy which the Speaker may determine when a point of order is raised.

On Dec. 10, 1963,[7] Speaker John W. McCormack, of Massachusetts, discussed the scope of House debate during a ruling on a point of order related thereto.

MR. [BYRON G.] ROGERS of Colorado: The point of order is we are now considering the rule on the indigent defendant's bill. The gentleman from Kansas is talking about the civil rights bill, and is out of order.

THE SPEAKER: The Chair is prepared to rule.

The Chair takes a lenient attitude toward debate in the House. If the gentleman from Kansas feels that there is anything involved in this bill that might be connected with legislation concerning civil rights, the Chair feels that the gentleman, who is conversant with the rules, is proceeding and will proceed in order.

The gentleman from Kansas may proceed.

MR. [HAROLD R.] GROSS [of Iowa]: Mr. Speaker, will the gentleman yield?

MR. [WILLIAM H.] AVERY [of Kansas]: Yes, Mr. Speaker, I yield to the gentleman from Iowa.

MR. GROSS: Mr. Speaker, I ask unanimous consent that the gentleman from Kansas have permission to speak out of order.

THE SPEAKER: Without objection, it is so ordered.

There was no objection.

Controlling Time for Debate

§ 3.25 The presiding officer supervises the timing of the proceedings by a clock in the House Chamber.

On Feb. 10, 1964,[8] when a discrepancy existed in the times shown on the clocks in the House Chamber, the following question was asked of the Chairman of the Committee of the Whole, Eugene J. Keogh, of New York:

MR. [ROBERT H.] MICHEL [of Illinois]: By what clock are we operating this afternoon?

THE CHAIRMAN: The one the Chair is looking at.[9]

§ 3.26 It is within the authority of the Chairman of the Committee of the Whole to supervise the control of time for debate, and when he is not informed of a delegation of control of time the delegation is ineffective.

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7. 109 CONG. REC. 23968, 88th Cong. 1st Sess.

8. 110 CONG. REC. 2724, 88th Cong. 2d Sess.

9. *Parliamentarian's Note:* The clock the Chair was "looking at" was the clock on the north wall of the House Chamber.

On Jan. 31, 1964,[10] during the course of the following debate the Chairman of the Committee of the Whole, Eugene J. Keogh, of New York, indicated the manner by which a delegation of control of time for debate is effective.

MR. [BASIL L.] WHITENER: [of North Carolina]: If the gentleman will get me more time, I will be glad to yield to the gentleman.

MR. [PETER W.] RODINO [Jr., of New Jersey]: I will give the gentleman 1 extra minute.

MR. WHITENER: I yield to the gentleman, but please do not take more than 1 minute.

THE CHAIRMAN: The Chair has to inform the gentleman from North Carolina that the gentleman from New Jersey does not have control of the time.

MR. WHITENER: Then, Mr. Chairman, I must respectfully decline to yield to the gentleman. . . .

MR. [BYRON G.] ROGERS of Colorado: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state the point of order.

MR. ROGERS of Colorado: Mr. Chairman, the gentleman from New Jersey is now in charge of the time in the absence of the chairman, the gentleman from New York [Mr. Celler].

THE CHAIRMAN: The Chair was not informed that the gentleman from New York is absent nor is the Chair informed that the gentleman from New Jersey is now in charge of the time.

The gentleman from North Carolina is recognized.

MR. WHITENER: I thank the chairman. . . .

THE CHAIRMAN: The time of the gentleman has expired.

MR. RODINO: Mr. Chairman, I yield myself 10 minutes, and I wish to state I am acting for the chairman of the Committee on the Judiciary who asked me to take charge of the time for him in his absence.

THE CHAIRMAN: The gentleman from New Jersey is recognized.

§ 3.27 It is within the authority of the Speaker and the House, and not the Chairman of the Committee of the Whole, to decide whether time for continued consideration of an unfinished bill will be given in the legislative program.

On Apr. 26, 1948,[11] the Chairman of the Committee of the Whole, Leslie C. Arends, of Illinois, responded to an inquiry about what time might be provided for a continuation of consideration of an unfinished bill.

MR. AUGUST H. ANDRESEN [of Minnesota]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN (Mr. Arends): The gentleman will state it.

MR. AUGUST H. ANDRESEN: Mr. Chairman, I understand that the Committee will rise at 4 o'clock. It is also my understanding of the rules that

10. 110 CONG. REC. 1538, 88th Cong. 2d Sess.

11. 94 CONG. REC. 4873, 80th Cong. 2d Sess.

this Committee should meet tomorrow in order to have continuous consideration of the pending legislation.

I would like to have a ruling of the Chair as to whether or not the rules provide that a day may intervene so that this legislation may be taken up on Wednesday.

THE CHAIRMAN: The Chair may say that is a matter for the Speaker of the House and the House itself to determine. It is not something within the jurisdiction of the [Chairman of the Committee of the Whole] to decide.

§ 3.28 The Speaker has set policy with regard to the practice of one-minute speeches by Members.

On July 22, 1968,[12] Speaker John W. McCormack, of Massachusetts, discussed the practice of permitting one-minute speeches from the floor of the House:

MR. [LESLIE C.] ARENDS [of Illinois]: . . . Would it be proper if Members were permitted to extend their remarks and make their 1-minute speeches at the end of the legislative day in order that we might just get started right away on the legislative program when we meet.

MR. MCCORMACK: I call the 1-minute period "dynamic democracy." I hesitate to take away the privilege of a Member as to speaking during that period and it has become a custom and a practice of the House. I think it is a very good thing to adhere to that custom and practice.

It is only on rare occasions that Members have not been recognized for that purpose. How would the gentleman feel if he had a 1-minute speech to make and he had sent out his press release and then found out that the Speaker was not going to recognize him? Surely, I think, the gentleman would feel better if the Speaker did recognize him; would he not?

MR. ARENDS: According to a person's views—I think it would be the reverse.

MR. MCCORMACK: Does the gentleman mean at the end of the day?

MR. ARENDS: You said that this might be "dynamic democracy." I would rather it would be started when we have the time rather than be started at noon.

MR. MCCORMACK: It is an integral part of the procedure of the House and I like to adhere to it. Very seldom have I said to Members that I will accept only unanimous-consent requests for extensions of remarks. I hesitate to do it. I think every Member realizes that I am trying to protect their rights.

MR. [DURWARD G.] HALL [of Missouri]: I thank the gentleman for yielding.

I think the question is not that of eliminating the 1-minute speeches after the Members have their news releases out. But it is a question of not going back after the second or third rollcall and rerecognizing speeches. In this connection does "dynamic democracy" mean the same thing as benign but beneficial dictatorship—which does have merit?

MR. MCCORMACK: The gentleman from Missouri has raised a very interesting question. Many times I have said to myself, I am going to announce

12. 114 CONG. REC. 22633, 22634, 90th Cong. 2d Sess.

that the 1-minute speeches will have to be at 12 o'clock and not thereafter. But I have not come to the making of that resolution because I just could not bring myself to it. It is somewhat late in this session to do it and when, of course, we Democrats control the House in the next Congress, and I hope I will be Speaker, then I might do it. I am not promising it, but I may do it. But there is something to what the gentleman from Missouri says.

MR. HALL: I would appreciate it if we had a little more "dynamic democracy" so that we could get to work on the legislative program.

MR. MCCORMACK: I realize that any Member who wants to make a 1-minute speech ought to be here at 12 o'clock. But we are all human beings. None of us are perfect.

On June 17, 1970,[13] Speaker McCormack made the following announcement:

THE SPEAKER: The Chair will recognize Members for unanimous-consent requests to extend remarks, and so forth, or for 1-minute speeches with yielding back of the time, and later in the day the Chair will recognize Members for 1-minute speeches if Members desire to present them. . . .

MR. [WILLIAM V.] ALEXANDER [Jr., of Arkansas]: Mr. Speaker, I ask unanimous consent to address the House for 1 minute, to revise and extend my remarks and to include extraneous matter.

THE SPEAKER: Is there objection to the request of the gentleman from Arkansas?

MR. [HAROLD R.] GROSS [OF IOWA]: Mr. Speaker, reserving the right to object——

THE SPEAKER: The gentleman from Arkansas asked unanimous consent to address the House for 1 minute.

MR. GROSS: I understand that, Mr. Speaker, and I reserved the right to object.

Mr. Speaker, when the session opened this morning the Speaker—very providently, I thought—in the interest of—getting on with the legislative business, precluded 1-minute speeches. However, I am not at all certain that it was done for the purpose of expediting the legislation, but rather to prevent 1-minute speeches on the resolution just passed.

THE SPEAKER: . . . As far as the Chair is concerned the custom of the 1-minute speech procedure is adhered to as much as possible because the Chair thinks it is a very healthy custom.

The Chair had the intent, after the disposition of the voting rights bill, to recognize Members for 1-minute speeches or further unanimous-consent requests if they so desired to do so.

Construing and Applying House Rules

§ 3.29 It has been held within the authority of the Speaker to look to all pertinent facts concerning a matter in order to construe House rules sought to be applied thereto.

On Aug. 13, 1937,[14] Speaker William B. Bankhead, of Ala-

13. 116 CONG. REC. 20158, 20245, 91st Cong. 2d Sess.

14. 81 CONG. REC. 8842–45, 75th Cong. 1st Sess.

bama, described the circumstances that could be considered in construing a rule of the House.

MR. [JOHN H.] KERR [of North Carolina]: Mr. Speaker, I offer a privileged report in the election contest of Roy against Jenks.

The Clerk read the title of the resolution.

THE SPEAKER: Referred to the House Calendar and ordered printed.

MR. [CHARLES W.] TOBEY [of New Hampshire]: Mr. Speaker, I rise to make a point of order against the acceptance by the House of the report and resolution just offered by the chairman of Elections Committee No. 3.

Mr. Speaker, it is my contention that the making of this report constitutes a violation of section 47 of rule 11 of the rules of the House of Representatives, which reads as follows:

> 47. The several elections committees of the House shall make final report to the House in all contested election cases not later than 6 months from the first day of the first regular session of the Congress to which the contestee is elected except in a contest from the Territory of Alaska in which case the time shall not exceed 9 months.

The language of this rule is not permissive; it is mandatory, compelling. . . .

After lengthy debate Speaker Bankhead said:

THE SPEAKER: The Chair is prepared to rule on this point of order. . . .

. . . Of course, this is a rather serious proposition which has been submitted to the Chair, because it involves the right of the contestant or the contestee to have the issue presented to this House as to whether or not the contestant or the contestee is entitled to a seat on the floor. . . .

The Chair thinks it proper in the construction of this issue not only to take into consideration the verbiage of this rule but also a provision of the Constitution of the United States which has been cited in this argument. Section 5 of article I of the Constitution, in part, provides:

> Each House shall be the judge of the elections, returns, and qualifications of its own Members.

The Chair is of opinion that although the terms of the rule are in the language read by the Chair and as argued by the gentleman from New Hampshire, yet, nevertheless, the Chair must look at all the facts in the case in order to reach a decision as to what was the fair intention of the House of Representatives in the adoption of this rule. . . .

The contestee and the contestant having each more than 6 months under the statutes to present their case, the Chair is of opinion that under all of the circumstances the fair and reasonable and just interpretation of this rule justifies him in overruling the point of order, and the Chair does overrule the point of order.[15]

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15. *Parliamentarian's Note:* The first regular session of the 75th Congress began on Jan. 5, 1937. The point of order in this case was that the time period under the rule in question was six months, and therefore the committee did not have jurisdiction

Ruling on Resolutions

§ 3.30 The Speaker normally does not rule on whether a resolution is a privileged one until the reading of it is concluded.

On July 9, 1935,[16] a Member rose to present what he considered to be a privileged resolution.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I have a matter of correcting a false report that should require not more than a few minutes. For the purpose of getting it immediately before the House, I rise to a question of the privileges of the House and present a privileged resolution.

The Clerk read the resolution, as follows:

RESOLUTION

Whereas all over the United States the press has erroneously asserted that in a brusque, uncalled-for manner the Doorkeeper of the House of Representatives forced a mother and child to leave the House gallery because she was nursing her baby, and inferentially censuring the House of Representatives for not allowing a mother to nurse her baby in the House gallery. . . .

. . . Therefore be it

Resolved, That said report emanating from Washington and published generally in the United States was incorrect and without warrant.

MR. [JOHN E.] RANKIN [of Mississippi] (interrupting the reading of the resolution): Mr. Speaker, I make the point of order that enough of the resolution has been read to show that it is not privileged.

MR. BLANTON: It should be privileged when the House of Representatives has been charged with having shown disrespect and an inexcusable indignity to an American mother.

MR. RANKIN: Mr. Speaker, it does not reflect on the dignity of the proceedings of the House at all.

THE SPEAKER [Joseph W. Byrns, of Tennessee]: The Clerk will finish the reading of the resolution. The Chair cannot pass on the matter until the reading of the resolution has been concluded. . . .

§ 3.31 Although the Chairman of the Committee of the Whole does not ordinarily rule on the effect of an amendment, he has interpreted questioned language in order to rule on a point of order.

On Apr. 26, 1966,[17] a point of order was raised concerning the effect of a proposed amendment.

MR. [JAMIE L.] WHITTEN [of Mississippi]: Mr. Chairman, I make a

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on Aug. 13 to submit the report. The issue of the contested election was filed with the committee on July 21, 1937, and immediately referred to the Committee on Elections No. 3. Thus in construing the rule, the Speaker in effect held that the six months' time period in question was directory and not mandatory in nature.

16. 79 CONG. REC. 10905, 74th Cong. 1st Sess.

17. 112 CONG. REC. 8968, 8969, 89th Cong. 2d Sess.

point of order against the amendment offered by the gentleman from Illinois on the ground that it is legislation on an appropriation bill. . . .

THE CHAIRMAN [Eugene J. Keogh, of New York]: The Chair is prepared to rule.

The gentleman from Illinois [Mr. Finley] has offered an amendment . . . to which amendment the gentleman from Mississippi has made a point of order on the ground that it is legislation on an appropriation act.

The language sought to be inserted by the amendment reads as follows:

> No funds appropriated by the Act shall be used to formulate or administer a Federal crop insurance program for the current fiscal year that does not meet the administrative and operating expenses from premium income.

It might be said that the effect of any proposed amendment is truly not within the competence of the Chair. But a reading of this language indicates to this occupant of the chair that there is here sought an express limitation on the funds appropriated by the pending bill and the Chair, therefore, overrules the point of order.

Inquiries by Chair

§ 3.32 The Chairman of the Committee of the Whole may inquire of a Member offering an amendment the purpose of including therein a reference to existing law.

On Oct. 10, 1963,[18] the Chairman of the Committee of the Whole, Richard Bolling, of Missouri, made the following inquiry of a Member:

THE CHAIRMAN: The Chair would like to ask the gentleman from Washington a question. What is the reason for the inclusion of language at the end of the amendment reading:

> Except pursuant to an agreement hereafter made by the President by and with the advice and consent of the Senate as provided by section 205 of the National Aeronautics and Space Act of 1958.

The Chair, to make it clear why he is asking the question, has examined section 205 of that act. That says:

> INTERNATIONAL COOPERATION
>
> Sec. 205. The Administration, under the foreign policy guidance of the President, may engage in a program of international cooperation in work done pursuant to this Act and in the peaceful application of the results thereof, pursuant to agreements made by the President with the advice and consent of the Senate.

The problem the Chair is considering is why there is any need to include the language at the end of the amendment unless in some way it changes existing law?

MR. [THOMAS M.] PELLY [of Washington]: Mr. Chairman, I would say that it does not change existing law but simply follows it. But, in order to clarify this matter I ask unanimous consent to strike from the amendment the words from "except pursuant to an agreement" to the end.

THE CHAIRMAN: Is there objection to the request of the gentleman from Washington?

18. 109 CONG. REC. 19260, 88th Cong. 1st Sess.

There was no objection.

Answering Inquiries

§ 3.33 The Speaker may answer parliamentary inquiries regarding the applicability of the rules of the House to standing committees.

On Feb. 15, 1949,[19] parliamentary inquiries were made concerning the applicability of the House rules to the standing committees.

MR. [EARL] CHUDOFF [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER [Sam Rayburn, of Texas]: The gentleman will state it.

MR. CHUDOFF: Mr. Speaker, I should like to know whether the committees of this House operate under the same rules as the House.

THE SPEAKER: The rules of the House so provide.

MR. CHUDOFF: Mr. Speaker, I should like to know further whether this House has a right to appeal from a ruling of the Chair.

THE SPEAKER: Any Member has the right to appeal from the ruling of the Chair.

MR. CHUDOFF: I should like to know whether, under that ruling, members of the committee can appeal from the ruling of the chairman of the committee.

THE SPEAKER: They can.

MR. CHUDOFF: So that the chairman of a committee who had his ruling appealed from would have no right other than to allow that appeal to go before the entire committee; is that right, Mr. Speaker?

THE SPEAKER: The rules of the House provide that the rules of the House are made the rules of its standing committees so far as applicable. The Members of the House have a right to appeal from a decision of the Chair. That would also apply in a committee.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RANKIN: Suppose a question is raised here and a roll call is asked for, and one-fifth of the Members rise and ask for a roll call, and the Chair holds that a roll call is called for, no appeal from that ruling would be in order, would it?

THE SPEAKER: That would be in accordance with the rules of the House.

MR. RANKIN: Certainly. That is just what happened in the committee this morning. I demanded a roll call and asked for a showing of hands, and more than one-fifth voted for a roll call. One member tried to appeal from the decision, which, of course, was ridiculous. Then a few of them walked out, evidently to keep from going on record.

THE SPEAKER: The Chair was only answering the parliamentary inquiry. He does not know what happened in the committee.

§ 3.34 The Speaker may decline to immediately answer a parliamentary inquiry

19. 95 CONG. REC. 1212, 1213, 81st Cong. 1st Sess.

when the inquiry would better be taken under advisement.

On July 21, 1956,[20] a parliamentary inquiry was directed to Speaker Sam Rayburn, of Texas:

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state the parliamentary inquiry.

MR. HOFFMAN [of Michigan]: Mr. Speaker, can a regular or select committee of the House authorize its chairman to file, subsequent to adjournment sine die, with the Clerk for printing as House documents reports which are approved by a majority of the members of the committee, if such reports do not purport to represent the views and conclusions of the entire membership?

THE SPEAKER: That is something the Chair would certainly have to take under advisement and it would take some time.

§ 3.35 The Speaker may request that a parliamentary inquiry be withheld under certain circumstances until the Speaker has had sufficient time to determine certain facts.

On July 8, 1957,[1] a parliamentary inquiry was addressed to Speaker Sam Rayburn, of Texas:

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, I desire to propound a parliamentary inquiry.

THE SPEAKER: The gentleman will state the parliamentary inquiry.

MR. SMITH of Virginia: Mr. Speaker, the bill, H.R. 6127, known as the civil rights bill, as it passed the House, contained an amendment, one amendment, which should have been printed on page 13 where it was adopted. By inadvertence an error was made in the Journal and in the printing of the bill, and the bill was printed so that the amendment appears at the bottom of page 8 of the bill instead of as a new section on page 13. It was so messaged to the other body in the erroneous form. In other words, the House sent to the other body a bill which is not in conformity with the action of the House. The bill was received by the other body and was read the first time and was then read the second time and it is now on the calendar of the other body. My parliamentary inquiry is whether it is not the proper procedure at this time to ask the other body to return the bill to the House for action to conform to what actually took place and to conform with the Record and the Journal of the House.

THE SPEAKER: The Chair would ask the gentleman from Virginia to withhold his inquiry for the purpose of enabling the Chair to look further into the matter.

MR. SMITH of Virginia: I thank the Speaker.

§ 3.36 The Speaker, and not the Chairman of the Committee of the Whole, is considered the proper person to

20. 102 CONG. REC. 13832, 84th Cong. 2d Sess.

1. 103 CONG. REC. 11012, 85th Cong. 1st Sess.

answer parliamentary inquiries regarding points of order which might be made against a conference report under consideration in the House.

On May 18, 1966,[2] a parliamentary inquiry was addressed to the Chairman of the Committee of the Whole, Eugene J. Keogh, of New York:

MR. [CHARLES R.] JONAS [of North Carolina]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state his parliamentary inquiry.

MR. JONAS: In case the bill agreed on in the conference should delete this amending language, and the bill which came back to the House contained the objectionable language, against which the point of order was lodged, could a point of order be made against the conference report to strike that language?

THE CHAIRMAN: The present occupant of the chair would not assume to undertake to suggest what would be done by the Speaker in that event.

MR. JONAS: That would be a matter for the Speaker to decide.

THE CHAIRMAN: The gentleman is correct.

§ 3.37 The Speaker, and not the Chairman of the Committee of the Whole, is considered the person having authority to answer parliamentary inquiries regarding voting requirements in the House.

On June 13, 1946,[3] a parliamentary inquiry was addressed to the Chairman of the Committee of the Whole, William M. Whittington, of Mississippi:

MR. [FRANCIS H.] CASE [of South Dakota]: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. CASE: Would it be possible to get a rule making in order a paragraph which had previously been stricken from the bill on a point of order, unless that rule was adopted by a two-thirds vote?

THE CHAIRMAN: The Chair may say to the gentleman that that inquiry is not one that can be answered in the Committee of the Whole. It is a matter that would have to be determined by the Speaker of the House.

§ 3.38 It is within the authority of the Speaker, and not the Chairman of the Committee of the Whole, to answer parliamentary questions concerning possible procedures whereby the House could authorize the Committee of the Whole to sit in executive session.

On May 9, 1950,[4] a parliamentary inquiry was addressed to the

2. 112 CONG. REC. 10895, 89th Cong. 2d Sess.

3. 92 CONG. REC. 6877, 79th Cong. 2d Sess.

4. 96 CONG. REC. 6746, 81st Cong. 2d Sess.

Chairman of the Committee of the Whole:

MR. [ERRETT P.] SCRIVNER [of Kansas]: Mr. Chairman . . . I would submit a parliamentary inquiry as to whether or not an executive session could be held and, if so. what procedure would be necessary to bring that to pass before we are asked to vote upon the $350,000,000 additional.

THE CHAIRMAN [Mike Mansfield, of Montana]: The Chair will state to the gentleman from Kansas that the Committee of the Whole would have no control over that. That would be a matter for the House itself to decide.

MR. SCRIVNER: I understand that, of course, and raised the question for information of the Members. Since it is a matter for the House to determine, as a further parliamentary inquiry, what would be the method followed to take that action?

THE CHAIRMAN: The Chair will say to the gentleman from Kansas that a parliamentary inquiry of that sort should be addressed to the Speaker rather than the chairman.

Accepting subpena

§ 3.39 The Speaker accepts service of a subpena duces tecum in his official capacity as Speaker of the House.

On Feb. 11, 1965,[5] Speaker John W. McCormack, of Massachusetts, made an announcement concerning a subpena duces tecum from a U.S. District Court.

THE SPEAKER: The Chair desires to make a statement.

The Chair, in his official capacity as Speaker of the House, has been served with a subpena duces tecum, issued by the U.S. District Court for the District of Columbia, commanding him to appear in the said court to testify in the case of the United States of America against Russell Nixon, Dagmar Wilson, and Donna Allen on the 18th day of March 1965.

Under the precedents of the House, the Chair is unable to comply with this subpena without the consent of the House, the privileges of the House being involved. The Chair therefore submits the matter for the consideration of this body. The Clerk will read a copy of the subpena. . . .[6]

Certifying for Contempt

§ 3.40 The Speaker may be authorized by a formal House resolution to certify to a U.S. attorney the names of persons found to be in contempt of a House committee.

On Mar. 28, 1946,[7] the following resolution was introduced in the House:

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 573) and ask for its immediate consideration.

5. 111 CONG. REC. 2645, 89th Cong. 1st Sess.

6. *Parliamentarian's Note:* In order to avoid the problems which might be associated with his being served in the Capitol Building, the Speaker agreed in advance to receive the deputy marshal in his hotel suite.

7. 92 CONG. REC. 2745. 79th Cong. 2d Sess.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following persons to produce before the said committee for its inspection the books, papers, and records of an unincorporated organization known as the Joint Anti-Fascist Refugee Committee, with offices at 192 Lexington Avenue, New York, N.Y., together with all the facts relating thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law: . . .

[Names]

On Aug. 2, 1946,[8] the following resolution was introduced in the House:

THE SPEAKER: [Sam Rayburn, of Texas]: The Clerk will read the resolution.

The Clerk read as follows:

Resolved, That the Speaker of the House of Representatives certify the foregoing report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following person to produce before the said committee for its inspection certain books, papers, and records which had been duly subpenaed, and to testify under oath concerning all pertinent facts relating thereto; under seal of the House of Representatives to the United States attorney for the District of Columbia to the end that the said person named below may be proceeded against in the manner and form provided by law; Richard Morford, 114 East Thirty-second Street, New York, N.Y.

§ 3.41 When the Speaker certifies to a U.S. District Attorney for prosecution (2 USC § 194) the name of a person a House committee has found to be in contempt, it has been held that no further action of the House is required for the courts to begin proceedings.

On Nov. 14, 1944,[9] Speaker Sam Rayburn, of Texas, made an announcement concerning his certification to the U.S. Attorney of the District of Columbia of statements of fact concerning the willful refusal of certain individuals to testify for a special committee of the House:

THE SPEAKER: The Chair desires to announce that during the past recess of the Congress the Special Committee to Investigate Campaign Expenditures authorized by House Resolution 551, Seventy-eighth Congress, reported to and filed with the Speaker statements of facts concerning the willful and deliberate refusal of Edward A. Rumely of the Committee for Constitutional Government and Joseph P. Kamp of the Constitutional Educational League, Inc., to testify and to produce the books, papers, records, and documents

8. 92 CONG. REC. 10748, 79th Cong. 2d Sess.

9. 90 CONG. REC. 8163, 78th Cong. 2d Sess.

of their respective organizations before the said Special Committee of the House, and the Speaker, pursuant to the mandatory provisions of Public Resolution No. 123, Seventy-fifth Congress, certified to the United States attorney, District of Columbia, the statement of facts concerning the said [persons]. . . .

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RANKIN: Mr. Speaker, what is necessary to dispose of the document which the Speaker has just read? Will it require a resolution by the House or will it be referred to some committee?

THE SPEAKER: That is not necessary under the statute. It is before the court now.

MR. RANKIN: I understand, but in order to call for court action it will be necessary, as I understand it, to have a resolution from the House.

THE SPEAKER: The Chair thinks not, under the law.

§ 3.42 Once authorized by the House, the Speaker certifies to U.S. District Attorneys for prosecution the names of persons that House committees have found to be in contempt.

On Aug. 24, 1960,[10] Speaker San Rayburn, of Texas, made the following announcement:

THE SPEAKER: The Chair desires to announce that, pursuant to sundry resolutions of the House, he has, today, made certifications to the U.S. attorney, District of Columbia, and to the U.S. attorney, Commonwealth of Puerto Rico, as follows:

To the U.S. attorney, District of Columbia:

House Resolution 606, the refusal of Austin J. Tobin to furnish certain documents to the Committee on the Judiciary. . . .

Ending Contempt Proceedings

§ 3.43 The Speaker must be formally authorized by the House to certify to a U.S. District Attorney the name of a person who has purged himself of contempt of a House committee for purposes of ending prosecution of the person.

On July 23, 1954,[11] the following resolution was introduced in the House:

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, I offer a resolution (H. Res. 681) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the Committee on Un-American Activities of the House of Representatives concerning the action of Francis X. T. Crowley in purging himself of contempt of the House of Representatives of the

10. 106 CONG. REC. 17479, 86th Cong. 2d Sess.

11. 100 CONG. REC. 11650, 83d Cong. 2d Sess.

United States, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia to the end that legal proceedings based upon the matter certified by the Speaker pursuant to H. Res. 541, 83d Congress, second session, against the said Francis X. T. Crowley may be withdrawn and dropped in the manner and form provided by law.

Emergency Recesses

§ 3.44 In cases of emergency, the Speaker has the inherent power to declare recesses of the House subject to the call of the Chair.

On Mar. 2, 1943,[12] Speaker Sam Rayburn, of Texas, declared a recess of the House pursuant to his inherent powers in the case of an emergency.

THE SPEAKER: The time of the gentleman from Massachusetts has expired.

MR. [JACK] NICHOLS [of Oklahoma]: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Nichols: On page 1, line 4, after "on" and before "aviation", insert "civil and commercial."

Mr. [ALFRED L.] BULWINKLE [of North Carolina]: I rise in opposition to the amendment.

THE SPEAKER: The gentleman from North Carolina is recognized for 1 hour.

MR BULWINKLE: Mr. Speaker——

RECESS

THE SPEAKER: Pursuant to the inherent power lodged in the Presiding Officer in case of emergency, the Chair declares this House in recess subject to the call of the Chair for the purpose of participating in a practice air-raid drill. The alarm has sounded. Members will leave the Chamber as rapidly as possible, and the galleries will be cleared.

Accordingly (at 2 o'clock and 18 minutes p.m.) the House stood in recess, subject to the call of the Speaker.

On Mar. 1, 1954,[13] Speaker Joseph W. Martin, Jr., of Massachusetts, without authorization, declared the House in recess.

At approximately 2 o'clock and 30 minutes p.m. a demonstration and the discharge of firearms, from the southwest House Gallery, interrupted the counting of the vote; the Speaker, pursuant to the inherent power lodged in the Presiding Officer in the case of grave emergency, after ascertaining that certain Members had been wounded and to facilitate their care, at 2 o'clock and 32 minutes p.m. declared the House in recess, subject to the call of the Chair.

Enforcing Rules of Comity

§ 3.45 The Speaker, on the part of the House, has within his

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12. 89 CONG. REC. 1487, 78th Cong. 1st Sess.

13. 100 CONG. REC. 2434, 83d Cong. 2d Sess.

For a more detailed treatment of this precedent, see Ch. 4, supra.

authority the enforcement of the customary rules of comity between the House and the Senate.

On Jan. 17, 1955,[14] Speaker Sam Rayburn, of Texas, announced his policy with the regard to the rule of comity between the two Houses.

THE SPEAKER: The Chair desires to make this statement at the beginning of this session with reference to something that has been maintained by every Speaker of the House since the present occupant of the Chair has been a Member of this body, and that is that the House of Representatives, regardless of what any other body or any other individual does, has maintained strictly those rules and regulations which protect and perpetuate the comity between the two Houses. And when any Member of this House rises to make remarks about what has happened in another body or about any individual in that body, the present occupant of the Chair will certainly see that the rules of the House and the rules of comity between the two Houses are enforced.

On Mar. 26, 1964,[15] a Member made reference to a Senator in the course of debate:

MR. [LOUIS C.] WYMAN [of New Hampshire]: Mr. Speaker, I want to express myself as being in whole-hearted disagreement with the amazing, incredible, and dismaying remarks regarding American foreign policy of the chairman of the Senate Foreign Relations Committee made on the Senate floor yesterday. . . .

May the Lord help us should this sort of policy be in effect——

MR. [KENNETH] HECHLER [of West Virginia]: Mr. Speaker, a point of order.

THE SPEAKER: [John W. McCormack, of Massachusetts]: The gentleman will state it.

MR. HECHLER: Mr. Speaker, the gentleman's remarks are directed to a Member of the other body, which is a violation of the rules of the House.

THE SPEAKER: The Chair will say that under the rules no Member may refer to a Member of the other body, or to a speech another Member has made in that body.

The gentleman from New Hampshire will proceed in order.

MR. WYMAN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:: The gentleman will state it.

MR. WYMAN: Mr. Speaker, I had no intention to violate the rules of the House. The speech is a matter of record. It was made by the chairman of the Foreign Relations Committee of the Senate, and I do not know how I could refer to it otherwise. The speech is in the Record, and it is before us at our seats.

May I inquire as to how I may now properly refer to the speech and disassociate myself from its views without referring to its author?

THE SPEAKER: The Chair has stated what the rules of the House are. The

14. 101 CONG. REC. 386, 84th Cong. 1st Sess.

15. 110 CONG. REC. 6361, 88th Cong. 2d Sess.

Chair did not use the word "violate." The Chair did not go that far. The Chair simply says reference to a Member of the other body is not proper, and is not consistent with the rules of the House. The gentleman was recognized to proceed in order.

MR. WYMAN: Mr. Speaker, I will, of course, accord with the rule and I will therefore refer only to prominently publicized remarks appearing on the front pages of the Nation's newspapers of last night and this morning

§ 4. Limitations on the Speaker's Powers

As previously noted, the Speaker is not unlimited in the exercise of his various powers. The House rules and precedents serve not only as a guide for his actions but also as a constraint on them. In Jefferson's Manual, the author noted the importance of such constraints:

> And whether these forms be in all cases the most rational or not is really not of so great importance. It is much more material that there should be a rule to go by than what that rule is; that there may be a uniformity of proceeding in business not subject to the caprice of the Speaker. . . .[16]

Thus, the Speaker is constrained to follow formal procedures when they exist. For example, the Speaker normally does not refer matters to the various House committees without first examining the measures[17] and conferring with the House Parliamentarian.[18]

The Speaker is, of course, guided in his duties by the House rules and precedents. Thus, he normally does not comment on the advisability of one rule over another in a case where a previous rule is in conflict with a current rule,[19] nor does he normally rule on a point of order in such a way as to overturn previous rulings, though he has the power to do so.[1]

Though in certain circumstances it might seem helpful for the Speaker to interpret the Senate rules of procedure, he does not normally even attempt to do so.

Similarly, the Speaker does not rule on the effect of a resolution being considered by the House which deals with the House rules.[2]

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16. *House Rules and Manual* § 285 (1973).

17. See § 4.2, infra.

18. See § 4.3, infra. See Ch. 16, infra, for treatment of reference of bills to committees.

19. See § 4.4, infra. See Ch. 5, supra, for treatment of the House rules.

1. See § 4.5, infra. See Ch. 31, infra, for fuller treatment of the Speaker's rulings on points of order.

2. See § 4.8, infra.

Whether a Member may display exhibits during his remarks is a matter for the House and not the Speaker to decide.[3]

Tke Speaker's duty to rule on various points of order is limited in certain ways.[4] It is considered improper for the Speaker to rule, for example: on the constitutionality of measures;[5] on the effect of an amendment;[6] on the merits of a measure;[7] on the purpose of an amendment;[8] on the sufficiency, insufficiency, or binding effect of a committee report;[9] on the substantive effect of extraneous material in a committee report;[10] on the possible ambiguity of language in a measure;[11] on the propriety of instructions that might subsequently accompany a motion to recommit a measure;[12] on the propriety of an announced speech topic in advance of its delivery;[13] or on how the results of a vote should be construed.[14]

In many situations, the Speaker is entitled to perform certain actions only after the House has given him its formal authorization. Thus, for example, under normal circumstances, the Speaker must be authorized by the House prior to declaring a recess.[15] This authorization may later be vacated by the House.[16]

The Speaker must also be authorized to sign enrolled bills and joint resolutions during House adjournments.[17] The Speaker's signature may later be rescinded by House action.[18]

Congressional Record Policy

§ 4.1 Although the Speaker may have set policy regard-

3. See § 4.10, infra. See Ch. 29, infra, for fuller treatment of the Speaker's role in consideration and debate of legislative measures, and as to the use of exhibits.
4. See Ch. 31, infra, for fuller treatment of the Speaker's role vis-a-vis points of order.
5. See § 4.18, infra.
6. See § 4.19, infra.
7. See § 4.20, infra.
8. See § 4.21, infra.
9. See § 4.22, infra.
10. See § 4.23, infra.
11. See § 4.24, infra.
12. See § 4.25, infra. See Ch. 28, infra, for treatment of the germaneness rule generally.
13. See § 4.26, infra.
14. See §§ 4.27, 4.28, infra.
15. See § 4.34, infra. See also § 3.44, supra, for Speaker's power to declare recesses in an emergency. See Ch. 39, infra, for fuller treatment of the Speaker's role in recessing the House.
16. See § 4.35, infra.
17. See §§ 4.37, 4.38, infra. See Ch. 24, infra, for fuller treatment of the formal passage of bills.
18. See §§ 4.39, 4.40, infra

ing matter to be included in the Congressional Record, it is a matter for the House to decide whether such a policy, not being a House rule, shall be followed.

On Mar. 6, 1945,[19] Speaker Sam Rayburn, of Texas, discussed extension of remarks in the *Congressional Record* in response to a parliamentary inquiry:

> MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.
>
> MR. RANKIN: Mr. Speaker, on yesterday several Members made 1 minute speeches. Among them was the gentleman from Arkansas . . . the gentle man from Nevada . . . the gentleman from New York . . . and your humble servant.
>
> Without consulting the gentleman from Nevada . . . or the gentleman from Arkansas . . . or me, somebody down the line inserted our speeches in the Appendix of the Record and left the speech made by the gentleman from New York . . . in the body of the Record where it should be.
>
> As I understand the rules of the House, nobody in the Printing Office has any right to change this Record. One reason I am raising this question is this: The Speaker is familiar with the fact that a short time ago, I made a short address on the floor and when it was sent down to the Printing Office it had a heading on it, and . . . one of the Official Reporters in the well of the House here called down there at midnight and had that heading changed.
>
> It seems to me that we have come to the time, if Congress is going to control the Congressional Record, that we might as well find it out. I understand it has been the ruling of the Chair that where a Member makes a 1-minute speech, if he asks to insert extraneous matter that contains more than 300 words, the speech must be inserted in the Appendix of the Record. But where a Member makes his own speech and extends his own remarks, he has the right to have that speech appear in the Record at that point. . . .
>
> THE SPEAKER: The Chair can reiterate what he has said many times.
>
> When I became majority leader, I made the statement to the House, after consulting with the minority leader, who I think at that time was Mr. Snell, of New York, that if anyone asked to proceed for more than 1 minute before the legislative program of the day was completed we would object. Since then Members have not asked to proceed for more than a minute before the legislative program.
>
> Then Members began speaking for a minute and putting into the Record a long speech, so that 10 or a dozen pages of the Record was taken up before the people who read the Record would get to the legislative program of the day, in which I would think they would be the most interested. So we adopted the policy—there is no rule about it—of asking that when Members speak for a minute, if their remarks are more than 300 words, which many times can be said in a minute,

19. 91 CONG. REC. 1788, 1789, 79th Cong. 1st Sess.

their remarks or any extension of their remarks go in the Appendix of the Record. The Chair has on numerous occasions spoken to those who control the Record and asked them to follow that policy.

MR. RANKIN: Mr. Speaker, I take issue of course with that policy, because these 1-minute speakers do not abuse the Record, as a rule. The only question that has been raised about any abuse of the Record in regard to these 1-minute speeches was with reference to a speech made on the 5th of February, I believe, wherein the 1-minute speaker used several pages.

THE SPEAKER: The Chair might state also that when there is no legislative program in the House for the day, such speeches may go in, and they will go in as 1-minute speeches.

MR. [DANIEL A.] REED of New York: Mr. Speaker, verifying the statement, which, of course, needs no verification, I remember going to the Speaker and asking if it would be proper to put the speech in the body of the Record, and the Speaker said that there was no legislative program for the day and there was no reason why a Member could not do it. I assume that was on the 5th of February.

THE SPEAKER: That is correct.

Mr. Rankin: Let me say to the gentleman from New York that on yesterday one of the Members made a speech that you will find in the Record almost or quite as long as the speech of the gentleman from Nevada . . . or the one of the gentleman from Arkansas . . . or the one that I made. It was placed in the body of the Record, and it was in excess of 300 words. I can go back through the Record here and find numerous occasions.

If we are going to adopt the policy that everybody who speaks in the well of the House and uses over 300 words must have his speech printed in the Appendix, it should apply to all of us.

. . . I think this should be a matter to be settled by the membership of the House. . . .

THE SPEAKER: The House has that within its entire control at any time it desires to act upon the question. . . .

Mr. Rankin: Let me ask the Speaker now, I want to know, because the Members of the House are all interested, if Members, when they make a 1-minute speech, use more than 300 words, it is to be printed in the Appendix of the Record and not in the body?

THE SPEAKER: That is correct.

MR. RANKIN: So the rule will be applied to all alike?

THE SPEAKER: The Chair tries to apply that rule.

Announcing Reference of Bill

§ 4.2 The Speaker may refuse to say, in advance of examination of a bill, to which committee the bill will be referred.

On Feb. 1, 1966,[1] parliamentary inquiries were addressed to Speaker John W. McCormack, of Massachusetts:

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

1. 112 CONG. REC. 1716, 89th Cong. 2d Sess.

MR. HALL: . . . [M]y parliamentary inquiry would involve two questions: First, would reference of the President's message to the Committee on Foreign Affairs of this House automatically involve reference of bills referred to therein to the same committee of this House?

THE SPEAKER: It would depend upon the nature of the bill. The answer as to one does not necessarily follow as to the other. On the other hand, the provisions of the bill and the Rules of the House would govern.

MR. HALL: I thank the Speaker.

The second portion of my parliamentary inquiry, Mr. Speaker, if I may continue, is this: In view of the fact that the military and economic authorization requests are to be contained, according to the President's message, in two separate bills—again, for the first time in some years—would the military authorization part thereof, when submitted, apparently by the administration, per this message, be referred to the Legislative Committee on Armed Services of this House, or would it go to the Committee on Foreign Affairs?

THE SPEAKER: The Chair is not prepared to answer that inquiry at the present time, because the answer to the second inquiry would relate back to the first inquiry made by the gentleman from Missouri, and the response of the Chair to that inquiry.

In the opinion of the Chair, the second question is related to the first question, that question being answered that it does not necessarily follow that specific legislation would be referred to the committee to which the message would be referred.

MR. HALL: I thank the Speaker.

THE SPEAKER: Therefore, the Chair does not feel able to pass upon the second inquiry until the Chair has had an opportunity to observe the provisions of the bill.

Bill Reference After Consultation

§ 4.3 The Speaker may withhold referral of a Senate bill on the Speaker's Table until he has studied the question, consulted with the Parliamentarian, and decided on the proper jurisdiction.

On June 6, 1949,[2] Speaker Sam Rayburn, of Texas, indicated the nature of his duty to refer bills to committees.

MR. [WRIGHT] PATMAN [of Texas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. PATMAN: Mr. Speaker, may I ask the status of the bill S. 1008, which, I understand, was messaged over from the Senate on Friday last?

THE SPEAKER: The Chair understands it is on the Speaker's table.

MR. PATMAN: Will it be referred to the Committee on the Judiciary?

THE SPEAKER: The Chair does not know about that.

MR. PATMAN: What action will be necessary in order to get it referred to the committee?

THE SPEAKER: It is the duty and the privilege of the Chair to refer bills to

2. 95 CONG. REC. 7255, 81st Cong. 1st Sess.

whatever committee he desires, after consultation with the Parliamentarian, of course. The Chair will not recognize any motion in that regard at this time.

Speaker Guided by Rules and Precedents

§ 4.4 It has been considered not within the province of the Speaker to pass on the advisability of a more recent House rule which appears to conflict with previous ones.

On July 16, 1935,[3] Speaker Joseph W. Byrns, of Tennessee, responded to a point of order.

THE SPEAKER: The Chair is ready to rule.

Last Friday the gentleman from Texas [Mr. Blanton] kindly indicated that it was his purpose to make the point of order he has raised today when the House began consideration of the so-called "omnibus private claims bill." The gentleman from Texas has served in the House for many years with distinction and is familiar with the rules of the House, and the Chair has given considerable thought to the point of order since the gentleman indicated on last Friday that it was his purpose again to raise it on this occasion.

The gentleman from Texas, in his argument today, has contended that this rule conflicts with a number of rules to which he has referred. Without passing upon the question of whether or not there is a conflict, the Chair will state that if there is a conflict the rule last adopted would control. The Chair assumes that if this rule should be found to conflict with previous rules, that the House intended, at least by implication, to repeal that portion of the previous rule with which it is in conflict.

The Chair may state that in passing upon this point of order it is not the province of the Chair, nor has the Chair any such intention, to pass upon the question of whether or not this rule is advisable or whether a better one could have been adopted.

§ 4.5 Although it is within the authority of the Speaker to rule on a point of order in such a way as to overturn previous precedents of the House, the Speaker in most instances follows the precedents of the House when they are very clearly applicable to a given situation.

On June 24, 1958,[4] a point of order was raised against the following remarks of a Member:

MR. [THOMAS B.] CURTIS of Missouri: . . . If this committee [the Subcommittee of the Interstate and Foreign Commerce Committee on Legislative Oversight] does not intend to do its job, but rather intends to continue this campaign on these collateral issues which I have alleged, in my judgment, amount to defamation, I think it should be called sharply to

3. 79 CONG. REC. 11264, 74th Cong. 1st Sess.

4. 104 CONG. REC. 12121, 12122, 85th Cong. 2d Sess.

task first by the full Committee on Interstate and Foreign Commerce, and if the full committee fails in this responsibility then the House should take action. . . . Not only is this subcommittee, in my judgment, not doing the job that needs to be done, it has brought the institution again, in my judgment, into disrepute by disregarding the rules of the House and permitting a committee of the House to be used as a forum in this fashion.

MR. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I must object again and ask that those words be deleted.

MR. CURTIS of Missouri: I would like to ask the gentleman before he does, just what language is he objecting to?

MR. HARRIS: To the charge that this committee is violating the rules of the House.

MR. CURTIS of Missouri: Well, I certainly do charge that and I think it is proper to charge such a thing if I have presented the evidence. How else are we going to present the case to the House?

THE SPEAKER [Sam Rayburn, of Texas]: There is a long line of decisions holding that attention cannot be called on the floor of the House to proceedings in committees without action by the committee. The Chair has just been reading a decision by Mr. Speaker Gillett and the decision is very positive on that point.

MR. CURTIS of Missouri: Mr. Speaker, in addressing myself to that, may I say I am unaware of such a rule and I would argue, if I may, in all propriety, that that rule, if it does exist, should be changed because how else will the House ever go into the functioning and actions of its committees?

THE SPEAKER: That is not a question for the Chair to determine. That is a question for the House to change the rule.

MR. CURTIS of Missouri: Mr. Speaker, is it a rule or is it a ruling? If it is a ruling of the Chair, then it is appropriate for the Chair to consider it.

THE SPEAKER: The precedents of the House are what the Chair goes by in most instances. There are many precedents and this Chair finds that the precedents of the House usually make mighty good sense.

MR. CURTIS of Missouri: But the Chair can change a precedent. That is why I am trying to present this matter.

THE SPEAKER: If the Chair did not believe in the precedents of the House, then the Chair might be ready to do that, but this Chair is not disposed to overturn the precedents of the House which the Chair thinks are very clear.

Interpreting Senate Rules

§ 4.6 The Chairman of the Committee of the Whole may decline to interpret the rules or procedures of the Senate.

On June 6, 1961,[5] a Member raised the following question:

MR. [WILLIAM H.] AVERY [of Kansas]: Mr. Chairman, the language of the amendment now pending at the desk is the identical language that came into conference from the other body following action of the House, and my amendment in 1959 became incor-

5. 107 CONG. REC. 9627, 87th Cong. 1st Sess.

porated, I believe, in the conference report. Does that in any way change the legislative history of the amendment?

THE CHAIRMAN [Paul J. Kilday, of Texas]: The Chair may advise the gentleman that nothing is pending before the Chair, but by way of observation, the language the gentleman speaks of was apparently added by the other body. The present occupant of the Chair would not attempt to state or to interpret the rules or procedure of the other body.

Passing on Resolutions and Special Orders

§ 4.7 The Speaker may decline to answer hypothetical questions regarding special orders.[6]

§ 4.8 The Chair does not pass on the effect of a pending resolution amending the House rules.

On Apr. 25, 1967,[7] a parliamentary inquiry concerning the effect of a resolution [H. Res. 42] amending the rules of the House was addressed to Speaker pro tempore Carl Albert, of Oklahoma:

MR. [DURWARD G.] HALL [of Missouri]: . . . [W]ill the distinguished gentleman yield at this time for a parliamentary inquiry of the Chair, inasmuch as it is important that we try to envisage, in passing this legislation today, what effect it will have on the future rules of procedure in the House, and their application.

MR. [WILLIAM M.] COLMER [of Mississippi]: I yield to the gentleman from Missouri.

THE SPEAKER PRO TEMPORE: The Chair must advise the distinguished gentleman from Missouri that this is a matter for debate on a resolution pending and not a matter properly within the jurisdiction of the Chair on a parliamentary inquiry. It is up to the sponsor of the resolution to explain the terms of the resolution.

Quorum Request Not Dilatory

§ 4.9 Since the Constitution defines a quorum of the House and states that it shall be required for the conduct of business, a point of order that a quorum is not present is in order in the absence of a quorum, and the Chair does not hold such a point to be dilatory.

On Oct. 8, 1968,[8] Speaker pro tempore Wilbur D. Mills, of Arkansas, heard a parliamentary inquiry concerning an alleged dilatory tactic.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

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6. Special orders generally, see Ch. 21, infra.

7. 113 CONG. REC. 10710, 90th Cong. 1st Sess.

8. 114 CONG. REC. 30097, 90th Cong. 2d Sess.

MR. [JAMES C.] WRIGHT [Jr., of Texas]: I thank the Speaker for permitting me this additional parliamentary inquiry. . . .

On occasion the Chair has held that certain motions and points of order amounted to dilatory tactics, and that that was their obvious motivation, and on those occasions the Chair has summarily refused to recognize such obviously dilatory points of order and motions.

Mr. Speaker, my point of parliamentary inquiry is: would the Chair not feel that under the present situation, with repeated points of order being made that a quorum is not present, immediately followed by the absenting of themselves by certain Members who have come in to answer the quorum, to be a rather obvious dilatory tactic, and one which might obviously lend itself to the assumption on the part of the Chair that a quorum having been established and proven so frequently and repeatedly during the day, would be presumed to be present for the completion of business?

THE SPEAKER: PRO TEMPORE: (Mr. Mills): The Chair is ready to respond to the parliamentary inquiry posed by the gentleman from Texas.

It is the understanding of the Chair that no occupant of the Chair has ever in the history of the Congress held that a point of order that a quorum is not present is a dilatory tactic. The reasoning, obviously, is that the Constitution itself requires the presence on the floor of the House of a quorum at all times in the transaction of the business of the House of Representatives.[9]

Permitting Exhibits

§ 4.10 It is for the House and not the Speaker to decide whether a Member may be allowed to display an exhibit in debate.

On June 2, 1937,[10] a point of order was made concerning the display of an exhibit during debate in the House.

MR. [MAURY] MAVERICK [of Texas]: Mr. Speaker, I make the point of order that the gentleman has no right to display a liquor bottle in the House of Representatives.

MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Speaker, this is Government rum, presented to me by Secretary Ickes.

THE SPEAKER: [William B. Bankhead, of Alabama]: The gentleman will suspend. The gentleman from Texas makes the point of order that the gentleman from Pennsylvania has no right to exhibit the bottle without permission of the House. The point of order is well taken.

MR. [CHARLES W.] TOBEY [of New Hampshire]: Mr. Speaker, a parliamentary inquiry.

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9. *Parliamentarian's Note:* The precedents of the House which indicate that the Chair has held a point of no quorum to be dilatory when it immediately follows a call of the House which discloses the presence of a quorum are not applicable to the situation where there is "intervening business" between the establishment of the quorum and the making of the point of no quorum. Generally, see Ch. 20, infra.

10. 81 CONG. REC. 6104, 6105, 75th Cong. 1st Sess.

THE SPEAKER: The gentleman will state it.

MR. TOBEY: The Speaker called the attention of the gentleman from Texas to the fact that the gentleman had a bottle of liquor.

How does the Speaker know it is liquor, sir?

THE SPEAKER: That is a question of which the House cannot take judicial notice. The point of order is well taken.

The Chair will submit it to the House, if the gentleman insists on displaying the exhibit.

MR. MAVERICK: I insist on the point of order, Mr. Speaker.

THE SPEAKER: As many as are in favor of granting the gentleman from Pennsylvania the right to exhibit the bottle which he now holds in his hand will say "aye" and those opposed will say "no."

The vote was taken and the Speaker announced that the ayes have it, and the permission is granted.

Answering Parliamentary Inquiries

§ 4.11 The Speaker normally declines to answer parliamentary inquiries that are improperly addressed to him.

On Apr. 11, 1935,[11] a parliamentary inquiry was addressed to Speaker Joseph W. Byrns, of Tennessee:

MR. [JOSEPH P.] MONAGHAN [of Montana]: Mr. Speaker

THE SPEAKER: For what purpose does the gentleman from Montana rise?

MR. MONAGHAN: For the purpose of submitting a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MONAGHAN: Is not the statement that was made by the gentleman from Oregon [Mr. Mott] correct, that if this rule passes, then only one particular plan, the plan that we now have under discussion, may be passed upon by the Congress,

THE SPEAKER: The Chair is not in position to answer that parliamentary inquiry. That is a matter which will come up subsequently under the rules of the House. The Chair would not seek to anticipate what the Chairman of the Committee of the Whole may rule or what the Committee itself may do. The Chair feels very certain that the Chairman of the Committee will he governed, as all chairmen of committees are, by the rules and precedents of the House. Certainly the Chair would not anticipate his ruling; and in addition to this, the Chair cannot pass upon any particular amendment until it has been presented in all its phases.

§ 4.12 The Chair has declined to answer a parliamentary inquiry in the midst of a demand that certain words be taken down.

On Oct. 31, 1963,[12] a Member made some remarks which became the subject of a request that they may be taken down.

THE SPEAKER: [John W. McCormack, of Massachusetts]: Under previous

11. 79 CONG. REC. 5457, 5458, 74th Cong. 1st Sess.

12. 109 CONG. REC. 20742, 88th Cong. 1st Sess.

order of the House, the gentleman from Texas [Mr. Foreman] is recognized for 60 minutes.

MR. [EDGAR FRANKLIN] FOREMAN: Mr. Speaker, Mr. Bernard Baruch once said:

> Every man has a right to his opinion but no man has a right to be wrong in his facts.

My purpose today is to set the facts straight to clarify and briefly discuss a seemingly very interesting and disturbing subject for some colleagues at least of a recent news article by a Washington news correspondent employed by the Scripps-Howard newspapers. . . . I was surprised to see the story written by their dedicated Washington correspondent, Mr. Seth Kantor, last week, because I was quoted as calling 20 of my colleagues in this body "pinkos." Apparently in his zeal to write a colorful and controversial front page story, at the time when congressional news was very meager, this enterprising correspondent decided to do some name calling for me.

"Pinkos" seems to be a very popular and controversial name, so he wrote a story, "Foreman Labels 20 Colleagues Pinkos." The fact of the matter is, to set the record straight, I have only referred to one Member of this body as a "pinko." On Friday, October 18, 1963——

MR [JOHN J.] ROONEY [of New York]: Mr. Speaker, I demand the gentleman's words be taken down.

THE SPEAKER: The gentleman will suspend. The demand has been made that the gentleman's words be taken down.

MR. [BRUCE R.] ALGER [of Texas]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The Chair cannot entertain that at this time.

§ 4.13 The Speaker does not entertain hypothetical questions.

On Sept. 14, 1944,[13] a parliamentary inquiry was addressed to Speaker pro tempore Orville Zimmerman, of Missouri:

> MR. [CLARK E.] HOFFMAN [of Michigan]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER PRO TEMPORE:: The gentleman will state it.
>
> MR. HOFFMAN: I gathered from statements which were made on the floor today that a statement going back as far as 1920 and containing information as to the amounts of money requested by the military establishments of the Government, as to the amounts that had been recommended by the executive department, and as to the amounts finally appropriated by Congress, had been sent to the Committee on Appropriations, but for some 2 years it had been in the safe over there, inaccessible to Members of the House. By what authority or what rule of Congress or what rule governing committees was that suppressed?
>
> THE SPEAKER PRO TEMPORE (Mr. Zimmerman): The present occupant of the chair has no knowledge of any such facts, and therefore is not in a position to answer the gentleman's inquiry.
>
> MR. HOFFMAN: Does the Chair mean he does not have any knowledge that that is true?

13. 90 CONG. REC. 7772, 78th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE: The Chair has no knowledge of that, except that somebody has said it is true, according to the gentleman's statement.

MR. HOFFMAN: Submitting that then as a hypothetical question.

THE SPEAKER PRO TEMPORE: The Chair does not entertain a hypothetical question. . . .

§ 4.14 The Speaker normally avoids answering parliamentary inquiries based upon hypothetical facts or future events which are not certain of happening.

On Mar. 1, 1967,[14] a parliamentary inquiry was addressed to Speaker John W. McCormack, of Massachusetts:

MR. [JOE D.] WAGGONNER [Jr., of Louisiana]: Mr. Speaker, in view of the fact that I am limited to one inquiry, that one inquiry will of necessity be rather long.

Am I correct in assuming that under the rules in debating House Resolution 278 that now, since the time has been extended an additional hour by unanimous consent over and beyond what the rules of the House provide for, that the gentleman from New York [Mr. Celler] will control the time for the 2 hours less that yielded to the gentleman from West Virginia and that this time will be used for no purpose except debate of House Resolution 278; that he will have the option of determining whether or not amendments or substitutes can be offered; that at the conclusion of this two hours of debate on House Resolution 278 he will move the previous question, which, if voted down, will make amendments or substitutes to House Resolution 278 in order; at that time will the Speaker give preference, if the previous question is voted down, to the minority who oppose the resolution to control the ensuing hour, or will the Chair give preference to committee members who oppose the resolution regardless of which side of the aisle they sit on to offer amendments or substitutes to House Resolution 278; and if amendments or substitutes are offered then will there occur another vote on the previous question, if the preceding previous question is voted down, and what will be the order of priority in recognizing some Member of the House on either side of the aisle, either alternatively Democratic and Republican or alternatively Republican and Democratic in determining who will control each ensuing hour; and will we have the opportunity to vote on all previous questions no matter how many amendments are offered as long as preceding previous questions are voted down?

THE SPEAKER: In answering the several questions involved in the statement made or in the parliamentary inquiry made by the gentleman from Louisiana, the Chair will state that the Chair will follow the rules of the House of Representatives as it is the duty of the Chair to do, and the precedents. The question of the allocation of time is a matter for the chairman of the committee, one-half of the time being yielded to the gentleman from West Virginia [Mr. Moore]. Both the chairman and the ranking minority member

14. 113 CONG. REC. 4997, 90th Cong. 1st Sess.

of the select committee control the allocation of time. The question of recognition is one that the Chair will pass upon if that time should arise.

On the other questions of the gentleman from Louisiana the Chair will determine them as they arise in accordance with the rules of the House and the precedents.

§ 4.15 Although it is generally within the discretion of the Speaker to construe the applicability of a House rule to a given situation, where a rule explicitly calls for a decision by a House committee the Speaker does not normally answer a general parliamentary inquiry regarding a committee's actions or future actions respecting such a decision.

On Apr. 5, 1967,[15] a parliamentary inquiry was addressed to Speaker John W. McCormack, of Massachusetts:

MR. [SIDNEY R.] YATES [of Illinois]. Mr. Speaker, a parliamentary inquiry:

THE SPEAKER: The gentleman will state it.

MR. YATES: Mr. Speaker, rule XI, 26(m) of the Rules of the House of Representatives states as follows:

> If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session;

Mr. Speaker, my question is this: If the committee determines that the evidence it is about to receive may tend to defame, degrade or incriminate a witness, is it not compulsory under the Rules of the House for the committee to hold such hearings in executive session?

THE SPEAKER: The Chair will state that that is a matter which would be in the control of the committee for committee action.

MR. YATES: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. YATES: I must say that I do not understand the ruling. Is the Chair ruling that a committee can waive this rule? That it can refuse to recognize this rule?

THE SPEAKER: The Chair would not want to pass upon a general parliamentary inquiry, as distinguished from a particular one with facts, but the Chair is of the opinion that if the committee voted to make public the testimony taken in executive session, it is not in violation of the rule, and certainly that would be a committee matter.

§ 4.16 Although it is considered within the discretion of the Chair to respond to a parliamentary inquiry concerning an amendment, it is not considered proper for him to do so before the amendment is offered.

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15. 113 CONG. REC. 8420, 90th Cong. 1st Sess.

On June 28, 1967,[16] a parliamentary inquiry was addressed to the Chairman of the Committee of the Whole, John J. Flynt, Jr., of Georgia:

MR. [JOSEPH E.] KARTH [of Minnesota]: Mr. Chairman, if that figure cannot be further amended, and the gentleman chooses to pursue his amendment, and change the figure on page 2, would it then be a proper amendment?

THE CHAIRMAN: The Chair does not pass on that until an amendment described by the gentleman from Minnesota is offered.

The gentleman's parliamentary inquiry is premature. It cannot be made until such an amendment is offered.

§ 4.17 Whether a proposition will be subject to a roll call vote at a future time is a matter for the House, and not the Speaker, to decide.

On June 29, 1961,[17] a Member introduced a resolution which became the subject of two parliamentary inquiries when he withdrew it.

MR. [SAMUEL W.] FRIEDEL [of Maryland]: Mr. Speaker, I withdraw the resolution.

MR. [HAROLD R.] GROSS [of Iowa]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: [Sam Rayburn, of Texas]: The gentleman will state it.

MR. GROSS: Is is not necessary to ask unanimous consent to withdraw the resolution?

THE SPEAKER: It is, but the Chair did not think anyone would object to that unanimous consent request.

MR. GROSS: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. GROSS: Will this resolution be subject to a rollcall vote when it is called up again?

THE SPEAKER: That would be up to the House to decide.

When Rulings Would Be Improper

§ 4.18 The Chair does not rule on the constitutionality of measures.

On Oct. 7, 1966,[18] the Chairman of the Committee of the Whole ruled on a point of order as follows:

THE CHAIRMAN (Mr. [Charles Melvin] Price [of Illinois]): The Chair is ready to rule.

The gentleman from Virginia [Mr. Smith] raises a point of order against the amendment as to the constitutionality and the germaneness of the amendment. The Chair holds that the amendment is germane because it provides a different condition in the matter of agreement to the compact.

As to the question of constitutionality, the Chair holds that the

16. 113 CONG. REC. 17754, 17755 90th Cong. 1st Sess.

17. 107 CONG. REC. 11799, 87th Cong. 1st Sess.

18. 112 CONG. REC. 25677, 89th Cong. 2d Sess.

Chair does not pass upon a constitutional question and this is in keeping with the ruling made by the gentleman from Virginia [Mr. Smith] on March 11, 1958.

Therefore, the point of order is overruled.

§ 4.19 The Chair does not pass on the effect of an amendment. . . .

On June 23, 1960,[19] Mr. Herman C. Anderson, of Minnesota, sought a determination from the Chair as to whether an amendment, if adopted, would "undo" the work of the previous day. Chairman Frank N. Ikard, of Texas, in the exchange below, declined to rule on the effect of the amendment:

MR. ANDERSON of Minnesota: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. ANDERSON of Minnesota: Is the gentleman's amendment in order at this point after the substitute for the Quie amendment has been adopted?

THE CHAIRMAN: It is.

MR. ANNDERSON of Minnesota: And its effect would be to undo everything that we did yesterday?

THE CHAIRMAN: The Chair does not pass on the effect of amendments. . . .

§ 4.20 Although the Chair may rule on the germaneness of an amendment to a bill, he does not rule on the merits of the amendment or bill.

On May 19, 1948,[1] a point of order was raised against an amendment being considered by the Committee of the Whole:

MR. [KARL E.] MUNDT [of South Dakota]: Mr. Chairman, I make the point of order against the amendment that it is not germane to the pending bill. . . .

THE CHAIRMAN [James W. Wadsworth, Jr., of New York]: . . . The Chair is ready to rule.

The Chair would remind the gentleman . . . that [the Chair's] function is not to pass upon the merits of an amendment nor to pass upon the merits of the bill which the gentleman says has already passed the House. The Chair may personally find himself in complete agreement with the objective sought by the legislation. . . . but the legislation to which he refers, as the Chair understands, has to do with the immigration and naturalization laws of the United States. This bill pending before the Committee of the Whole does not approach that subject. . . . It comes from the Committee on Un-American Activities. That committee has no jurisdiction over legislation having to do with immigration and naturalization laws. Therefore, the Chair holds that the amendment is not germane.

§ 4.21 The Speaker does not rule on the purpose of a

19. 106 CONG. REC. 14062, 86th Cong. 2d Sess.

1. 94 CONG. REC. 6140, 80th Cong. 2d Sess.

recommended committee amendment to a bill.

On Apr. 1, 1935,[2] a point of order was raised against an amendment being considered by the House:

MR. [MALCOLM C.] TARVER [of Georgia] (interrupting the reading of the committee amendment): Mr. Speaker, I desire to make a point of order against the first committee amendment, which is to strike out all of section 1 after the enacting clause and insert certain language. The language which is proposed be inserted is identical with the language of section 1 now in the bill. The proposal of the committee amendment is simply to strike out existing language and then reinsert identical language.

THE SPEAKER: [Joseph W. Byrns, of Tennessee]: The Chair cannot pass on that. The Chair will say to the gentleman from Georgia that is a matter for the House to determine. The Chair cannot enter into the purpose of the committee in proposing the amendment, since that is not within the province of the Chair. The Chair will suggest to the gentleman from Georgia that the remedy that occurs to the Chair is for the House to vote down the committee amendment and pass the bill as originally introduced.

§ 4.22 The Chair does not rule on the sufficiency, insufficiency, legal effect, or binding nature of a committee report.

On Apr. 14, 1955,[3] a question regarding a committee report was raised during debate in the Committee of the Whole:

MR. [ROBERT C.] WILSON of California: I have a question relative to the United States Information Agency as it affects the report of the committee. . . .

I am wondering if the fact that these limitations appear in the report make them actual limitations in law. [notice they are not mentioned in the bill itself, and I wonder if the committee regards them as binding on the agency, because there are many serious limitations, particularly in regard to exhibits, for example. I would just like to hear the opinion of the chairman.

MR. [JOHN J.] RODNEY [of New York]: I may say to the gentleman from California that it is expected that they will be the law; and that they are binding. The fact that they have not been inserted in the bill is not important. They represent the considered judgment of the committee and we expect the language of the report to be followed.

MR. WILSON of California: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN [Jere Cooper, of Tennessee]: The gentleman will state it.

MR. WILSON of California: Are limitations written in a committee report such as this, but not written into the wording of the legislation, binding?

THE CHAIRMAN: That is not a parliamentary inquiry. That is a matter to be settled by the members of the Committee of the Whole.

2. 79 CONG. REC. 4781, 4782 74th Cong. 1st Sess.

3. 101 CONG. REC. 4463, 4464, 84th Cong. 1st Sess.

MR. WILSON of California: I merely wanted it for my own understanding and information, for I am fairly new here. It seems to me rather unusual to consider matter written into a report of the same binding effect on an administrator as though written into the law itself.

THE CHAIRMAN: It is not the prerogative of the Chair to pass upon the sufficiency or insufficiency of a committee report.

§ 4.23 The Speaker does not rule on the substantive effect of extraneous material in a committee report on a bill.

On Dec. 3, 1963,[4] a parliamentary inquiry was addressed to Speaker John W. McCormack, of Massachusetts, during the colloquy set out below after his ruling on a committee report:

THE SPEAKER: The Chair is prepared to rule. . . .

It is the opinion of the Chair that the report of the committee complies with the Ramseyer rule, the purpose of which is to give Members information in relation to any change in existing law.

If a report includes some other references to other laws which in a sense would be surplusage or unnecessary, it is the Chair's opinion that the committee was attempting to give to the Members of the House as full information as was possible. . . .

MR. [PAUL] FINDLEY [of Illinois]: Mr. Speaker——

THE SPEAKER: For what purpose does the gentleman from Illinois rise?

MR. FINDLEY: To propound a parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state the parliamentary inquiry.

MR. FINDLEY: I am not clear about the substantive effect of the ruling of the Chair at this time. Does it mean that section 105 of the 1949 act and section 330 of the 1938 act are repealed by this bill?

THE SPEAKER: The Chair did not pass on that. The Chair simply said that they were included in the report.

§ 4.24 The Chair does not rule on whether language contained in a measure is ambiguous.

On July 5, 1956,[5] certain points of order were raised concerning a pending amendment:

MR. [ROSS] BASS of Tennessee: I make the point of order that the amendment is not germane to the bill.

THE CHAIRMAN [Francis E. Walter, of Pennsylvania]: It is certainly germane to the amendment offered by the gentleman from New York to substitute the word "decisions" for the word "provisions." The Chair so rules.

MR. BASS of Tennessee: Mr. Chairman, a further point of order.

THE CHAIRMAN: The gentleman will state it.

MR. BASS of Tennessee: I make the point of order that the word "provisions" is ambiguous and has no mean-

4. 109 CONG. REC. 23038, 88th Cong. 1st Sess.

5. 102 CONG. REC. 11875, 84TH CONG. 2D SESS.

ing whatever and would make the amendment not germane.

THE CHAIRMAN: The Chair does not rule on the question of ambiguity. It is a question of germaneness solely, and the Chair has ruled that the amendment is germane.

§ 4.25 The Speaker does not rule in advance as to whether a particular motion to recommit a measure with instructions might be in order.

On Dec. 19, 1963,[6] a parliamentary inquiry was addressed to Speaker John W. McCormack, of Massachusetts, relative to a motion to recommit with instructions a conference report.

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. HALLECK: Mr. Speaker, in the event that the conference report is acted on first in the House, as we now understand it will be, would a motion to recommit with instructions be in order?

THE SPEAKER: A proper motion would be.

MR. HALLECK: Of course, it would have to be germane. If so, a motion to recommit to insist on the wheat amendment, I take it, would be in order.

THE SPEAKER: The Chair, of course, would pass upon any question at the appropriate time.

MR. HALLECK: I thank the Chair.

§ 4.26 The Chair does not rule in advance whether an announced topic of speech is in order.

On Sept. 26 (legislative day, Sept. 25), 1961,[7] a Member requested unanimous consent to address the House on a particular topic:

MR. [CLARK E.] HOFFMAN of Michigan: Mr. Speaker, I ask unanimous consent that at the conclusion of the regularly scheduled business of the House and all other special orders for today that I may be permitted to proceed for 5 minutes on the topic: "Is the Congress Mentally Ill?"

MR. [FRANK T.] BOW [of Ohio]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: [John W. McCormack, of Massachusetts]: The gentleman will state it.

MR. BOW: Is that a proper subject for debate on the floor of the House?

MR. HOFFMAN of Michigan: Mr. Speaker, I submit neither the Chair nor the gentleman from Ohio [Mr. Bow], can tell until they hear it.

THE SPEAKER PRO TEMPORE: The gentleman from Michigan [Mr. Hoffman] asked unanimous consent that after all other special orders he be permitted to address the House for 5 minutes. That is the gentleman's unanimous consent request?

MR. HOFFMAN of Michigan: Yes, Mr. Speaker.

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6. 109 CONG. REC. 25249, 88th Cong. 1st Sess.

7. 107 CONG. REC. 21466, 87th Cong. 1st Sess.

THE SPEAKER PRO TEMPORE: What the gentleman from Michigan [Mr. Hoffman] talks about is a matter for him to determine, and then a matter for the Members.

Is there objection to the request of the gentleman from Michigan?

There was no objection.

§ 4.27 The Chair does not construe the consequences of a "no" vote by the House on a proposed motion.

On Sept. 7, 1965,[8] various parliamentary inquiries concerning certain motions were addressed to Speaker pro tempore Carl Albert, of Oklahoma, as follows:

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALL: Is a highly privileged motion according to the Constitution subject to a motion to table?

THE SPEAKER PRO TEMPORE: It is.

MR. [L. MENDEL] RIVERS of South Carolina: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. RIVERS of South Carolina: Those desiring to table the motion of the gentleman from Missouri will vote "aye" when their names are called.

THE SPEAKER PRO TEMPORE: The Chair is about to state the question. So many as are in favor of the motion by the gentleman from South Carolina to table the motion of the gentleman from Missouri will when their names are called vote "aye" and those who are opposed will vote "no."

MR. HALL: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HALL: Mr. Speaker, would a "no" vote as just stated by the Chair be tantamount to overriding the Presidential veto of the military construction bill?

THE SPEAKER PRO TEMPORE: The Chair cannot make such construction on a motion.

§ 4.28 The Chair does not construe the result of a vote.

On Sept. 13, 1961,[9] questions regarding a future vote were addressed to Speaker pro tempore John W. McCormack, of Massachusetts.

MR. [WILLIAM C.] CRAMER [of Florida]: Is it true, Mr. Speaker, that if this motion is voted upon favorably, there will be no opportunity on the part of the House whatsoever to consider the vote fraud amendment approved in a bill——

MR. [JOHN J.] ROONEY [of New York]: Mr. Speaker, I submit that is not a parliamentary inquiry.

MR. CRAMER: Which is now pending before the Committee on Rules?

THE SPEAKER PRO TEMPORE: The Chair has stated before that he has his own personal opinion. The Chair cannot construe the result of the vote.

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8. 111 CONG. REC. 22958, 22959, 89th Cong. 1st Sess.

9. 107 CONG. REC. 19206, 87th Cong. 1st Sess.

Challenge of Conference Report

§ 4.29 The Speaker may not impeach the names of conferees who have signed a conference report on a bill when the report has been challenged as being invalid for an alleged failure of the conferees to meet.

On June 19, 1948,[10] a point of order was raised regarding a conference report.

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, I make a point of order, and I ask the indulgence of the Speaker so that I may argue the point.

THE SPEAKER: [Joseph W. Martin, Jr., of Massachusetts]: The Chair will hear the gentleman.

MR. MARCANTONIO: Mr. Speaker, I make the point of order that the document which has just been presented is not the report of any conference. It is not the product of a full and free conference as required in Jefferson's Manual. I make my point of order based on the proposition that there has never been a valid conference—specifically, that there has never been a valid meeting on the part of the managers on the part of the House. . . .

THE SPEAKER: The Chair is ready to rule.

On page 770, volume 5, of Hinds' Precedents, section 6497 states:

> A conference report is received if signed by a majority of the managers of each House.

The Chair has examined the report and the papers and finds that it is signed by five of the managers on the part of the Senate and six of the seven managers on the part of the House.

The Chair has no knowledge, of course, how this report was reached, but the Chair cannot impeach the names of the managers on the part of the two Houses. Furthermore, the Senate having already received the report, and according to a message heretofore received by the House has officially adopted it, the Chair feels that under the circumstances the report is properly before the House for such action as the House may see fit to take. The Chair overrules the point of order.

When Recognition Required

§ 4.30 The Speaker is constrained to recognize on Calendar Wednesdays any Member properly proposing a motion to dispense with Calendar Wednesday business.

On June 5, 1946,[11] a motion was made to dispense with Calendar Wednesday business.

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, that motion is not in order. To dispense with Calendar Wednesday requires the unanimous consent of the House. . . .

THE SPEAKER: [Sam Rayburn, of Texas]: The Chair will state that the following was held by Speaker Gillette, who has been quoted today, as follows:

10. 94 CONG. REC. 9268, 9269, 80th Cong. 2d Sess.

11. 92 CONG. REC. 6357, 79th Cong. 2d Sess.

The Speaker is constrained to recognize on Wednesdays any Member proposing a motion to dispense with further proceedings in order on that day.

The motion is in order, but it takes a two-thirds vote to pass it.

§ 4.31 Although the Speaker has the discretion to choose between Members seeking recognition,[12] he is obliged to recognize for a privileged motion when the proponent has the floor and no other motion of higher privilege is pending or offered.[13]

§ 4.32 Although the Speaker has discretion to recognize, or not, a Member under most circumstances, he may not refuse to recognize a Member having the floor for a motion to adjourn.

On Mar. 16, 1945,[14] a motion to recommit a bill was made. Votes were taken and a quorum found not to be present. This led to a call for adjournment.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: [Sam Rayburn, of Texas]: The gentleman will state it.

MR. HOFFMAN: What is the regular order now?

THE SPEAKER: The regular order is to see if a quorum develops.

MR. HOFFMAN: Is it in order to adjourn?

THE SPEAKER: That motion is always in order in the House.

MR. HOFFMAN: If there is not a quorum, Mr. Speaker, I move we adjourn.

THE SPEAKER: Will the gentleman withhold that for a moment?

THE HOFFMAN: If the Chair is refusing recognition, I will.

THE SPEAKER: The Chair cannot do that.

The House then agreed to a motion, offered by Mr. John W. McCormack, of Massachusetts, to adjourn.

§ 4.33. Inasmuch as Members of the Senate may not address the House unless the House rules are changed by proper procedure, the Speaker has declined to recognize a Member for the purpose of asking unanimous consent for the consideration of a resolution to allow Senators to address the House.

On Oct. 11, 1943,[15] Members discussed the desirability of inviting certain Senators to address the House.

MRS. [EDITH NOURSE] ROGERS of Massachusetts: Mr. Speaker, on Thurs-

12. Recognizing for debate, see Ch. 29, infra.

13. Motions generally, see Ch. 23, infra.

14. 91 CONG. REC. 2379, 2380, 79th Cong. 1st Sess.

15. 89 CONG. REC. 8197, 78th Cong. 1st Sess.

day last I, with several others, called attention to the importance of having the five Senators who have just returned from the far-flung battle fronts give the Members of the House their findings regarding conditions on the battle fronts. I understand there is some objection to having them appear in the House Chamber. I hope the gentleman from Mississippi and some of the other Members will join in asking them to appear in the Caucus Room. Then we can all have the benefit of their valuable information. It does not matter where we hear their testimony so long as we hear it.

MR. [JOHN E.] RANKIN [of Mississippi]: If the gentlewoman will yield, let me say that these are Members of the United States Senate. They have the privilege of the floor. We have a perfect right to invite them here to address the Members of the House in secret session. We want them to come here and give us the benefit of the information they have garnered in their trip to the various battle fronts of the world.

MRS. ROGERS of Massachusetts: Has the gentleman consulted the Speaker and leaders about it?

MR. RANKIN: I have, and I think that when the resolution is offered they will agree that this is the place to have them.

THE SPEAKER: [Sam Rayburn, of Texas]: The Chair thinks it is time for the Chair to make a statement, because this matter was discussed with the Chair by the gentlewoman from Massachusetts [Mrs. Rogers], last week, and the gentleman from Mississippi [Mr. Rankin], over the phone.

The Chair does not intend to recognize a Member to ask unanimous consent for the present consideration of a resolution inviting Senators to address the House in open or executive session, because the Chair thinks that is tantamount to an amendment to the rules of the House and, therefore, is a matter for the House to determine. If resolutions like that are introduced, they will be sent to the proper committee.

Authority to Declare Recess

§ 4.34 The Speaker, under normal circumstances, must be authorized by the House to declare recesses.[16]

On Oct. 3, 1964,[17] for example, unanimous consent was requested and received to authorize Speaker John W. McCormack, of Massachusetts, to declare recesses, subject to the call of the Chair, during the remainder of the day.

§ 4.35 Authority conferred upon the Speaker to declare recesses of the House may be vacated by unanimous consent.

On Sept. 8, 1969,[18] unanimous consent was requested to vacate previous authorization for Speaker John W. McCormack, of Massa-

16. Compare § 3.44, supra, as to the Speaker's inherent power to declare a recess in an emergency.
17. 110 CONG. REC. 23955, 88th Cong. 2d Sess.
18. 115 CONG. REC. 24653, 91st Cong 1st Sess.

chusetts, to declare recess on a certain day.

Mr. [Carl] Albert [of Oklahoma]: Mr. Speaker, I ask unanimous consent that the authority for the Speaker to declare a recess on September 10 be vacated.

THE SPEAKER: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

MR. ALBERT: Mr. Speaker, I also ask unanimous consent that it may be in order for the Speaker to declare a recess at any time on September 16 for the purpose of receiving in joint meeting the Apollo 11 astronauts.

THE SPEAKER: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.[19]

Authority to Sign Bills and Resolutions

§ 4.36 The Speaker must be formally authorized to sign a duplicate copy of an enrolled bill.

On May 27, 1938,[20] a unanimous-consent request was made as follows:

MR. [SAM] RAYBURN [of Texas]: Mr. Speaker, I ask unanimous consent for the present consideration of Senate Concurrent Resolution No. 37.

The Clerk read the concurrent resolution, as follows:

SENATE CONCURRENT RESOLUTION 37

Resolved by the Senate (the House of Representatives concurring), That the Speaker of the House of Representatives and the President of the Senate be, and they are hereby, authorized to sign a duplicate copy of the enrolled bill (S. 3532) entitled "An act to extend the times for commencing and completing the construction of a bridge across the Missouri River at or near Randolph, Mo.," and that the Secretary of the Senate be, and he is hereby, directed to transmit the same to the President of the United States.

THE SPEAKER [William B. Bankhead, of Alabama]: Is there objection to the request of the gentleman from Texas?

MR. [CARL E.] MAPES [of Michigan]: Mr. Speaker, reserving the right to object, will the gentleman from Texas explain the purpose of this resolution?

MR. RAYBURN: Mr. Speaker, the situation is that before this bill got to the President for his signature it was misplaced or lost. This is a resolution to allow the President to sign a duplicate.

THE SPEAKER: Is there objection to the request of the gentleman from Texas?

There was no objection.

§ 4.37 The Speaker must be formally authorized by the House to sign enrolled bills and joint resolutions during a sine die adjournment of the Congress.

19. *Parliamentarian's Note:* The authorization to declare the recess was vacated due to the death of Senator Everett Dirksen.

20. 83 CONG. REC. 7637, 75th Cong. 3d Sess.

On Oct. 14, 1968,[11] a resolution was offered by Mr. Carl Albert, of Oklahoma, as follows:

MR. ALBERT: Mr. Speaker, I call up Senate Concurrent Resolution 82 and ask for its present consideration.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 82

Resolved by the Senate (the House of Representatives concurring), That, notwithstanding the sine die adjournment of the two Houses, the Speaker of the House of Representatives and the President of the Senate, the President pro tempore, or the Acting President pro tempore be, and they are hereby, authorized to sign enrolled bills and joint resolutions duly passed by the two Houses and found truly enrolled.

The Senate concurrent resolution was concurred in.

§ 4.38 The Speaker is normally authorized by unanimous consent to sign enrolled bills and joint resolutions during any adjournment of the House.

On Aug. 10, 1961,[2] a unanimous consent request was made as follows:

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I ask unanimous consent that notwithstanding any adjournment of the House during the present session of the 87th Congress, the Clerk be authorized to receive messages from the Senate and that the Speaker be authorized to sign any enrolled bills and joint resolutions duly passed by the two Houses and found truly enrolled.

MR. [HAROLD R.] GROSS [of Iowa]: Mr. Speaker, reserving the right to object, are we going to enter into some recesses or adjournments of the House?

MR. MCCORMACK: For example, such as adjourning from Friday to Monday.

MR. GROSS: That is all the gentleman has in mind?

MR. MCCORMACK: That is all. . . .

THE SPEAKER: [Sam Rayburn, of Texas]: Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

§ 4.39 Although it is within the authority of the Speaker to sign enrolled bills, by concurrent resolution the Congress may rescind the Speaker's signature.

On July 1, 1947,[3] a resolution was introduced as follows:

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table Senate Concurrent Resolution 22. . . .

The Clerk read the concurrent resolution, as follows:

Resolved by the Senate (the House of Representatives concurring), That

1. 114 CONG. REC. 31313, 90th Cong. 2d Sess.
2. 107 CONG. REC. 15320, 87th Cong. 1st Sess.
3. 93 CONG. REC. 8012, 80th Cong. 1st Sess.

the President of the United States be, and he is hereby, requested to return to the House of Representatives the enrolled bill (H.R. 493) to amend section 4 of the act entitled "An act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia," approved July 8, 1932 (sec. 22, 3204 D.C. Code, 1940 ed.): that if and when the said bill is returned by the President, the action of the Presiding Officer of the two Houses in signing the said bill be deemed to be rescinded; and that the House engrossed bill be returned to the Senate.

THE SPEAKER [Joseph W. Martin, Jr., of Massachusetts]: Is there objection to the request of the gentleman from Illinois?

There was no objection.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

§ 4.40 Although it is within the authority of the Speaker to sign enrolled bills of the House, the House may agree to a Senate resolution requesting that the Speaker's signature be rescinded.

On July 30, 1942,[4] Speaker pro tempore Alfred L. Bulwinkle, of North Carolina, laid before the House a Senate resolution:

Resolved, That the Secretary be directed to request the House of Representatives to rescind the action of the Speaker in signing the enrolled bill (H.R. 7297) entitled "An act authorizing the assignment of personnel from departments or agencies in the executive branch of the Government to certain investigating committees of the Senate and House of Representatives, and for other purposes," and that the House of Representatives be further requested to return the above-numbered engrossed bill to the Senate.

THE SPEAKER PRO TEMPORE: Without objection, it is so ordered.

There was no objection.

§ 5. Participation in Debate and Voting

The Speaker is entitled as a Member of the House to participate in debate.[5] Accordingly, when the Speaker desires to be heard in debate on a matter he may speak from the floor, whether debate is in the House[6] or in the Committee of the Whole.[7] Occasionally the Speaker will speak in debate from the Chair.[8]

Under the House rules[9] the Speaker may, but is not required, to vote on matters except where (1) his vote would be decisive, or

4. 88 CONG. REC. 6713, 77th Cong. 2d Sess.

5. *House Rules and Manual* § 751 (1973).

6. See §§ 5.1, 5.2, infra.

7. See § 5.3, infra.

8. See Ch. 29, infra, for fuller treatment of the Speaker's participation in debate.

9. Rule I clause 6, *House Rules and Manual* § 632 (1973).

(2) where the House is engaged in voting by ballot.[10] Measures decided by a tie vote are lost.[11]

The Speaker has voted, for example: in order to make a quorum of the House;[12] on a yea and nay roll call vote;[13] on a roll call vote to make a tie;[14] and on a division vote to break a tie.[15] The Speaker may vote on a teller vote to make a tie[16] and in doing so he need not pass through the tellers to have his vote counted.[17]

Participating in Debate

§ 5.1 Normally, if the Speaker wishes to participate in House debate, he does so from the floor of the House.

On Mar. 31, 1958,[18] Speaker Sam Rayburn, of Texas, participated in a debate on the floor of the House when a Member yielded to him. The Speaker commended the work of a particular subcommittee and congratulated the members thereof.

On Aug. 27, 1959,[9] Speaker Rayburn participated in a debate in the House on the House floor. He took the occasion to express his views on the reconstruction of the east front of the Capitol.

§ 5.2 The Speaker may eulogize a deceased Member from the House floor.

On Jan. 16, 1962,[20] Speaker John W. McCormack, of Massachusetts, took the floor to eulogize a deceased Member, Louis Rabaut, of Michigan.

§ 5.3 If the Speaker desires to participate in debate in the Committee of the Whole, he does so from the floor.

On Aug. 31, 1960,[1] Speaker Sam Rayburn, of Texas, participated in debate in the Committee of the Whole from the floor. The debate concerned a bill [H.R. 13021] to provide financial assist-

10. *Parliamentarian's Note:* Voting by ballot in the House is rarely used and is not to be confused with voting by electronic device. See Rules I clause 5, § 630 (electronic device), and XXXVIII § 934 (ballot), *House Rules and Manual* (1973).

11. Sec Ch. 30, infra, for fuller treatment of the Speaker's participation in voting.

12. See § 5.4, infra.

13. See § 5.5, infra.

14. See § 5.6, infra.

15. See § 5.7, infra.

16. See § 5.8, infra.

17. Sec 5.9, infra.

18. 104 CONG. REC. 5854, 5855, 85th Cong. 2d Sess.

19. 105 CONG. REC. 17237, 86th Cong. 1st Sess.

20. 106 CONG. REC. 285, 87th Cong. 2d Sess.

1. 106 CONG. REC. 18734, 18735, 86th Cong. 2d Sess.

ance to certain South American countries for reconstruction and development.

Participation in Voting

§ 5.4 The Speaker may vote in order to make a quorum of the House.

On Nov. 24, 1942,[2] Speaker Sam Rayburn, of Texas, cast his vote to provide a quorum for purposes of voting on a motion to recommit.

> THE SPEAKER: The question is on agreeing to the motion to recommit.
>
> The question was taken and on a division, there were, ayes 15, noes 70.
>
> MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Speaker, I object to the vote upon the ground that there is no quorum present.
>
> THE SPEAKER: Evidently there is no quorum present. The Clerk will call the roll. The question is on agreeing to the motion to recommit.
>
> The question was taken; and there were—yeas 31, nays 184, not voting,[3] 214. . . .
>
> THE SPEAKER: The Clerk will call my name.
>
> The Clerk called the name of Mr. Rayburn and he answered "no."
>
> So the motion to recommit was rejected.

2. 88 CONG. REC. 9116, 9117, 77th Cong. 2d Sess.

3. *Parliamentarian's Note:* Six vacancies existed in the House at the time this vote was taken; and 215 Members were needed to make a quorum.

§ 5.5 The Speaker may vote on a yea and nay roll call vote.

On June 30, 1939,[4] Speaker William B. Bankhead, of Alabama, voted as shown below on a yea and nay roll call vote involving a motion to recommit.

> THE SPEAKER: The question is on the motion to recommit.
>
> The question was taken; and on a division (demanded by Mr. Fish) there were—ayes 179, noes 185.
>
> MR. [HAMILTON] FISH [Jr., of New York]: Mr. Speaker, I ask for the yeas and nays.
>
> The yeas and nays were ordered.
>
> The question was taken; and there were—yeas 194, nays 196, answered "present" 1, not voting 40. . . .
>
> THE SPEAKER: The Clerk will call my name.
>
> The Clerk called the name of Mr. Bankhead, and he answered "nay."
>
> So the motion to recommit was rejected.

§ 5.6 The Speaker may vote on a roll call vote to make a tie.

On May 3, 1946,[5] Speaker Sam Rayburn, of Texas, on a roll call voted to make a tie and thus reject the question being considered.

§ 5.7 The Speaker may vote on a division vote to break a tie vote of the House.

4. 84 CONG. REC. 8512, 8513, 76th Cong. 1st Sess.

5. 92 CONG. REC. 4434, 4435, 79th Cong. 2d Sess.

On July 15, 1937,[6] Speaker William B. Bankhead, of Alabama, cast the deciding vote on a motion to recede and concur:

THE SPEAKER: The question is on the motion of the gentleman from Nevada that the House recede and concur [in a Senate amendment].

MR. [ABE] MURDOCK of Utah: Mr. Speaker, I demand a division of that question

THE SPEAKER: The gentleman is entitled to a division of the question. The question is whether the House shall recede from its disagreement to the Senate amendment. . . .

The question was taken; and on a division (demanded by Mr. Rich) there were—ayes 58, noes 58.

THE SPEAKER: The Chair votes "aye."

§ 5.8 The Chair may vote on a teller vote to make a tie.

On Aug. 1, 1966,[7] in the Committee of the Whole, an amendment was offered and a vote taken on it, as follows:

MR. [RICHARD H.] POFF [of Virginia]: Mr. Chairman, I offer an amendment.

THE CHAIRMAN [Richard Bolling, of Missouri]: The question is on the amendment offered by the gentleman from Virginia [Mr. Poff].

The question was taken; and on a division (demanded by Mr. Celler) there were—ayes 51, noes 44.

MR. [EMANUEL] CELLER [of New York]: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Poff and Mr. Celler.

The Committee again divided, and the tellers reported that there were—ayes 84, noes 83.

THE CHAIRMAN [Mr. Bolling]: The Chair votes "no."

So the amendment was rejected.

§ 5.9 The Chair may count himself to make or break a tie on a teller vote without passing through the tellers.

On Sept. 21, 1965,[8] a teller vote was demanded and taken on an amendment offered in the Committee of the Whole.

THE CHAIRMAN [Daniel D. Rostenkowski, of Illinois]: The question is on the amendment offered by the gentleman from Pennsylvania [Mr. Clark].

The question was taken, and the Chairman announced that the noes had it.

MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Chairman, I ask for tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Clark and Mr. Blatnik.

The Committee divided.

THE CHAIRMAN: On this vote by tellers, the ayes are 100, noes 99.

The Chair votes in the negative.

So the amendment was rejected.

6. 81 CONG. REC. 7197, 7198, 75th Cong. 1st Sess.

7. 112 CONG. REC. 17760, 17761, 89th Cong. 2d Sess.

8. 111 CONG. REC. 24635, 89th Cong. 1st Sess.

§ 6. Power of Appointment; Legislative Authority

The Speaker derives his power of appointment from statutes, the House rules, and House resolutions. This section lists examples from each of these sources, and reviews various appointment practices under the House precedents.

Examples of appointments made under statutory provisions are as follows.

The Speaker appoints six members to the National Visitors Facilities Advisory Commission;[9] three members to the Advisory Commission on Intergovernmental Relations;[10] four members to the Presidential Joint Commission on the Coinage;[11] up to nine members to the North Atlantic Treaty Parliamentary Conference;[12] 12 members to the 24-member group to represent the United States at the Mexico-United States Interparliamentary Group;[13] one member to the National Historical Publications Commission;[14] three members to the 17-member Board of Regents of the Smithsonian Institution;[15] six members to a 13-member board in the Office of Technology Assessment;[16] five members to the 10-man Joint Committee on Congressional Operations;[17] 10 members to the 20-member Joint Economic Committee;[18] two of the nine members of the Commission on Executive, Legislative, and Judicial Salaries;[19] and a committee to direct and control the operation of the House Recording Studio.[1]

The Speaker appoints a Legislative Counsel for the House[2] and approves the appointment by the Legislative Counsel of assistants and other employees.[3]

The Speaker must also approve the appointment of librarians for the library of the House of Representatives.[4]

The Speaker is a member of and appoints two Members to the House Office Building Commission.[5]

The Speaker may make temporary appointments to fill vacan-

9. 40 USCA § 822.
10. 42 USCA § 4273.
11. 31 USCA § 301.
12. 22 USCA § 1928a.
13. 22 USCA § 276h.
14. 44 USCA § 2501.
15. 20 USCA §§ 42 and 43.
16. 2 USCA § 473.
17. 2 USCA § 411.
18. 15 USCA § 1024.
19. 2 USCA § 352.
1. 2 USCA § 123b.
2. 2 USCA § 282.
3. 2 USCA § 282a.
4. 2 USCA § 153.
5. 40 USCA § 175. See Ch. 4, supra, for treatment of the House Office Buildings.

cies in the offices of the Clerk, the Sergeant at Arms, the Doorkeeper, the Postmaster, and the Chaplain.[6]

The Speaker has in the past appointed four of the 12-man Commission on the Organization of the Government for the Conduct of Foreign Policy;[7] two members to the nine-member National Fisheries Center and Aquarium Advisory Board;[8] two members to a fourman advisory board to the National Commission on Fire Prevention and Control;[9] three members to the nine-member National Commission on Consumer Finance;[10] five members to a 15-member National Commission on Food Marketing;[11] and four members to the 15-member Commission on the Review of the National Policy Toward Gambling.[12]

Under House rules, the Speaker may appoint Speakers pro tempore,[13] the Chairman of the Committee of the Whole,[14] members to select and conference committees,[15] tellers for vote counting,[16] and the official reporters of the House.[17]

The manner by which the Speaker exercises his powers of appointment is governed by House customs and practices of long standing. Thus, whenever the House resolves itself into a Com-

6. 2 USC § 75a–1.

7. 22 USCA § 2821. See Ch. 13, infra, for treatment of the powers and prerogatives of the House vis-a-vis foreign relations generally.

8. 16 USCA § 1055.

9. 15 USCA § 278f note.

10. 15 USCA § 1601 note.

11. Pub. L. No. 89–20, May 15, 1965, 79 Stat. 111.

12. 18 USCA § 1955 note.

13. Rule I clause 7, *House Rules and Manual* § 633 (1973). See §§ 9 et seq., infra, for treatment of the Speaker pro tempore, including the Speaker's power to appoint one.

14. Rule XXIII clause 1, *House Rules and Manual* § 861 (1973). See Ch. 19, infra, for treatment of the Speaker's relationship to the Committee of the Whole.

15. Rule X clause 2, *House Rules and Manual* § 671a (1973). See Ch. 17, infra, for fuller treatment of the Speaker's power to appoint committees.

16. Rule I clause 5, *House Rules and Manual* § 630 (1973) covers regular vote-counting by tellers. See Ch. 30, infra, for treatment of regular voting. For electoral college votes, see 3 USC § 315 and U.S. Const. amend. XII.

17. Rule XXXIV clause 1, *House Rules and Manual* § 923 (1973). See Ch. 5, supra, for fuller treatment of official reporters.

Parliamentarian's Note: Although the rule vests the power of appointment of official reporters in the Speaker, under statute, 2 USCA § 84a, he normally exercises his power by approving their employment.

mittee of the Whole, the Speaker will appoint a Chairman of the Committee.[18] If the designated Chairman is not present when the House resolves itself into the Committee, the Speaker may also appoint a Chairman pro tempore until the designated Chairman arrives.[19]

Although the House rules[20] provide that the Speaker may appoint members to select committees, the rules further provide that such appointments may be made to committees that the House may from time to time establish. Thus, the Speaker appoints members to such committees pursuant to authorization provided for by law or by action of the House. House authorization may be in the form of unanimous consent[1] or formal resolution.[2]

The Speaker may make appointments to select committees orally,[3] and under certain circumstances, he may appoint the majority and minority members at different times.[4] For certain committees, usually ceremonial ones, the Speaker may appoint himself as a member of the committee.[5]

When a vacancy occurs on a select committee, the Speaker fills the vacancy pursuant to the original authorization to appoint the committee.[6]

The Speaker's appointment of conferees on the part of the House to conference committees is somewhat different from his appointment of select committees.[7] For instance, the manner of appointment of conferees and the number of members appointed is usually within the discretion of the Speaker.[8] But the Speaker must still be authorized to make appointments of conferees pursuant to House action.[9] And although the Speaker fills vacancies in conference committees without seeking new authorizations from the House,[10] for the Speaker to appoint additional conferees, additional House authorization must be given.[11]

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18. See § 6.1, infra.

19. See § 6.2, infra.

20. Rule X clause 2, *House Rules and Manual* § 671a (1973).

1. See § 6.3, infra.

2. See §§ 6.4, 6.6, infra.

3. See § 6.9, infra.

4. See §§ 6.10, 6. 11, infra.

5. See § 6.12, infra. See Ch. 36, infra, for treatment of the Speaker's role in various ceremonies.

6. See § 6.13, infra.

7. See Ch. 33, infra, for fuller treatment of the Speaker's role vis-a-vis House-Senate conferences.

8. See § 6.14, infra.

9. For example, see illustrations under § 6.16, infra.

10. See § 6.16, infra.

11. See § 6.18, infra.

On occasion the House will authorize the designation of certain House employees subject to the approval of the Speaker.[2]

Appointing Chairmen

§ 6.1 The Speaker (and the Speaker pro tempore) appoints a Chairman when the House resolves itself into the Committee of the Whole.

On July 25, 1962,[13] a motion was made for the House to resolve itself into the Committee of the Whole House on the state of the Union.

> MR. [HERBERT] ZELENKO [of New York]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 11677) to prohibit discrimination on account of sex in the payment of wages by certain employers engaged in commerce or in the production of goods for commerce and to provide for the restitution of wages lost by employees by reason of any such discrimination.
>
> The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill H.R. 11677, Mrs. Edna F. Kelly, of New York, having been appointed to preside.

On Jan. 14, 1964,[14] a motion was made for the House to resolve itself into the Committee of the Whole House on the state of the Union.

> MR. [OREN] HARRIS [of Arkansas]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 1153), to amend the Federal Airport Act to extend the time for making grants thereunder, and for other purposes.
>
> THE SPEAKER PRO TEMPORE: [Carl Albert, of Oklahoma]: The question is on the motion offered by the gentleman from Arkansas.
>
> The motion was agreed to.

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill S. 1153, Mrs. Leonor Kretzer Sullivan, of Missouri, having been appointed to preside.

§ 6.2 The Speaker (and the Speaker pro tempore) may appoint both a Chairman and a Chairman pro tempore of the Committee of the Whole.

On Oct. 18, 1967,[15] Speaker pro tempore Carl Albert, of Okla-

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12. See § 6.26, infra.

13. 108 CONG. REC. 14747, 87th Cong. 2d Sess.

14. 110 CONG. REC. 399, 88th Cong. 2d Sess.

15. 113 CONG. REC. 29277, 90th Cong. 1st Sess.

homa, made the following announcement:

> THE SPEAKER PRO TEMPORE: The Chair designates the gentleman from Ohio [Mr. Vanik] as Chairman of the Committee of the Whole, and requests the gentleman from Illinois [Mr. Rostenkowski] to assume the chair temporarily.

Authority to Appoint

§ 6.3 Pursuant to authority granted him by the House, the Speaker may appoint committees, commissions, and boards authorized by law or by the House.

On Aug. 24, 1935,[16] for example, a unanimous-consent request was made as follows:

> MR. [EDWARD T.] TAYLOR of Colorado: Mr. Speaker, I ask unanimous consent that the Speaker may have until Wednesday next, August 28, 1935, to appoint committees and commissions that have been authorized by the House or by law.
>
> THE SPEAKER [Joseph W. Byrns, of Tennessee]: Is there objection.
>
> There was no objection.

Similarly, on Aug. 21, 1937,[17] unanimous consent was requested and received to permit Speaker William B. Bankhead, of Alabama, to appoint commissions and committees authorized by law or by the House, notwithstanding the adjournment of the first session of the 75th Congress.

Likewise, on Oct. 13, 1962,[18] a unanimous-consent request was made as follows:

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that notwithstanding the adjournment of the 2d session of the 87th Congress, the Speaker be authorized to accept resignations, and to appoint commissions, boards, and committees authorized by law or by the House.
>
> THE SPEAKER [Sam Rayburn, of Texas]: Is there objection to the request of the gentleman from Oklahoma?
>
> There was no objection.

Announcing Appointments

§ 6.4 When the House has authorized a Speaker to appoint committees, boards, or commissions, the Speaker informs the House of his exercise of the authority granted.

On July 26, 1948,[19] Speaker Joseph W. Martin, Jr., of Massachusetts, announced his appointment of certain special committees.

> The Speaker, pursuant to the authority conferred upon him by House

16. 79 CONG. REC. 14645, 74th Cong. 1st Sess.

17. 81 CONG. REC. 9640, 75th Cong. 1st Sess.

18. 108 CONG. REC. 23515, 87th Cong. 2d Sess.

19. 94 CONG. REC. 9362, 80th Cong. 2d Sess.

Resolution 691, Eightieth Congress, and the order of the House of June 19, 1948, empowering him to appoint commissions, boards, and committees authorized by law or by the House, did on June 29, 1948, appoint as members of the select committee to conduct a study and investigation of the organization, personnel, and activities of the Federal Communications Commission the following Members of the House: Hon. Forest A. Harness, Indiana, chairman; Hon. Leonard W. Hall, New York; Hon. Charles H. Elston, Ohio; Hon. J. Percy Priest, Tennessee; Hon. Oren Harris, Arkansas. . . .

On Jan. 3, 1956,[20] Speaker Sam Rayburn, of Texas, announced certain appointments he made, pursuant to authority granted, during an adjournment period.

THE SPEAKER: The Chair lays before the House the following announcement with respect to certain appointments made by the Speaker subsequent to adjournment which the Clerk will read.

The Clerk read as follows:

The Chair desires to announce that pursuant to the order of the House of August 2, 1955, empowering him to appoint commissions, boards, and committees authorized by law or by the House, he did, on September 1, 1955, pursuant to the provisions of Public Law 742, 83d Congress, appoint as members of the National Monument Commission the following members on the part of the House: Mr. Smith of Virginia, Mr. Aspinall of Colorado, Mr. Smith of Wisconsin, and Mr. Westland of Washington.[1]

On Jan. 4, 1965,[2] Speaker John W. McCormack, of Massachusetts, announced appointments he made pursuant to authority granted during a *sine die* adjournment.

THE SPEAKER:: The Chair desires to announce that pursuant to the order of the House of October 3, 1964, empowering him to accept resignations and to appoint commissions, boards, and committees authorized by law or by the House, he did, on November 18, 1964, pursuant to the provisions of section 3, Public Law 88–630, appoint as members of the Lewis and Clark Trail Commission the following Members on the part of the House: Mr. Morris, of New Mexico; Mr. Rivers, of Alaska; Mr. Berry, of South Dakota; Mr. Skubitz, of Kansas.

§ 6.5 When a former Speaker has made appointments pursuant to authority granted him during a *sine die* adjournment of the House, the new Speaker informs the House of such actions.

On Jan. 3, 1947,[3] Speaker Joseph W. Martin, Jr., of Massachusetts, laid before the House a com-

20. 102 CONG. REC. 5, 84th Cong. 2d Sess.

1. *Parliamentarian's Note:* When the Speaker makes appointments during a *sine die* adjournment pursuant to authority granted by the House, he informs the House of his action at its next convening.

2. 111 CONG. REC. 25, 89th Cong. 1st Sess.

3. 93 CONG. REC. 39, 80th Cong. 1st Sess.

munication from the previous Speaker, Sam Rayburn, of Texas, in which Mr. Rayburn indicated that, subsequent to a sine die adjournment of the House during the second session of the 79th Congress, and pursuant to authority granted him by the House, he had made certain appointments:

JANUARY 3, 1947.

THE SPEAKER,
House of Representatives, United States,
Washington, D.C.

DEAR MR. SPEAKER: I desire to inform the House of Representatives that subsequent to the sine die adjournment of the Seventy-ninth Congress and pursuant to the provisions of Public Law 711 and the order of the House of August 2, 1946, empowering the Speaker to appoint commissions and committees authorized by law or by the House, I did, as Speaker of the Seventy-ninth Congress, on September 6, 1946, appoint Hon. Michael J. Bradley as a member of the Philadelphia National Shrines Park Commission.

Respectfully,

SAM RAYBURN.

Select Committee Appointments

§ 6.6 The Speaker appoints Members to select committees established pursuant to formal House resolutions.

On Dec. 6, 1967,[4] a resolution was introduced to authorize Speaker John W. McCormack, of Massachusetts, to appoint Members to a select committee.

MRS. [MARTHA W.] GRIFFITHS [of Michigan]: Mr. Speaker, on behalf of the distinguished gentlewoman from Washington [Mrs. May] and myself, I offer a resolution (H. Res. 1000) and ask unanimous consent for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1000

Resolved, (a) That there is hereby created a select committee to be composed of three Members of the House of Representatives to be appointed by the Speaker, one of whom shall be designated as chairman. Any vacancy occurring in the membership of the committee shall be filled in the same manner in which the original appointment was made.

(b) Effective upon the date of approval of this resolution, until otherwise ordered by the House, the management of the House Beauty Shop and all matters connected therewith shall be under the direction of the Select Committee herein created and shal1 be operated under such rules and regulations as such Committee may prescribe for the operation and the employment of necessary assistance for the conduct of said Beauty Shop by such business methods as may produce the best results consistent with economical and modern management.

Sec. 2. The Select Committee is hereby authorized to purchase, at a cost not to exceed $15,000, the initial equipment and materials required for the operation of the House Beauty Shop, and the expense thereof shall be paid from the contingent fund of the House of Representatives.

4. 113 CONG. REC. 35143, 90th Cong. 1st Sess.

THE SPEAKER: Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

MRS. GRIFFITHS: Mr. Speaker, the $15,000 advanced to reestablish the House beauty shop will be in the course of the next year, barring unforeseen circumstances, be returned to the contingency fund, and it is my earnest hope that the next time you hear from the select committee, it will be for the pleasant task of returning money to the Treasury of the United States.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: Pursuant to the provisions of House Resolution 1000, the Chair appoints as members of the Select Committee on the House Beauty Shop the following Members: Mrs. Griffiths, chairman; Mrs. Green of Oregon, and Mrs. May.

Discretion in Appointments

§ 6.7 The Speaker on occasion has insisted that he be permitted discretion in appointing Members to select committees.

On July 10, 1945,[5] Speaker Sam Rayburn, of Texas, indicated his desires concerning the formulation of resolutions providing for the appointment of select committees by the Speaker.

MR. [FRITZ G.] LANHAM [of Texas]: Mr. Speaker, I ask unanimous consent for the immediate consideration of Senate Joint Resolution 31.

The Clerk read the title of the joint resolution.

THE SPEAKER: Is there objection to the request of the gentleman from Texas?

MR. [JOSEPH W.] MARTIN [Jr.] of Massachusetts: Mr. Speaker, reserving the right to object, will the gentleman from Texas kindly explain the legislation?

MR. LANHAM: Mr. Speaker, this Senate joint resolution, which was passed unanimously by the Senate, provided for the treatment of the Legislative Chambers long delayed in giving proper quarters in which to meet. . . .

THE SPEAKER: The Chair desires to call attention to one amendment. The Chair is not going to raise the question at this time but will hereafter, and he thinks he might as well try to raise it with his beloved friend from Texas as anybody else, because there will not be any trouble with him about it.

The Chair calls attention to the amendment on page 2 of the bill running from line 17 to 24 and reading as follows:

> *Provided further,* That the project, insofar as it affects the House wing of the Capitol, shall be carried forward by the Architect of the Capitol in accordance with plans to be approved by a committee of five Representatives to be appointed by the Speaker of the House of Representatives, upon recommendation of the chairman of the House Committee on Public Buildings and Grounds.

Hereafter the Chair is going to insist that if he is to appoint a committee and be responsible for it he be permitted to appoint whom he pleases. To

5. 91 CONG. REC. 7392–94, 79th Cong. 1st Sess.

that end, of course, he would consult with the chairman of the Committee on Public Buildings and Grounds or whatever the committee of the House might be. . . .

The committee amendments were agreed to.

Appointment Restrictions

§ 6.8 Though it is customary to allow the Speaker discretion in appointing Members to select committees, authorizing resolutions normally include restrictions as to the total number of Members to be appointed and the party balance to be obtained.

On Mar. 5, 1958,[6] a resolution was introduced as follows:

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I offer a resolution and ask unanimous consent for its present consideration.

The Clerk read as follows:

HOUSE RESOLUTION 496

Resolved, That there is hereby created a Select Committee on Astronautics and Space Exploration to be composed of 13 Members of the House of Representatives to be appointed by the Speaker, 7 from the majority party and 6 from the minority party, one of whom he shall designate as chairman. Any vacancy occurring in the membership of the committee shall be filled in the manner in which the original appointment was made. . . .

There was no objection.

The resolution was agreed to and a motion to reconsider was laid on the table.

Making Select Committee Appointments

§ 6.9 The Speaker may orally appoint Members to a select committee pursuant to authority granted him.

On Oct. 20, 1966,[7] Speaker John W. McCormack, of Massachusetts, appointed Members to a select committee.

THE SPEAKER: Pursuant to the provisions of House Resolution 1013, 89th Congress, the Chair appoints as members of the Select Committee on Standards and Conduct the following Members of the House: Mr. Bennett, of Florida, chairman; Mr. Brooks, of Texas; Mr. Nix, of Pennsylvania; Mr. Carey, of New York; Mr. Cameron, of California; Mr. Ronan, of Illinois; Mr. Gross, of Iowa; Mr. Broyhill, of Virginia; Mr. Michel, of Illinois; Mrs. May, of Washington; Mr. Latta, of Ohio; and Mr. Stafford, of Vermont.

§ 6.10 Under certain circumstances, the Speaker may appoint the majority party members to a select committee without appointing the minority party members simultaneously.

6. 104 CONG. REC. 3443, 85th Cong. 2d Sess.

7. 112 CONG. REC. 28112, 89th Cong. 2d Sess.

On Feb. 7, 1961,[8] Speaker Sam Rayburn, of Texas, appointed the majority party members of a select committee.

THE SPEAKER: The Chair desires to make the following announcement.

Pursuant to the provisions of House Resolution 46, 87th Congress, the Chair appoints as members of the Select Committee To Conduct Studies and Investigations of the Problems of Small Business the following Members of the House:

Mr. Patman, Texas, chairman; Mr. Evins, Tennessee; Mr. Multer, New York; Mr. Yates, Illinois; Mr. Steed, Oklahoma; Mr. Roosevelt, California; Mr. Alford, Arkansas.[9]

§ 6.11 Under certain circumstances, the Speaker may appoint minority party members to a select committee pursuant to authority granted him without appointing the majority party members simultaneously.

On Feb. 17, 1961,[10] Speaker Sam Rayburn, of Texas, appointed the minority party members to a select committee.

THE SPEAKER: Pursuant to the provisions of House Resolution 46, 87th Congress, the Chair appoints as additional members of the Select Committee To Conduct Studies and Investigations of the Problems of Small Business the following Members of the House:

Mr. McCulloch, Ohio; Mr. Moore, West Virginia; Mr. Avery, Kansas; Mr. Smith, California; Mr. Robison, New York; and Mr. Derwinski, Illinois.

§ 6.12 The Speaker may appoint himself to certain select committees, and has served on the Joint Select Committee on Preparations for Inaugural Ceremonies.

On Apr. 20, 1964,[11] a resolution was introduced concerning the creation of a joint committee.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I offer a Senate concurrent resolution and ask for its immediate consideration.

The Clerk read as follows:

S. CON. RES. 71

Resolved by the Senate (the House of Representatives concurring), That a joint committee consisting of three Senators and three Representatives, to be appointed by the President of the Senate and the Speaker of the House of Representatives, respectively, is authorized to make the necessary arrangements for the inau-

8. 107 CONG. REC. 1820, 87th Cong. 1st Sess.

9. *Parliamentarian's Note:* The majority party members were appointed so that the committee could organize and the chairman could certify the employment of staff personnel. The Republican members did not hold a caucus to ratify the recommendations of their Committee on Committees until after the session of the House on Feb. 9, 1961.

10. 107 CONG. REC. 2271, 87th Cong. 1st Sess.

11. 110 CONG. REC. 8375, 88th Cong. 2d Sess.

guration of the President-elect and Vice-President-elect of the United States on the 20th day of January 1965.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: [John W. McCormack, of Massachusetts]: Pursuant to the provisions of Senate Concurrent Resolution 71, 88th Congress, the Chair appoints as Members of the Joint Committee . . . the following Members on the part of the House: Mr. McCormack, Mr. Albert, and Mr. Halleck.

Filling Vacancies

§ 6.13 When a vacancy occurs on a special committee, the Speaker, acting under the original authorization by the House, may appoint a Member to fill the vacancy.

On Jan. 3, 1939,[12] Speaker William B. Bankhead, of Alabama, made the following announcement:

THE SPEAKER: On August 13, 1938, a vacancy was created on the Special Joint Committee to Investigate the Tennessee Valley Authority due to the resignation of Hon. William J. Driver. The Chair, pursuant to the authority conferred upon him by Public Resolution 83, Seventy-fifth Congress, and the order of the House of June 15, 1938, empowering him to appoint commissions and committees authorized by law or by the House, did on August 23, 1938, appoint Hon. Graham A. Barden as a member of the Special Joint Committee to Investigate the Tennessee Valley Authority to fill the vacancy, and notified the Clerk of the House of his action.

On Feb. 2, 1960,[13] Speaker Sam Rayburn, of Texas, laid before the House a written announcement:

THE SPEAKER: The Chair lays before the House the following announcement, which the Clerk will read.

The Clerk read as follows:

Pursuant to the provisions of section 5, Public Law 115, 78th Congress, and House Resolution 165, 86th Congress, the Chair appoints as a member of the Committee on the Disposition of Executive Papers the gentleman from Iowa, Mr. Kyl, to fill the existing vacancy thereon.

Appointing Conferees

§ 6.14 The appointment of conferees on the part of the House is considered a matter within the discretion of the Speaker, although he customarily hears suggestions from the House leaders or from the chairman of the reporting committee.

On July 1, 1932,[14] unanimous consent was requested for the ap-

12. 84 CONG. REC. 16, 17, 76th Cong. 1st Sess.

13. 106 CONG. REC. 1822, 86th Cong. 2d Sess.

14. 75 CONG. REC. 14499, 14500, 72d Cong. 1st Sess.

pointment of conference committee managers on the part of the House.

MR. [SAMUEL] DICKSTEIN [of New York]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 10600) to exempt from the quota husbands of American citizens, with Senate amendments, disagree to the Senate amendments, and ask for a conference.

The Clerk read the title of the bill.

THE SPEAKER: [John N. Garner, of Texas]: Is there objection? (After a pause.) The Chair hears none, and appoints the following conferees: Messrs. Dickstein, Palmisano, Dies, Johnson of Washington, and Cable.

MR. [BERTRAND H.] SNELL [of New York]:[15] Mr. Speaker, the gentleman from Ohio [Mr. Cable] is absent through illness. I ask that the Chair substitute for the gentleman from Ohio [Mr. Cable] the gentleman from Ohio [Mr. Jenkins], the next man on the committee.

MR. DICKSTEIN:[16] Mr. Speaker, may I disagree with the selection of the conferee?

THE SPEAKER: No. If the gentleman is the ranking member, he should be appointed.

MR. DICKSTEIN: There are other Members ahead of the gentleman from Ohio.

THE SPEAKER: If the gentleman is the ranking member, then he ought to go on the conference. The Chair appoints the conferees and thinks the Republican side should have whom they want on the conference.

MR. DICKSTEIN: There are other gentlemen on the committee nearer the head of the table than the gentleman from Ohio.

THE SPEAKER: The gentleman from New York [Mr. Snell] has taken the responsibility of selecting the man on the committee whom he wants to represent the Republican organization, and that has been the custom. . . .

MR. DICKSTEIN: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. DICKSTEIN: May I submit a new list of conferees?

THE SPEAKER: The gentleman has stated that the Chair appoints the gentleman recommended by the gentleman from New York, and this ought to be sufficient if the Chair takes the responsibility.

On July 17, 1935,[17] Speaker Joseph W. Byrns, of Tennessee, discussed the practice of appointing conferees after the following unanimous-consent request was made and debated:

MR. [JOHN J.] MCSWAIN [of South Carolina]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill H.R. 8632, the Tennessee Valley Authority bill, disagree to the Senate amendments and agree to the conference asked for.

THE SPEAKER: Is there objection to the request of the gentleman from South Carolina?

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15. *Parliamentarian's Note:* Mr. Snell was the Minority Leader.

16. *Parliamentarian's Note:* Mr. Dickstein was the chairman of the committee reporting the bill in question.

17. 79 CONG. REC. 11319, 74th Cong. 1st Sess.

MR. [MAURY] MAVERICK [of Texas]: Reserving the right to object, will the gentleman from South Carolina inform this House how many conferees there will be?

MR. MCSWAIN: I do not mind stating to the gentleman that I have recommended to the Speaker to appoint five.

MR. MAVERICK: Mr. Speaker, reserving the right to object, an agreement was made by certain Members of the Military Affairs Committee to have five conferees, with unfriendly people on this committee. As one of the friends of the T.V.A., I was not invited, and as far as I know Mr. Thomason, of Texas, and Mr. Wilcox, of Florida, and Mr. Hill of Alabama, also friends of the T.V.A., were not there. I think it is wrong. I think this is a bad precedent to put unfriendly men on the conference committee; it may hold things up, and it does not appear to me as fair—I will not be a party to any agreement unfriendly to the purposes of the great T.V.A. program.

MR. [WILLIAM D.] MCFARLANE [of Texas]: Mr. Speaker, I reserve the right to object, to ask this question: I would like to see the personnel of the conference committee appointed according to the way the majority of the House voted, and the personnel should be so appointed so that a majority of the committee will favor the majority position of the House. Take the first three members on the conference committee, based on their vote on this question, and on the different administration amendments in the different issues voted on in the House. How would their known position on this legislation stand up with the opinion of the majority of the House on the legislation?

MR. MCSWAIN: The three members on the majority side whom I have nominated to the Speaker voted for the bill and voted against the motion to recommit. As I have stated time and time again, I am for whatever the House does; and I state again that I am for the House bill.

THE SPEAKER: After all, the Chair appoints the conferees. The Chair is always willing to accept the suggestions made by the chairman of the committee which has charge of the bill, assuming that the members who are appointed will stand for the House measure because they represent the House in the conference.

MR. MAVERICK: One of the members of the conferees has been one of the three bitterest opponents on the committee of the bill the President wants, and that is the gentleman from Louisiana [Mr. Montet]. As I understand it, he is one of those to be appointed. Yes; Mr. Montet finally voted for the bill, but he has consistently fought the bill from the very beginning.

THE SPEAKER: The Chair would certainly not assume that the gentleman from Louisiana would accept a position as a conferee and not stand for what the House wants, because that is what the House conferees are expected to do, consistent with any proper compromises that are necessary in order to put the measure through. On the contrary the Chair has confidence in the gentleman in every sense of the word. That is a matter which should appeal to the conferees when they go into session, and, after all, when the matter is reported to the House, the House has its opportunity to express its approval or disapproval of the conference report.

Speaker as Conferee

§ 6.15 Although the manner of appointment of conferees on

the part of the House and their number is considered within the discretion of the Speaker, the Speaker normally does not appoint himself to a conference committee.

On June 24, 1932,[18] Speaker John N. Garner, of Texas, suggested the appointment of himself to a conference committee. After some debate, and after a ruling by the Speaker concerning his discretion in the manner of appointments of conferees, he did not appoint himself to the committee.[19]

Appointing Successor Conferees

§ 6.16 Under more recent precedents, the Speaker appoints successor conferees to conference committees on the part of the House without the requirement of House approval.

On Mar. 22, 1950,[20] a letter of resignation was laid before the House as follows:

MARCH 22, 1950.

THE SPEAKER,
The House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: It is with regret that I announce my resignation as a House conferee to consider H.R. 1243, a bill to amend the Hatch Act. I am forced to resign because of ill health.

Sincerely yours,
MARY T. NORTON.

THE SPEAKER [Sam Rayburn, of Texas]: Without objection, the resignation is accepted.

There was no objection.

THE SPEAKER: The Chair appoints the gentlewoman from Connecticut [Mrs. Woodhouse] to fill the vacancy and the Clerk will notify the Senate of the change.

On Oct. 14, 1966,[1] the following unanimous-consent request was made:

MR. [ADAM C.] POWELL [of New York]: Mr. Speaker, I ask unanimous consent that the Republican conferees on the bill (H.R. 13161) to strengthen and improve programs of assistance for our elementary and secondary schools, be excused, and that the Speaker be empowered to appoint new Republican conferees.

THE SPEAKER [John W. McCormack, of Massachusetts]: Is there objection to the request of the gentleman from New York?

MR. GERALD R. FORD [of Michigan]: Mr. Speaker, reserving the right to object, is the gentleman from New York going to submit the names of the additional conferees?

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18. 75 CONG. REC. 13876–79, 72d Cong. 1st Sess.

19. See 8 Cannon's Precedents § 3220, for further treatment of this instance.

20. 96 CONG. REC. 3803, 81st Cong. 2d Sess.

1. 112 CONG. REC. 26996, 89th Cong. 2d Sess.

THE SPEAKER: As the gentleman from Michigan knows, the Chair makes the appointment. The Chair always seeks the counsel and advice of the chairman, assuming that the chairman has in turn conferred with the members of his own committee on both sides. The Chair will state that he has four names. . . .

Is there objection to the request of the gentleman from New York? The Chair hears none, and appoints the following conferees: Messrs. Ayres, Quie, Goodell, and Bell, and the Senate will be so notified.

THE SPEAKER: Is there objection to the request of the gentleman from New York? The Chair hears none, and appoints the following conferees: Messrs. Ayres, Quie, Goodell, and Bell, and the Senate will be so notified.

On Nov. 17, 1967,[2] the following unanimous-consent request was made:

MR. [CARL D.] PERKINS [of Kentucky]: Mr. Speaker, I ask unanimous consent that the gentleman from New Jersey [Mr. Daniels] may be excused as a conferee on the bill S. 2388, and that the Speaker be authorized to appoint a Member to fill the vacancy.

THE SPEAKER [John W. McCormack, of Massachusetts]: Is there objection to the request of the gentleman from Kentucky?

There was no objection.

THE SPEAKER: The Chair appoints the gentleman from Michigan [Mr. O'Hara] to fill the vacancy.[3]

2. 113 CONG. REC. 32953, 90th Cong. 1st Sess.

3. *Parliamentarian's Note:* When the House excuses a conferee from further service, the Speaker may appoint a successor without specific authorization from the House. Hence Mr. Perkins need not have sought unanimous consent; it is when the Speaker appoints an additional conferee that he must have the authorization of the House.

§ 6.17 Unanimous consent was required where a House conferee sought to absent himself from a conference.

On May 16, 1930,[4] the following unanimous-consent request was made.

MR. [GILBERT N.] HAUGEN [of Iowa]: Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (S. 108) to suppress unfair and fraudulent practices in the marketing of perishable commodities in interstate and foreign commerce, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

THE SPEAKER [Nicholas Longworth, of Ohio]: The gentleman from Iowa asks unanimous consent. . . . Is there objection?

There was no objection.

The Chair appointed the following conferees: Mr. Haugen, Mr. Purnell, and Mr. Aswell.

MR. [JAMES B.] ASWELL [of Louisiana]: Mr. Speaker, I shall be absent next week, and I ask that the gentleman from Kentucky [Mr. Kincheloe] be appointed in my place.

THE SPEAKER: Without objection, the gentleman from Kentucky [Mr.

4. 72 CONG. REC. 9076, 71st Cong. 2d Sess.

Kincheloe] will take the place of the gentleman from Louisiana on the conference.

There was no objection.

Appointing Additional Conferees

§ 6.18 In order for the Speaker to appoint an additional conferee to a conference committee on the part of the House, unanimous consent of the House must first be obtained.

On Oct. 9, 1967,[5] a unanimous consent request was made relative to the naming of an additional conferee committee.

MR. [JOHN L.] MCMILLAN [of South Carolina]: Mr. Speaker, I ask unanimous consent that the Speaker be authorized to appoint an additional manager on the part of the House to serve on the conference on the bill (H.R. 8719) to increase the annual Federal payment to the District of Columbia and to provide a method for computing the annual borrowing authority for the general fund of the District of Columbia.

THE SPEAKER [John W. McCormack, of Massachusetts]: Is there objection to the request of the gentleman from South Carolina?

The Chair hears none, and appoints the following additional conferee: Mr. Fuqua.

The Clerk will notify the Senate.

§ 6.19 The Speaker informs the House when, pursuant to authority granted him, he has appointed conferees on the part of the House during an adjournment of the House.

On Sept. 23, 1940,[6] Speaker Sam Rayburn, of Texas, made the following announcement:

THE SPEAKER: Pursuant to authority granted on Thursday, September 19, 1940, the Chair did on Friday, September 20, 1940, appoint as managers on the part of the House to attend the conference on H.R. 10413, the excess-profits-tax bill, the following Members of the House: Mr. Doughton, Mr. Cullen, Mr. McCormack, Mr. Cooper, Mr. Treadway, Mr. Crowther, Mr. Knutson.

Conferees on Appropriations

§ 6.20 The Speaker may appoint different conferees on the part of the House to confer on separate chapters of an appropriations bill.

On July 27, 1955,[7] the following unanimous-consent request was made:

MR. [CLARENCE] CANNON [of Missouri]: Mr. Speaker, I ask unanimous

5. 113 CONG. REC. 28161, 90th Cong. 1st Sess.

6. 86 CONG. REC. 12460, 76th Cong. 3d Sess. The House had previously agreed to the conference on Sept. 19, 1940; see *id.* at p. 12360.

7. 101 CONG. REC. 11686, 84th Cong. 1st Sess.

consent to take from the Speaker's table the bill (H.R. 2728) making supplemental appropriations for the fiscal year ending June 30, 1956, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER [Sam Rayburn, of Texas]: Is there objection to the request of the gentleman from Missouri? [After a pause.] The Chair hears none and appoints the following conferees: Messrs. Cannon and Taber; and on chapter I, Messrs. Whitten, Marshall, and H. Carl Andersen; on chapter II, Messrs. Preston, Thomas, and Bow; on chapter III. Messrs. Mahon, Sheppard, Sikes, Wigglesworth, Scrivner, and Ford; on chapter IV, Messrs. Passman, Gary, and Wigglesworth; on chapter V, Messrs. Andrews, Mahon, and Fenton; on chapter VI, Messrs. Thomas, Yates, and Phillips; on chapter VII, Messrs. Kirwan, Norrell, and Jensen; on chapter VIII, Messrs. Fogarty, Fernandez, and Hand; on chapter IX, Messrs. Rabaut, Kirwan, and Davis of Wisconsin; on chapter X, Messrs. Rooney, Preston, and Coudert; on chapter XI, Messrs. Gary, Passman, and Canfield; on chapters XII, XIII, XIV, and XV, Messrs. Rabaut, Norrell, and Horan.

Appointing Tellers

§ 6.21 The Chair appoints tellers where tellers are ordered in a Committee of the Whole.

On Sept. 21, 1965,[8] the following motion was made:

MR. [JOHN A.] BLATNIK [of Minnesota]: Mr. Chairman, I move that the Committee do now rise.

THE CHAIRMAN [Daniel D. Rostenkowski, of Illinois]: The question is on the motion of the gentleman from Minnesota.

MR. [WILLIAM C.] CRAMER [of Florida]: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Blatnik and Mr. Cramer.

§ 6.22 The Chair may appoint new tellers after the initial ones are found to be in disagreement on a teller vote.

On July 19, 1946,[9] a question was voted on as follows:

THE CHAIRMAN [John J. Delaney, of New York]: The question is on the committee amendment.

The question was taken; and on a division (demanded by Mr. Thomason) there were—ayes 63, noes 38.

MR. [R. EWING] THOMASON [of Texas]: Mr. Chairman, I demand tellers. Tellers were ordered, and the Chair appointed as tellers Mr. May and Mr. Short.

The committee divided; and the tellers were unable to agree on the count.

THE CHAIRMAN: Without objection, the Chair will direct that the vote by tellers be taken over.

There was no objection.

The Chair appointed as tellers Mr. Thomason and Mr. Short.

The Committee again divided, and the tellers reported that there were-ayes 102, noes 72.

8. 111 CONG. REC. 24635, 89th Cong. 1st Sess.

9. 92 CONG. REC. 9466, 79th Cong. 2d Sess.

Appointing Electoral Vote Tellers

§ 6.23 The Speaker appoints tellers for the counting of Presidential and Vice Presidential electoral votes pursuant to a concurrent resolution of both Houses.

On Jan. 3, 1961,[10] the following resolution was offered.

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, I offer a resolution (S. Con. Res. 1) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

Resolved by the Senate (the House of Representatives concurring), That the two Houses of Congress shall meet in the Hall of the House of Representatives on Friday, the 6th day of January 1961, at 1 o'clock post meridian, pursuant to the requirements of the Constitution and laws relating to the election of President and Vice President of the United States, and the President of the Senate shall be their presiding officer; that two tellers shall be previously appointed by the President of the Senate on the part of the Senate and two by the Speaker on the part of the House of Representatives, to whom shall be handed, as they are opened by the President of the Senate, all the certificates and papers purporting to be certificates of the electoral votes, which certificates shall be opened, presented, and acted upon in the alphabetical order of the States, beginning with the letter "A", and said tellers, having then read the same in the presence and hearing of the two Houses, shall make a list of the votes as they shall appear from the said certificates; and the votes having been ascertained and counted in the manner and according to the rules by law provided, the result of the same shall be delivered to the President of the Senate, who shall thereupon announce the state of the vote, which announcement shall be deemed a sufficient declaration of the persons, if any, elected President and Vice President of the United States, and, together with list of the votes, be entered on the Journals of the two House.

The concurrent resolution was agreed to.

THE SPEAKER: [Sam Rayburn, of Texas]: Pursuant to the provisions of Senate Concurrent Resolution 1, the Chair appoints as tellers on the part of the House to count the electoral votes on January 6, 1961, the gentlewoman from New York [Mrs. Kelly] and the gentlewoman from Ohio [Mrs. Bolton].

§ 6.24 The Speaker may appoint a new teller for the counting of electoral votes when a previously appointed one is not present.

On Jan. 6, 1949,[11] after the election in 1948 of Harry S. Truman as President, Speaker Sam Rayburn, of Texas, designated a teller for the counting of electoral votes.

THE SPEAKER: The gentleman from New York [Mr. Gamble] is unavoidably

10. 107 CONG. REC. 26, 27, 87th Cong. 1st Sess.

11. 95 CONG. REC. 89, 81st Cong. 1st Sess.

detained and is unable to serve as teller.

The Chair designates the gentleman from Pennsylvania [Mr. Graham] to act as teller in his stead.

Temporary Appointments

§ 6.25 Pursuant to law and House authorization, the Speaker may make temporary appointments to fill vacancies in the offices of the Clerk, the Sergeant at Arms, the Doorkeeper, the Postmaster, and the Chaplain of the House.

On July 28, 1953,[12] the following unanimous-consent request was made:

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 6571) amending the Legislative Reorganization Act of 1946 to provide for the appointment of persons to exercise temporarily the duties of certain offices of the House of Representatives.

There being no objection, the Clerk read the bill, which authorized the Speaker to make appointments on a temporary basis to fill vacancies in the offices of the Clerk, the Sergeant at Arms the Doorkeeper, the Postmaster and the Chaplain of the House.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.[13]

On Jan. 6, 1954,[14] a letter of resignation of the Sergeant at Arms, dated Sept. 14, 1953, was laid before the House:

THE HONORABLE THE SPEAKER,
House of Representatives.

MY DEAR MR. SPEAKER: I submit herewith, effective at the close of business today, my resignation as Sergeant at Arms, House of Representatives, which additional duty I assumed pursuant to House Resolution 325, dated July 8, 1953, 83d Congress.

Respectfully yours,
LYLE O. SNADER,
Clerk of the House of Representatives.

THE SPEAKER: [Joseph W. Martin, Jr., of Massachusetts]: The Chair announces that, pursuant to the provisions of section 208(a) of the Legislative Reorganization Act of 1946, he did on September 15, 1953, appoint William R. Bonsell, of the State of Pennsylvania, to act temporarily as Sergeant at Arms until the House chooses a person for that office.[15]

On Mar. 14, 1966,[16] Speaker John W. McCormack, of Massa-

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12. 99 CONG. REC. 10128, 83d Cong. 1st Sess.

13. See also 2 USCA 75a–1.

14. 100 CONG. REC. 8, 83d Cong. 2d Sess.

15. *Parliamentarian's Note:* Mr. Snader, the Clerk of the House, had assumed the additional duties of the Sergeant at Arms following the death of the elected Sergeant at Arms, William F. Russell.

16. 112 CONG. REC. 5712, 89th Cong. 2d Sess.

chusetts, appointed an Acting Chaplain following the death of the elected Chaplain.

THE SPEAKER: Pursuant to the provisions of the Legislative Reorganization Act of 1946, as amended by Public Law 197, 83d Congress (67 Stat. 387; 2 U.S.C. 75–a–1–(a)), the Chair appoints Edward Gardiner Latch, D.D., L.H.D., of Washington, D.C., to act as and to exercise temporarily the duties of the Chaplain of the House of Representatives.[17]

Appointments Subject to Approval

§ 6.26 On occasion, the House authorizes the designation of certain House employees subject to the approval of the Speaker.

On Jan. 18, 1945,[18] a resolution was offered which provided for the designation of an assistant to the Clerk subject to the approval of the Speaker.

MR. [JOHN J.] COCHRAN [of Missouri]: Mr. Speaker, I offer a resolution (H. Res. 95) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That there shall be paid out of the contingent fund of the House, until otherwise provided by law, compensation at the rate of $3,600 per annum, payable monthly, for the services of an assistant reading clerk, who shall be designated by the Clerk of the House, subject to the approval of the Speaker: *Provided, however*, That the authorization and appropriation herein contained shall terminate whenever a vacancy occurs in a position of reading clerk.

The resolution was agreed to.

On Aug. 3, 1953,[19] a resolution was introduced as follows:

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I offer a resolution (H. Res. 392) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That effective August 1, 1953, there shall be paid out of the contingent fund of the House, until otherwise provided by law, compensation at the basic rate of $3,000 per annum for the employment of an assistant Journal Clerk-Indexer, who shall be designated by the minority leader subject to the approval of the Speaker.

The resolution was agreed to, and a motion to reconsider was laid on the table.

§ 7. Preserving Order on the House Floor

The Speaker's jurisdiction, duty, and power to preserve order on

17. *Parliamentarian's Note:* This appointment was made to fill the vacancy caused by the death of the Chaplain, Reverend Bernard Braskamp.

18. 91 CONG. REC. 334, 79th Cong. 1st Sess.

19. 99 CONG. REC. 11133, 83d Cong. 1st Sess.

the House floor derives mainly from the House rules and House precedents. This section lists examples of both.

Under House rules, the Speaker preserves order on the House floor by maintaining the decorum of the proceedings,[20] by controlling the use of the House Chamber,[1] by presiding over the Members during debate,[2] and by supervising the admission of persons to the House floor.[3]

Under House precedents, the Speaker preserves order on the House floor: by using his power of recognition to remedy situations wherein a Member attempts to interrupt another Member who has the floor;[4] by controlling the manner by which one Member addresses or refers to another;[5] by disallowing or controlling certain references by Members to Senators or others; by controlling the movements of Members on the floor during debate;[6] by controlling the distribution of materials on the House floor;[7] and by enforcing the privileges of the House floor.[8]

Controlling interjected Remarks

§ 7.1 In preserving order on the House floor, the Speaker has the power of recognition and Members must seek the Speaker's recognition before interrupting another Member who has the floor.

On Feb. 17, 1936,[9] a parliamentary inquiry was addressed to Speaker Joseph W. Byrns, of Tennessee, as follows:

> MR. [CLIFTON A.] WOODRUM [of Virginia]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER: The gentleman will state it.

20. Rule I clause 2, *House Rules and Manual* § 622 (1973). See Ch. 29, infra, for fuller treatment of the Speaker's role in maintaining order on the House floor.

1. Rules I clause 3, § 623, and XXXI, § 918, *House Rules and Manual* (1973). See Ch. 4, supra, for discussion of the use of the House Chamber.

2. Rule XIV clauses 1–8, §§ 749–764, *House Rules and Manual* (1973). See Ch. 29, infra, for fuller treatment of the Speaker's role in presiding over debate.

3. Rule XXXII clauses 1 and 2, *House Rules and Manual* §§ 919–921 (1973). See Ch. 4, supra, for treatment of admission to the House floor.

4. See §§ 7.1, 7.2, infra.

5. See §§ 7.3 et seq., infra.

6. See §§ 7.13, 7.14, infra.

7. See § 7.15, infra.

8. See Ch. 4, supra.

9. 80 CONG. REC. 2201, 74th Cong. 2d Sess.

MR. WOODRUM: Mr. Speaker, in the interest of orderly procedure, I should like to propound a parliamentary inquiry to the Speaker.

If I understand the rules of the House, they provide that in debate should a Member desire to address the House or the Speaker he must first secure recognition of the Speaker. If a Member has the floor and is addressing the House or the Speaker and another Member desires to interrogate him, interrupt, or interject remarks, he must first secure the permission of the Member who has the floor.

Mr. Speaker, I observe a custom growing up here of Members getting up and a number of them talking at once, with the Speaker pounding for order. It seems to me that they must not understand the rules, or else I do not understand them. I do not understand that under the rules a Member has a right to cut into another Member's speech, or interrupt the Member when he is trying to speak, or while the Speaker is trying to make a ruling or is addressing the House. I think the Speaker should rule on this matter.

THE SPEAKER: The gentleman is correct. The Chair has had occasion several times, according to his distinct recollection, to call this rule to the attention of the Members of the House. It is a violation of the rules of the House for a Member to interrupt another Member when he has the floor without first addressing the Chair and obtaining the consent of the Member having the floor before he interrupts.

§ 7.2 In preserving order on the House floor, the Chair may rule that statements interjected into the speech of a Member without his permission may be stricken by the Member in his revision of remarks.

On Mar. 4, 1936,[10] a debate took place which brought about a point of order, as follows:

MR. [CHARLES] KRAMER [of California]: Mr. Chairman, will the gentleman yield?

MR. [MAURY] MAVERICK [of Texas]: Yes.

MR. KRAMER: Will the gentleman explain what the cartoon said down below it? The gentleman said it was a fine picture of the President. I am surprised that the gentleman would stand on the floor here as a Democrat, as a supporter of this administration and take that attitude toward our President.

MR. MAVERICK: Do not talk nonsense, Mr. Kramer.

MR. [VITO] MARCANTONIO [of New York]: Mr. Chairman, will the gentleman yield there?

MR. MAVERICK: Yes; I yield.

MR. MARCANTONIO: As a matter of fact, the attitude of the gentleman and some other gentlemen who are advocating this legislation is one of competing with Mr. Hearst on the question of communism.

[Several gentlemen rose. Some confusion. Mr. Bankhead rose to a point of order.]

MR. [WILLIAM B.] BANKHEAD [of Alabama]: Mr. Chairman, I rise to a point

10. 80 CONG. REC. 3278, 74th Cong. 2d Sess.

of order. It is an absolute violation of the rules of the House governing debate to have remarks interjected without the consent of the gentleman who holds the floor. It certainly does not contribute anything to the dignity of the proceedings of the Committee or the clarification of issues, and I hope gentlemen will observe the rule.

MR. MARCANTONIO: But the gentleman from Texas had yielded to me.

MR. [JOHN J.] O'CONNOR [of New York]: Mr. Chairman, supplementing what the distinguished majority leader has said, there is a bad practice in this House of the stenographer taking down words which are said not under the rules of the House. The Chair should instruct the stenographer not to take down the words used by the gentleman from California in answer to my colleague from New York.

THE CHAIRMAN [William L. Nelson, of Missouri]: Under the rule the gentleman holding the floor has the privilege of striking from his remarks such words. [In pursuance of the above ruling Mr. Maverick eliminated certain matter not regarded as relevant to the proceedings.]

Controlling Manner of Address

§ 7.3 In preserving order on the House floor, a Speaker or a Chairman of the Committee of the Whole may instruct Members as to the manner by which they may properly address one another in debate.

On Oct. 24, 1945,[11] Speaker Sam Rayburn, of Texas, advised a Member, Mr. John E. Rankin, of Mississippi, as to the manner in which a Member should address or make reference to another Member on the floor of the House:

MR. RANKIN: Mr. Speaker, we have just witnessed one of the most ridiculous performances that has taken place in this House since I have been in Congress. These unjustified attacks on the Committee on Un-American Activities, these smear attacks on the Daughters of the American Revolution by the Jewish gentleman from New York [Mr. Celler], have been shocking indeed, to say the least of it.

MR. [EMANUEL] CELLER: Mr. Speaker, I make the point of order that the gentleman is out of order when he refers to me as "the Jewish gentleman from New York." I ask that the words be taken down.

THE SPEAKER: If the gentleman will allow the Chair, there is one way to refer to a Member of the House of Representatives and that is, "the gentleman from" the State from which he comes. Any other appellation is a violation of the rules.

MR. RANKIN: Mr. Speaker, if he objects to being called a "Jewish gentleman" I withdraw it.

MR. CELLER: Mr. Speaker, I ask that the words be taken down.

MR. [VITO] MARCANTONIO [of New York]: I ask that those words be taken down.

MR. RANKIN: I am withdrawing the words. I have not the time to argue such matters.

MR. MARCANTONIO: I object to his withdrawing the words. I request that the words be taken down.

11. 91 CONG. REC. 10032, 10033, 79th Con. 1st Sess.

THE SPEAKER: The Chair has already stated the rule with reference to the language of the gentlemen from Mississippi. . . .

The gentleman from Mississippi [Mr. Rankin] will proceed in order. . . .

MR. RANKIN: Mr. Speaker, it is exceedingly strange that a man presuming to arrogate to himself the prerogative of speaking for a minority group will rise on this floor and denounce the Daughters of the American Revolution, in the manner the Member from New York [Mr. Celler] did and then raise a protest when he is even referred to as a gentleman of his race.

MR. CELLER: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. CELLER: The gentleman by inference and innuendo has simply repeated what he said at the inception of his remarks when he attempted to state that I was a Jewish gentleman. That is the second time he did it by indirection. I think the gentleman should be called to order and cautioned not to repeat that kind of language.

THE SPEAKER: The gentleman refers to the gentleman, if he referred to him at all, as the member of a minority race. The Chair does not think that is a violation of the rule.

MR. RANKIN: Mr. Speaker, a parliamentary inquiry. I wish to proceed in order. Does the Member from New York [Mr. Celler] object to being called a Jew or does he object to being called a gentleman? What is he kicking about?

MR. MARCANTONIO: Mr. Speaker, a point of order.

THE SPEAKER: The Chair desires to make a little statement.

The Chair trusts that points of order may be properly points of order hereafter, and that a Member before he makes a point of order secures the recognition of the Chair.

The gentleman from Mississippi will proceed in order, and the Chair trusts that the gentleman from Mississippi understands what the Chair means.

On Mar. 4, 1936,(12) a Member remarked as follows:

MR. [ROBERT F.] RICH [of Pennsylvania]: . . .

Mr. Chairman, where are we going to head in at? When will we stop this extravagance? I want to say that we have talked about responsibility. Whose responsibility? Whose, Mr. Bankhead? Is it yours or is it the Members of this House?

MR. [WILLIAM B.] BANKHEAD [of Alabama]: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN [William L. Nelson, of Missouri]: The gentleman will state it.

MR. BANKHEAD: Mr. Chairman, I am not sensitive about the matter, but I am a little meticulous about observance of the rules of the House, and it is a direct violation of the rules of the House for a Member to refer directly by name to any Member upon the floor, and I shall have to give the gentleman a little preliminary schooling on the rules of the House and I may add to it a little later on. The gentleman should say, "The gentleman from Alabama."

THE CHAIRMAN: The Chair confirms the statement of the gentleman from

12. 80 CONG. REC. 3286, 74th Cong. 2d Sess.

Alabama and sustains the point of order.

MR. [BYRON B.] HARLAN [of Ohio]: Mr. Chairman, as an additional point of order and with respect to the same point of order made by the gentleman from Alabama, following parliamentary practice and under the rules of the House, the gentleman should not, from the floor, even address the gentleman from Alabama directly, but should direct all of his remarks to the Chairman or the Speaker.

THE CHAIRMAN: The gentleman is correct.

Whom Members May Address

§ 7.4 The Chair, in preserving order on the floor of the House, may rule out of order a Member's address to anyone other than the Chair, including the press.

On Apr. 24, 1963,[13] the colloquy below occurred between Mr. Thomas B. Curtis, of Missouri, and the Chairman of the Committee of the Whole, Eugene J. Keogh, of New York:

MR. CURTIS: Mr. Chairman, I want to say to my so-called liberal friends who voted the motion up which closed off debate on such a serious matter that you have clearly demonstrated your concern for the basic civil liberties.

I would say to the press that this is a good observation——

MR. [ROSS] BASS [of Tennessee]: Mr. Chairman, I make the point of order that the gentleman is out of order in addressing the press gallery or any other gallery from the floor of the House.

MR. CURTIS: I am not addressing the press gallery. I am addressing——

THE CHAIRMAN: The gentleman from Missouri will suspend. The Chair advises the gentleman that the correct parliamentary procedure is for the gentleman to address the Chair and only the Chair. The gentleman will proceed in accordance with the rules.

§ 7.5 It is considered within the authority of the Speaker in preserving order on the floor of the House to interrupt a Member and rule out of order any reference to a person in the House gallery.

On June 4, 1963,[14] during a Member's remarks, Speaker John W. McCormack, of Massachusetts, on his own initiative took action to prevent the reference to persons in the gallery of the House.

MR. [WILLIAM T.] CAHILL [of New Jersey]: Mr. Speaker, and my colleagues, as one of the sponsors of this legislation, I have patiently sat on this floor expecting that my friends from that side of the aisle would at least show the courtesy to the minority to be heard. It was my hope that it would not be necessary for me to make any observations at all in order to obtain

13. 109 CONG. REC. 6892, 88th Cong. 1st Sess.

14. 109 CONG. REC. 10157, 10158, 88th Cong. 1st Sess.

the attention of my friends. Now, I would say that this is not my observation, but I thought the House might like to have the observation of a disinterested, objective observer who was sitting up in the gallery and who happens to be a visitor of mine——

THE SPEAKER: Reference to anybody in the gallery is not consistent with the rules of the House.

MR. CAHILL: I beg the Chair's pardon.

I would say then, may I quote to you the observation of a visitor who told me——

MR. [ROSS] BASS [of Tennessee]: Mr. Speaker, a point of order. Is the gentleman referring to a visitor in the Chamber, or in the gallery, or a visitor in Washington?

MR. CAHILL: No; I would say—

THE SPEAKER: The gentleman will suspend. The gentleman referred to a visitor and it is not the Chair's duty to penetrate his mind.

MR. BASS: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: Does the gentleman from Minnesota yield to the gentleman from Tennessee to make a parliamentary inquiry?

MR. [CLARK] MACGREGOR [of Minnesota]: Mr. Speaker, I yield to the distinguished gentleman from Tennessee for the purpose of his parliamentary inquiry.

MR. BASS: Since it is the prerogative of the Members to inquire into the minds of the other Members, may I request of the Member to divulge if this speaker is in the gallery or on the floor?

THE SPEAKER: The Speaker rules that is not a parliamentary inquiry. . . .

On July 27, 1954,[15] in a similar situation involving Benjamin F. James, of Pennsylvania, Chairman of the Committee of the Whole, a Member attempted to refer to a visitor in the House gallery.

MR. [WALTER H.] JUDD [of Minnesota]: Mr. Chairman, will the gentleman yield?

MR. [CLARENCE] CANNON [of Missouri]: If the gentleman will permit me, I will finish my statement and then I will be delighted to yield.

MR. JUDD: My purpose is to call attention to the French nurse who is in the gallery.

MR. CANNON: I yield to the gentleman.

MR. JUDD: Mr. Chairman, I appreciate the gentleman's courtesy in permitting this short interlude. One of the things that always thrills everybody in the world is courage and devotion to duty, especially when under most trying and dangerous circumstances. I appreciate the opportunity to call attention to the presence in our gallery

THE CHAIRMAN: The gentleman from Minnesota will suspend. The Chair regrets extremely——

MR. JUDD: Mr. Chairman, I ask unanimous consent to proceed out of order.

THE CHAIRMAN: The gentleman may not proceed out of order for the purpose which he manifestly intends to use the time. The Chair regrets extremely that he must so hold under the rules of procedure of the House. We

15. 100 CONG. REC. 12253, 83d Cong. 2d Sess.

are all conscious of the great heroism of the person to whom the Chair knows that the gentleman wishes to allude, but it is a matter of extreme regret that because of the rules of the House, reference may not be made to anyone in the gallery.

MR. JUDD: I shall not say anything about the gallery. I shall say she is on the Hill today.

THE CHAIRMAN: The Chair greatly regrets that under the rules of procedure of the House, the gentleman must be denied the privilege of introducing anyone in the gallery which, I know, every Member of the House would greatly appreciate in this instance, if it were possible under the rules.

MR. JUDD: Mr. Chairman, I had no intention of introducing anyone in the gallery. Is it not possible to refer here to persons who are in our country?

THE CHAIRMAN: It is not possible to refer to any person in the gallery.

MR. JUDD: May I not call attention to a most distinguished visitor in our country today?

THE CHAIRMAN: The gentleman may refer to one who is in our country.

MR. JUDD: Well, then, I should like to refer to the distinguished heroine of Dien Bien Phu who we, in the United States, are happy these days to welcome to our shores and to our city, and to pay tribute to her, as a person whose heroism is acclaimed by all, and as a symbol of all women of the world who in times of great crisis and peril are faithful to their duty, particularly that of ministering to men wounded in the defense of freedom. We pay tribute to her wherever she may be in our country at the present moment.

Enforcing Floor Privileges

§ 7.6 The Speaker has within his authority the enforcement of the privileges of the floor of the House, including times when there is held a joint session of Congress in the House Chamber.

On Jan. 7, 1964,[16] Speaker John W. McCormack, of Massachusetts, made an announcement with respect to the privileges of the floor during a joint session of the Congress.

THE SPEAKER: The Chair desires to make an announcement. After consultation with the majority and minority leaders, and with their consent and approval, the Chair announces on Wednesday, January 8, 1964, the date set for the joint session to hear an address by the President of the United States, only the doors immediately opposite the Speaker and those on his left and right will be open. No one will be allowed on the floor of the House who does not have the privileges of the floor of the House.

Controlling Reference to Senators

§ 7.7 In preserving order on the House floor, a Chairman of the Committee of the Whole may interrupt a Member to rule out of order any reference to a Member of the Senate.

16. 110 CONG. REC. 6, 88th Cong. 2d Sess.

On May 25, 1937,[17] a Member spoke as follows in the Committee of the Whole:

MR. [ALFRED F.] BEITER [of New York]: . . .

Mr. Chairman, I have letters here from Members of the Senate saying they are in sympathy with this movement. If you will permit me, I will read a letter from Senator Murray, in which he says——

THE CHAIRMAN [John J. O'Connor, of New York]: The Chair, on its own responsibility, makes the point of order against the reading of a letter from a Member of another body.

§ 7.8 In preserving order on the House floor, a Speaker pro tempore enforces the rule that in debate a Member may not directly nor indirectly refer to a Senator or to a speech made by a Senator even though the speech was not made in the Senate Chamber.

On May 2, 1941,[18] a point of order was raised:

MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE [Fadjo Cravens, of Arkansas]: The gentleman will state it.

MR. KEEFE: Mr. Speaker, the gentleman in the address he has just made has on repeated occasions made reference to Senator Wheeler of Montana. I am not making this point of order in defense of Senator Wheeler or anybody else but in an effort to preserve what I understand to be the rules of this House. I make the point of order that the gentleman is out of order and is proceeding in violation of the rules of the House when he refers either contemptuously or in a complimentary manner to a Member of another body. I believe the gentleman's remarks should be deleted in those aspects in which he has thus referred to the Senator from Montana in order that we may preserve the plain mandate of the rules of this House.

THE SPEAKER PRO TEMPORE: The point of order is sustained.

The gentleman from Wisconsin will proceed in order.

MR. [THADDEUS F. B.] WASIELEWSKI [of Wisconsin]: Mr. Speaker, the speech I have prepared here has wholly to do with the talk given by Senator Wheeler. Is it permissible to merely make reference to him as the senior Senator from Montana?

THE SPEAKER PRO TEMPORE: Under the rules of the House, it is a violation of the rules to refer to a Senator of the United States in any such fashion. Under the rules of the House the gentleman should refrain from such remarks as those and proceed in order. . . .

MR. WASIELEWSKI: Mr. Speaker, I ask unanimous consent at this time to revise and extend my remarks to conform with the House rules. I offer my profoundest regrets and apology if I have in any way violated the rules of the House. I did not realize that the

17. 81 CONG. REC. 5013, 75th Cong. 1st Sess.

18. 87 CONG. REC. 3536, 3537, 77th Cong. 1st Sess.

House rule also covered statements made by Members of Congress outside the Capitol halls.

MR. [EARL C.] MICHENER [of Michigan]: Mr. Speaker, reserving the right to object, the gentleman asks to revise and extend his remarks in accordance with the rules of the House?

MR. WASIELEWSKI: That is right.

MR. MICHENER: And the gentleman will not include in his extension those things that violate the rules and to which objection has been made?

MR. WASIELEWSKI: That is right. . . .

MR. [JOHN M.] VORYS of Ohio: Mr. Speaker, pursuing my parliamentary inquiry, and reserving the right to object, what I wanted to know is this—and whether it applies to this speech or not is not the point. Can an attack be made upon a Member of this House or a member of another body merely by referring to the person indirectly, so long as the Member is clearly identified and the matter consists of an attack upon something he has said or done?

THE SPEAKER PRO TEMPORE: Under the rules of the House the gentleman is not permitted to do indirectly what he cannot do directly. Consequently the point of order was sustained upon the theory that there had been an unintentional violation of the rules of the House. The gentleman now asks unanimous consent that he may be permitted to revise and extend his remarks. Is there objection?

There was no objection.

Controlling References to Members

§ 7.9 It is considered within the authority of the Chair in preserving order on the floor of the House to rule out of order words spoken in debate referring to another Member in an unparliamentary manner.

On July 2, 1935,[19] the debate below took place in the House, Speaker Joseph W. Byrns, of Tennessee, presiding:

MR. [MAURY] MAVERICK [of Texas]: I have not the parliamentary experience and ability to get up here and beat the parliamentary rules; but I do say I hope the House passes the resolution, and I do not believe a word the gentleman from Maine [Mr. Brewster] said. . . .

MR. [RALPH O.] BREWSTER: Mr. Speaker——

THE SPEAKER: For what purpose does the gentleman from Maine rise?

MR. BREWSTER: I rise to ask whether it is possible for the gentleman from Texas to challenge my word on the floor of this House without having his words taken down. I rose immediately the words were uttered, and it seems to me nothing could transcend such a proposition. If that is not possible, it transcends my conception of parliamentary procedure.

THE SPEAKER: To what words does the gentleman object?

MR. BREWSTER: He said, as I understood him, that he did not believe a word I had uttered.

THE SPEAKER: The Chair would state to the gentleman that the Chair does

19. 79 CONG. REC. 10670, 10671, 74th Cong. 1st Sess.

not think that implies that the gentleman uttered an untruth. That was the opinion of the gentleman from Texas, but not necessarily the opinion of anyone else, and the Chair does not understand that there is any question of privilege involved in the remarks uttered.

MR. BREWSTER: May I ask that the words be taken down?

THE SPEAKER: The gentleman could have done that——

MR. [WILLIAM D.] MCFARLANE [of Texas]: Mr. Speaker, a point of order.

THE SPEAKER: The Chair is trying to rule on a point of order now, if the gentleman will permit the Chair to do so.

MR. MCFARLANE: I wanted to make my point of order before the Chair rules.

THE SPEAKER: The gentleman from Texas made the statement, but that does not necessarily imply that the gentleman from Maine intentionally made a misstatement on his own part. He simply said he did not believe it, but this did not necessarily imply that the gentleman from Maine intentionally made a misstatement. What the gentleman from Texas said may be construed as meaning that the gentleman from Maine was merely mistaken in his conclusions, and that the gentleman did not deliberately make a false statement. So the Chair fails to see where any question of privilege is involved in the statement. Of course, if the gentleman wishes to make his own statement about it, he can do so with the permission of the House.

On Mar. 16, 1939,[20] debate took place in the Committee of the Whole as follows:

MR. [LEE G.] GEYER of California: . . . I see in the balcony some young people, some school people, who have come here to watch their Representatives in session. I am anxious that they get a proper idea concerning this great body.

I have heard the gentleman from Wisconsin, the man who made Milwaukee famous, stand upon this floor a good many times. He is an estimable gentleman. I like him very much when he is not in the well of this House. I have seen him come out with a hand that only he possesses, a hand like a ham, and grasp this [microphone] until it groaned from mad torture. I have seen him come on the floor and stamp up and down like a wild man.

MR. [JOHN] TABER [of New York]: Mr. Chairman, I demand that the gentleman's words be taken down.

THE CHAIRMAN [Frank H. Buck, of California]: The gentleman from New York demands that the words of the gentleman be taken down. The gentleman from California will take his seat.

The gentleman from New York will indicate to the Clerk the words objected to.

MR. TABER: "Stamping like a wild man" and "a hand like a ham."

MR. [JOHN C.] SCHAFER of Wisconsin: Mr. Chairman, as far as I am concerned, I am not objecting to the words. I will handle him at a later date.

MR. TABER: I believe the integrity of the rules of the House should be preserved.

THE CHAIRMAN: The Clerk will report the words taken down at the request of the gentleman from New York.

20. 84 CONG. REC. 2871, 76th Cong. 1st Sess.

The Clerk read as follows:

> I have seen him come on the floor and stamp up and down like a wild man.

MR. TABER: Mr. Chairman, there were some other words about "a hand like a ham."

THE CHAIRMAN: The Clerk will report the additional words. . . . The Committee will rise.

Accordingly the Committee rose; and the Speaker . . . resumed the chair . . .

THE SPEAKER [William B. Bankhead, of Alabama]: The Clerk will report the words objected to in the Committee of the Whole House on the state of the Union. . . .

The rule governing situations of this character provides as follows:

> OF DECORUM AND DEBATE
>
> When any Member desires to speak or deliver any matter to the House he shall rise and respectfully address himself to "Mr. Speaker," and, on being recognized, may address the House from any place on the floor or from the Clerk's desk, and shall confine himself to the question under debate, avoiding personality.

The words objected to and which have been taken down and read from the Clerk's desk very patently violate the rule, because the words alleged do involve matters of personal reference and personality.

On Dec. 20, 1943,[1] debate took place as follows in the House, Speaker pro tempore John W. McCormack, of Massachusetts, presiding:

MR. [ADOPH J.] SABATH [of Illinois]: Mr. Speaker, the original bill in the last Congress was introduced by the gentleman from West Virginia [Mr. Ramsey] and finally approved by the secretaries of the various States who sent a delegation down here. It was opposed then by the gentleman from Mississippi [Mr. Rankin]; nevertheless, the vast majority of the Members voted for it. The present bill that the gentleman from Mississippi charges was written by someone, he does not know whom, was introduced by me. . . .

I said that I did not care whether it was my bill, his bill, or any bill [when I appeared before the committee]; but that it should be a bill that will give them the right to vote and not a bill that will deprive them of that great privilege as the gentleman from Mississippi is trying to do.

MR. [JOHN E.] RANKIN: Mr. Speaker, I demand that those words be taken down. I make the point of order that his statement is false and slanderous. I demand that those words be taken down.

MR. SABATH: I demand that those words be taken down. . . .

THE SPEAKER PRO TEMPORE: The Chair has instructed that the words demanded to be taken down be read, and when they are ready the Clerk will report them.

The Clerk read as follows:

> Mr. Sabath: I said I did not care whether it was my bill, his bill, or any bill, but a bill that will give them the right to vote and not a bill that will deprive them of that great privilege as the gentleman from Mississippi is trying to do.

1. 89 CONG. REC. 10922, 10923, 78th Cong. 1st Sess.

MR. RANKIN: Mr. Speaker, I make the point of order that those words violate the rules of the House, and, so far as my denouncing them as false is concerned, I am clearly within the rules of the House, as has been demonstrated here and pointed out time and time again.

When any Member rises on the floor and makes a false statement, any other Member has the right to say that that statement is false; and when that statement is slanderous, any gentleman is within the rules of the House when he says so.

MR. SABATH: Mr. Speaker, I do not think it is necessary for me to answer the gentleman from Mississippi.

MR. [RALPH E.] CHURCH [of Illinois]: Mr. Speaker, the regular order.

MR. SABATH: His own statement shows he is wrong.

THE SPEAKER PRO TEMPORE: The Chair is prepared to rule. There are several ways of averting a ruling on this matter, but the Chair is prepared to rule, neither gentleman having asked unanimous consent that the remarks be withdrawn. . . .

The Chair feels that the question is very close to the line, but does transgress the rules when the gentleman from Illinois used the words "deprive them" in that those words tend to impugn the motives of the gentleman from Mississippi. . . .

So far as the remarks made by the gentleman from Mississippi are concerned, the Chair has no difficulty in ruling that those words clearly transgress the rules of the House, and the Chair so rules on both statements made, taken down, and reported by the Clerk.

On Jan. 31, 1946,[2] debate took place as follows:

MR. [EMANUEL] CELLER [of New York]: I wish, if I may be permitted, to answer my own question. The Case bill does return to those very dark and murky days; and, to quote the Bible, "as a dog returneth to his vomit, so a fool returneth to his folly."

MR. [CLARK E.] HOFFMAN [of Michigan]: Now, wait a minute. Mr. Chairman, I object to those words. I ask that those words be taken down as unparliamentary language.

MR. CELLER: But I quoted the Bible.

THE CHAIRMAN [Frank L. Chelf, of Kentucky]: What words does the gentleman object to?

MR. HOFFMAN: Where he said we would be like a dog returning to his vomit if we defeated this bill.

MR. CELLAR: I said the Case bill. That is a quotation from the Bible

MR. HOFFMAN: The gentleman can quote more Scripture to his purpose than anyone else.

THE CHAIRMAN: The Chair rules this all out of order. The Clerk will take down the words objected to.

MR. CELLER: Mr. Chairman, I demand that the words of the gentleman from Michigan be taken down. He said I quoted Scripture to my own purpose, like the devil.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I rise to a point of order. When a demand is made to take down a Member's words, that Member has no right to the floor until the matter has been settled.

2. 92 CONG. REC. 675, 676, 79th Cong. 2d Sess.

THE CHAIRMAN: All gentlemen will take their seats. . . .

The Committee will rise.

Accordingly, the committee rose; and The Speaker . . . resumed the chair.

THE SPEAKER [Sam Rayburn, of Texas]: The Clerk will report the words objected to. . . .

The Chair does not know all that happened before the language objected to was used, but the name of no Member is mentioned. In the words taken down the gentleman was giving his opinion of a measure before the House. The Chair would be compelled to hold that the language is not unparliamentary.

Controlling References to Nonmembers

§ 7.10 In preserving order in the House, the Chair determines whether words taken down, as reported by the Committee of the Whole, are out of order before further business is undertaken.

On Jan. 18, 1930,[3] during a debate on the enforcement of legislation regulating the sale of alcoholic beverages, the following remarks were made:

MR. [WILLIAM I.] SIROVICH [of New York]: I personally believe in the rigid enforcement of the prohibition law. I want every wet and dry to respect it in this country; but does not the gentleman believe that when a coast guard finds a man violating the prohibition law and the man flees, or he shoots at him, he should shoot two or three times above him and beside him and around him to show that the Government is sincere, and then, if he does not stop, to enforce the law as it should be enforced? . . .

MR. [CARROLL L.] BEEDY [of Maine]: I know that no warning gun, if the gentleman is referring to the Black Duck incident, was fired before the gun was fired which resulted in the loss of life. . . .

MR. [FIORELLO H.] LAGUARDIA [of New York]: The gentleman knows that that is just the difficulty. The moment the Government officer does act that way he is removed from the state court and brought before one of our own commissioners and then discharged. That is the difficulty.

MR. [CHARLES H.] SLOAN [of Nebraska]: That is a distinct charge against the judicial system of this country, which is not valid.

MR. [ADOLPH J.] SABATH [of New York]: It is true. Instead of being prosecuted, he is being defended by the district attorneys in each and every instance.

MR. SLOAN: I challenge the gentleman's general charge against the integrity of the courts of the United States.

MR. BEEDY: Mr. Chairman, I rise to a point of order.

THE CHAIRMAN [Bertrand H. Snell, of New York]: The gentleman will state it.

MR. BEEDY: I ask that the remarks of the gentleman from Illinois be taken down. . . .

THE CHAIRMAN: The Clerk will read the words taken down.

3. 72 CONG. REC. 1905–07, 71st Cong. 2d Sess.

The Clerk read as follows:

MR. SABATH: It is true. Instead of being prosecuted he is being defended by district attorneys. . . .

Accordingly the Committee rose; and the Speaker pro tempore [Mr. Tilson] . . . resumed the Chair. . . .

MR. [WILLIAM B.] BANKHEAD [of Alabama]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE [John Q. Tilson, of Connecticut]: The gentleman will state it.

MR. BANKHEAD: As I understand the rule, when the procedure has gone as far as it has in this instance, under the rule it is the primary duty of the Speaker, before any further procedure can be taken, to determine whether or not the words so reported are in themselves out of order.

THE SPEAKER PRO TEMPORE: The Chair is ready to rule.

MR. BEEDY: Mr. Speaker, they are not all the words I asked to be taken down.

THE SPEAKER PRO TEMPORE: The Chair can only rule on the words reported to the House by the Chairman of the Committee of the Whole House.

The present occupant of the Chair can see nothing objectionable, from a parliamentary standpoint, in the remarks reported.

The Committee will resume its session.

§ 7.11 It is considered within the authority of the Speaker in preserving order on the House floor to rule on whether words spoken in reference to persons other than present Members are unparliamentary.

On Nov. 15, 1945,[4] debate took place in the House as follows:

MR. [ANDREW J.] BIEMILLER [of Wisconsin]: Mr. Speaker, it is now more than 6 months since VE-day and more than 3 months after VJ-day. Six months ago, we expected when this happy event arrived we would see an immediate rush to peacetime activities, giving jobs to former war workers and soldiers, making things we all need. . . .

Yet, some of our people are so misinformed they cry Communist at every measure with the slightest touch of liberalism, at every person who has had a new idea since 1860. In so doing, they bring more opprobrium on themselves than on the cause or the individuals they attack. The gentleman from Mississippi, for instance, is well known for his ability to see a Communist in every woodpile. Only the other day it was reported in the Pathfinder magazine for October 31 that he stated at a committee hearing that he regarded Abraham Lincoln as a Communist.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a point of order. I called the Pathfinder up and they apologized and said that the man who wrote that took my statement and reversed it. When the leader of the Communist Party, William Z. Foster, talked about Lincoln as being a Communist, I said, "As a Southern Democrat, I resent your branding Abraham Lincoln as a Communist." Now, please

4. 91 CONG. REC. 10735, 10736, 79th Cong. 1st Sess.

do not get your information from those Communists about me but stay by the record while you are discussing me on this floor.

MR. BIEMILLER: Mr. Speaker, I am delighted to have the record show there is at least one liberal in the past century that Mr. Rankin does not consider as a Communist.

MR. RANKIN: Mr. Speaker, I demand that those words be taken down. . . .

THE SPEAKER: [Sam Rayburn, of Texas]: The Clerk will report the words the gentleman from Mississippi has demanded be taken down. . . .

MR. RANKIN: Mr. Speaker, I would like to be heard on the point of order.

THE SPEAKER: This is not a point of order. These are words taken down on the demand of the gentleman from Mississippi.

The Chair does not find anything in the language that is contrary to the rules of the House or is unparliamentary.

MR. RANKIN: Mr. Speaker, the point of order is this: That, taken in the light of his previous statements, where he falsely accused me of making a statement with reference to Abraham Lincoln that was exactly opposite from what I did say, his utterance was a violation of the rules of the House.

THE SPEAKER: Even if the gentleman had given his opinion that Mr. Lincoln was a Communist, that would not have been a violation of the rules of the House.

Controlling Reading of Papers

§ 7.12 In preserving order on the House floor, the Speaker puts the question to the House when objection is heard to a unanimous-consent request to allow a Member to read papers on the floor.

On Oct. 24, 1945,[5] a Member attempted to read some papers to the house:

MR. [HUGH] DE LACY [of Washington]: Mr. Speaker, the gentleman from New York has made a very able statement of some of the general issues involved in this discussion today. I would like to discuss some aspects of the freedom of the air.

When the House Committee on Un-American Activities requested the scripts of certain American radio commentators—

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a point of order.

THE SPEAKER: [Sam Rayburn, of Texas]: The gentleman will state it.

MR. RANKIN: A Member who has the floor has to get unanimous consent to read. Now they can all read that stuff in the papers tomorrow. I read it this morning. I make the point of order that he has no right to get up here and read that stuff and take up the time of the Congress without unanimous consent.

THE SPEAKER: If anybody objects to the reading, the question can be put to the House and the House can decide.

MR. RANKIN: I object to its reading. It has all been distributed and everybody is familiar with it.

THE SPEAKER: The question is, Shall the gentleman from Washington be permitted to read the statement?

5. 91 CONG. REC. 10031, 79th Cong. 1st Sess.

The question was taken; and the Speaker announced that the ayes had it.

THE SPEAKER: The gentleman from Washington may proceed.

Controlling Members' Floor Movements

§ 7.13 In preserving order on the House floor, the Chair may rule a Member out of order when he stands by or walks about another Member who has the floor in debate.

On Mar. 5, 1936,[6] debate took place in the Committee of the Whole as follows:

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Chairman, I rise in opposition to the amendment. If our friend from Washington [Mr. Zioncheck] had looked up the data on this bill and the hearings he would not have offered the amendment or made his speech. In the first place, instead of being $60,000 for lights, he will find it is only $25,000, and page 37 of the estimates shows that.

Mr. Zioncheck rose.

MR. BLANTON: I do not want to be interrupted.

MR. [MARION A.] ZIONCHECK [of Washington]: I am not asking the gentleman to yield.

MR. BLANTON: I do not want to be interrupted, and I ask the Chair to rule whether or not the gentleman from Washington is in order.

MR. ZIONCHECK: I am not asking the gentleman to yield. I am just standing here doing nothing. Has the gentleman got a complex?

MR. BLANTON: Will the Chair rule whether or not the gentleman is in order.

THE CHAIRMAN [William L. Nelson, of Missouri]: He is not in order.

MR. ZIONCHECK: Mr. Chairman, a point of order.

THE CHAIRMAN: Will the gentleman kindly take his seat?

MR. ZIONCHECK: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. ZIONCHECK: I was doing nothing; he brings this up; and I think the Chair cannot rule on something which does not exist.

THE CHAIRMAN: The Chair rules that the gentleman from Washington must be in his seat when the other gentleman has the floor.

MR. ZIONCHECK: In other words, I am supposed to sit down?

THE CHAIRMAN: Yes.

§ 7.14 In preserving order on the House floor, the Chair may rule that a Member is out of order if, when propounding a question to a Member speaking from the well of the House, he does so from the well rather than from the House seats.

On Mar. 7, 1957,[7] debate took place in the Committee of the Whole as follows:

6. 80 CONG. REC. 3376, 74th Cong. 2d Sess.

7. 103 CONG. REC. 3268, 85th Cong. 1st Sess.

MR. AUGUST H. ANDRESEN [of Minnesota]: I do not want to yield for a speech.

MR. [GEORGE H.] CHRISTOPHER [of Missouri]: I did not come down to heckle the gentleman.

MR. AUGUST H. ANDRESEN: I will yield for a question, but I refuse to yield for a speech.

MR. CHRISTOPHER: I would like to ask a question.

MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Chairman, a point of order.

THE CHAIRMAN [Brooks Hays, of Arkansas]: The gentleman will state it.

MR. HOFFMAN: I ask that the well be cleared.

THE CHAIRMAN: The gentlemen from Michigan makes a point of order that the well should be cleared. The gentleman will step back to the seats to ask his question.

MR. CHRISTOPHER: I want to ask a question about the 51 million acre base.

MR. HOFFMAN: Mr. Chairman, I insist on my point of order.

THE CHAIRMAN: The gentleman from Missouri will suspend. We want to comply strictly with the rules. The gentleman will stand back out of the well, please while the question is propounded.

Controlling Distribution of Materials

§ 7.15 The Speaker, in preserving order on the House floor, may stop the distribution to Members of copies of House bills with a Member's memoranda attached thereto.

On Aug. 16, 1935,[8] a parliamentary inquiry was addressed to Speaker Joseph W. Byrns, of Tennessee:

MR. [CLAUDE A.] FULLER [of Arkansas]: Mr. Speaker, I rise to a parliamentary inquiry. I just sent a page for the bill under consideration, H.R. 9100, and received the copy which I have in my hand. At the top of the bill, pasted onto it is a pink slip, and on that pink slip in typewriting are the words:

> Bituminous-coal as amended and reprinted—controversial phases largely eliminated. Two-thirds of tonnage output operators favor bill, and more than 95 percent of labor.

My inquiry is to know whether it is proper for anybody to paste such a thing as that on a document of the House and whether it is proper for it to be circulated in the House. This is the first time in my experience that I have ever seen any advertisement on an official document or bill pending in the House. I rise for the purpose of ascertaining how it came there and whether or not it is proper to be on this bill.

THE SPEAKER: The Chair has no information on the subject. Where did the gentleman get his copy of the bill?

MR. FULLER: From a page. I send this copy to the desk so that the Speaker may examine it.

MR. [J. BUELL] SNYDER [of Pennsylvania]: I can tell the gentleman how that came there.

THE SPEAKER: The gentleman may state.

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8. 79 CONG. REC. 13433, 74th Cong. 1st Sess.

MR. SNYDER: Mr. Speaker, I had so many of these bills sent to my office, and with my secretarial help we wrote those words on that pink slip and pasted the slip on the bill. That is how that happens to be there. I sent copies of these bills with the slip on them to those interested and sent some of them to the desk back here, to be handed out upon request. It is altogether fitting and proper that I should do so. . . .

THE SPEAKER: The Chair knows of no rule or authority for inserting a statement like that to which the gentleman has called attention on a bill, and the Chair instructs the pages of the House not to distribute any more bills carrying this sort of inscription to Members on the floor of the House.

Controlling Use of the Hall

§ 7.16 It is considered within the authority of the Speaker to rule that Members may not use the Chamber of the House to entertain groups of people.

On Feb. 14, 1955,[9] Speaker Sam Rayburn, of Texas, made the following statement:

THE SPEAKER: The Chair desires to make a statement on the use of the Hall of the House of Representatives. . . .

A great many Members have asked the Parliamentarian and the present occupant of the chair about the use of the Hall of the House of Representatives. At any time in the future when any Member desires to entertain a group except Members of the House of Representatives it will be held that the caucus room is open for that purpose, but not the Hall of the House of Representatives.[10]

§ 8. Preserving Order in the House Galleries

The Speaker's jurisdiction, duties, and powers to preserve order in the House galleries are derived from the House rules and precedents. This section gives examples of both.[11]

Under House rules the Speaker has control of the order and decorum of the House galleries,[12] the allocation of space in and the issuance of passes to the galleries,[13] and the regulation of the press galleries.[14]

The Speaker has ordered an offending visitor out of the House

9. 101 CONG. REC. 1512, 84th Cong. 1st Sess.

10. As to the Hall of the House, see Ch. 4, supra.

11. See Ch. 4, supra, for fuller treatment of the Speaker's control of the House galleries.

12. Rule I clause 2, *House Rules and Manual* § 622 (1973).

13. Rule XXXIII, *House Rules and Manual* § 922 (1973).

14. Rule XXIV clauses 2 and 3, *House Rules and Manual* §§ 930 and 930a (1973).

galleries[15] and has had all of the galleries cleared.[16] The Speaker has prescribed the manner of obtaining admission to the galleries[17] and has admonished visitors about improper demonstrations.[18]

The Speaker has also directed the press gallery to report to him, after an infraction of regulations, what remedial measures it would take to prevent future infractions.[19]

Controlling Admission to Gallery

§ 8.1 It is considered within the authority of the Speaker to regulate the manner by which guests may be permitted to enter the House gallery.

On Feb. 23, 1942,[20] Speaker Sam Rayburn, of Texas, spoke concerning his responsibility for the protection of the Members of the House:

> THE SPEAKER: One of the responsibilities of the Speakership is the protection of the Members and the places in which they work. This responsibility, of course, is a little more anxious one right now than in ordinary times, and anything that is done or any regulation that is issued is issued after the best and most competent advice the Speaker is able to get.
>
> Some time ago cards were issued and no one was allowed to come into the gallery without one. These cards have been outstanding for some time, and I am sorry to say they have been widely distributed, many of them mailed to distant points in the country. The Chair and those who advise him have decided that it is best to revoke all outstanding cards of admission to the galleries. New cards have been printed and will be distributed to the Members today and tomorrow, as the cards to the gallery outstanding will not be honored after Wednesday morning. . . .
>
> Another thing that those who advise me think is highly advisable is that the people entering any of the galleries, except the Members' gallery, submit themselves to search. This is thought wise and judicious by men who will be in the Capitol and who will be competent for the work.
>
> I hope this may not seem too irksome to some of our people who may come to Washington. I am willing to take this responsibility for the reason that if a mishap occurs around the Capitol somebody has got to take the responsibility, and I am willing to share my part of it. So I hope the cards that will be issued in lieu of those outstanding may be handed in Washington to visitors and constituents of yours and not be mailed around the country.

15. See § 8.4, infra.
16. See §§ 8.2, 8.5, infra.
17. See § 8.1, infra.
18. See § 8.3, infra.
19. See § 8.6, infra.
20. 88 CONG. REC. 1524, 77th Cong. 2d Sess.

§ 8.2 It is considered within the authority of the Speaker not to permit visitors in the House galleries under certain circumstances.

On May 10, 1972,[1] Speaker Carl Albert, of Oklahoma, made the following announcement:

THE SPEAKER: The Chair desires to make a statement.

The Chair has received intelligence from the police force and other responsible authorities that there will be disturbances in the gallery today. On the basis of this information and their recommendation the Chair has ordered that the galleries be closed to the public for the time being.

Controlling Visitor Behavior

§ 8.3 It is considered within the authority of the Chair to admonish visitors concerning the proper behavior in the House galleries.

On July 31, 1969,[2] a point of order was raised concerning the behavior of visitors in the House gallery.

MR. [JOHN E.] MOSS [Jr., of California]: Mr. Chairman, I make the point of order that the galleries are not in order and that the applause is in violation of the rules of the House and must stop.

THE CHAIRMAN [Chet Holifield of California]: The point of order is well taken.

The Chair will state that visitors in the gallery are guests of the House of Representatives. Under the rules and practices of the House of Representatives, visitors in the gallery are not permitted to make undue noise or to applaud or to in any way show their pleasure or displeasure as to the actions of the Members of the House.

§ 8.4 The Speaker may order the removal of a person who is taking pictures of the House from the gallery without permission of the House.

On Feb. 22, 1950,[3] Speaker Sam Rayburn, of Texas, made the following statement:

THE SPEAKER: The Chair understands there is a camera in the gallery. Whoever has that camera will remove the camera or remove themselves and the camera immediately. That is a violation of the rules of the House.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

In that case, is it not the rule to clear the gallery?

THE SPEAKER: Not necessarily.

MR. RANKIN: To clear them of those who are violating the law.

THE SPEAKER: The Chair has just made that suggestion.[4]

§ 8.5 It is considered within the authority of the Speaker

1. 118 CONG. REC. 4331, 92d Cong. 2d Sess.
2. 115 CONG. REC. 21634, 91st Cong. 1st Sess.
3. 96 CONG. REC. 2152, 81st Cong. 2d Sess.
4. *Parliamentarian's Note:* In this instance the Doorkeeper of the House confiscated the film.

to clear the House galleries in the case of disorderly conduct.[5]

On Jan. 18, 1972,[6] the following point of order was raised:

> MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, I demand that the gallery be cleared.
>
> THE SPEAKER: [Carl Albert, of Oklahoma]: The Chair will not tolerate demonstrations of approval or disapproval in the galleries.
>
> MR. HALL: Mr. Speaker, I make a point of order that our guests and those in the galleries are not in order. I request that the gallery be cleared.
>
> THE SPEAKER: The gentleman's point is well taken. The gallery will be cleared

Controlling Press Galleries

§ 8.6 It is considered within the authority of the Speaker, in preserving order in the House galleries, to direct each of the press galleries to report to him about what remedial actions will be taken to prevent infractions of the House rules regarding the taking of photographs of the House in session.

On Jan. 6, 1969,[7] Speaker John W. McCormack, of Massachusetts, addressed the press galleries:

> THE SPEAKER: The Chair is troubled over the flagrant violation by some of the news media of the restrictions on the taking of pictures during the organization of the House on last Friday.
>
> All segments of the news media were thoroughly familiar with the rules that taking any pictures—still, moving, TV, or tape—are prohibited except during the period when the [flood] lights are turned on.
>
> Some members of the news media who were granted the privilege of attending the opening session of the 91st Congress and permitted to bring their cameras into the galleries ignored the restrictions in complete violation of the agreement upon which they were admitted.
>
> The Chair is calling this matter to the attention of the news media galleries and will expect a report from each on the action taken by them with respect to the violations of the regulations as well as to what provisions they are making to prevent such violations in the future.

5. See Rule I clause 2, *House Rules and Manual* § 622 (1973).

6. 118 CONG. REC. 92d Con. 2d Sess.

7. 115 CONG. REC. 145, 91st Cong. 1st Sess.

B. SPEAKER PRO TEMPORE

§ 9. Introductory

This subchapter deals with the "Speaker pro tempore,"[8] the meaning of the phrase and the general nature of the office,[9] the oath and term of office,[10] and the procedures involved in appointing him to office.[11]

Throughout, emphasis is placed on the status of the office of Speaker pro tempore and on those duties, powers, and functions assumed by a Speaker pro tempore from a Speaker that are peculiar to the office of Speaker pro tempore. The responsibilities and functions undertaken by a Speaker pro tempore merely as the occupant of the Chair, and which are not peculiar to his office, are found more thoroughly described elsewhere in this work.

Examples of responsibilities and functions that are within the scope of authority of a Speaker pro tempore, but which are not peculiar to the office, are: announcing a Presidential veto;[12] announcing requests from the Senate;[13] deciding protocol for joint sessions;[14] answering parliamentary inquiries of various kinds;[15] proceeding to unfinished business;[16] putting the question in various situations;[17] quorum counting;[18] and ruling on points of order.[19]

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8. For previous treatment of the Speaker pro tempore see 6 Cannon's Precedents §§ 263–282; 2 Hinds' Precedents §§ 1377–1418; and references thereunder.

9. See § 10, infra.

10. See § 11, infra.

11. See §§ 12–14 infra.

12. 112 CONG. REC. 22411, 89th Cong. 2d Sess., Sept. 13, 1966.

13. 107 CONG. REC. 21453, 87th Cong. 1st Sess., Sept. 26 [legislative day, Sept. 25], 1961; 107 CONG. REC. 20822, 87th Cong. 1st Sess., Sept. 22, 1961; 107 CONG. REC. 19253, 87th Cong. 1st Sess., Sept. 13, 1961.

14. 91 CONG. REC. 1594, 1595, 79th Cong. 1st Sess., Feb. 28, 1945.

15. 114 CONG. REC. 18330, 18331, 90th Cong. 2d Sess., June 24, 1968; 107 CONG. REC. 21466, 87th Cong. 1st Sess., Sept. 26 [legislative day, Sept. 25], 1961; 107 CONG. REC. 20533, 20534, 87th Cong. 1st Sess., Sept. 21, 1961; 90 CONG. REC. 3128, 78th Cong. 2d Sess., Mar. 27, 1944.

16. 107 CONG. REC. 20533, 20534, 87th Cong. 1st Sess., Sept. 21, 1961; 104 CONG. REC. 13882, 85th Cong. 2d Sess., July 10, 1958.

17. 115 CONG. REC. 20153, 91st Cong. 1st Sess., July 21, 1969; 109 CONG. REC. 12120, 88th Cong. 1st Sess., July 2, 1963; 107 CONG. REC. 20537, 87th Cong. 1st Sess., Sept. 21, 1961.

18. 106 CONG. REC. 11830, 86th Cong. 2d Sess., June 3, 1960.

19. 104 CONG. REC. 13882, 85th Cong. 2d Sess., July 10, 1958. See also 107 CONG. REC. 18242, 18243, 87th Cong. 1st Sess., Sept. 6, 1961; 94

§ 10. Definition and Nature of Office

The "Speaker pro tempore"[1] is the title of the office (1) of the Member designated as such by the Speaker,[2] or (2) of the Member designated by the Speaker and approved by the House, or (3) of the person elected by the House to act as and to assume certain of the duties, powers, and functions of the Speaker during the Speaker's absence.[3]

The Speaker pro tempore should also be distinguished from the Chairman or Chairman pro tempore of the Committee of the Whole. See Ch. 19, infra.

The primary rule involving the Speaker pro tempore is Rule I clause 7, *House Rules and Manual* § 633 (1973). It states: "He [the Speaker] shall have the right to name any Member to perform the duties of the Chair, but such substitution shall not extend beyond three legislative days: *Provided*, however, That in the case of his [the Speaker's] illness, he may make such appointment for a period not exceeding ten days, with the approval of the House at the time the same is made; and in his [the Speaker's] absence and omission to make such appointment, the House shall proceed to elect a Speaker pro tempore to act during his absence."

The Speaker pro tempore is usually a Member who is a leader in the majority party.[4] A minority party member is designated Speaker pro tempore only on rare ceremonial occasions.[5]

Speakers pro tempore are distinguishable by whether they are designated, designated and approved, or elected. The kinds of duties, powers, and functions assumed by a Speaker pro tempore depend, more often than not, on the type of Speaker pro tempore involved.[6]

CONG. REC. 5065, 80th Cong. 2d Sess., Apr. 29, 1948.

1. "Pro tempore" is a Latin phrase meaning "for the moment" or "for a time."

Parliamentarian's Note: The Speaker pro tempore is more usually referred to in conversation as the "Speaker pro tem," which is acceptable in conversation, though not the official title. "Pro tem" has the same meaning as "pro tempore."

2. Or, on occasions, by a Speaker pro tempore. See §§ 12.3, 12.4, infra.

3. Even though the Clerk sometimes assumes some of the duties, powers, and functions of the Speaker when the Speaker is not yet elected or is absent, he is not considered a Speaker pro tempore. See § 18, infra, for treatment of the office of Clerk.

4. Party Organization generally, see Ch. 3, supra.

5. See § 12.7, infra.

6. See §§ 12.8–12.16 (designated), 13.1, 13.2 (designated and approved), and 14.8–14.16 (elected), infra.

It should be noted, however, that there are also situations, usually noncontroversial ones, in which actions undertaken by a Speaker pro tempore are not dependent on the type of Speaker pro tempore involved. Examples of these actions are: calling the House to order in the absence of the Speaker;[7] announcing matters involving actions of the Speaker;[8] and designating another Speaker pro tempore.[9]

§ 11. Oath of Office; Term of Office

The Members' oath of office[10] is administered to an elected Speaker pro tempore,[11] and, under recent precedent,[12] to a designated and approved Speaker pro tempore, but not to a designated Speaker pro tempore.[13]

The oath of office as Speaker pro tempore is administered by the Speaker if he is present[14] or by a Member chosen by the elected,[15] or designated and ap-

7. See § 12.15 (designated); and the illustration under § 14.12 (elected), infra.
8. See illustrations under § 12.2 (designated), infra; and 109 CONG. REC. 25591, 88th Cong. 1st Sess., Dec. 27, 1963; and 108 CONG. REC. 12705, 87th Cong. 2d Sess., July 5, 1962 (elected).
9. See illustrations under §§ 14.1 (designated); 12.3 (elected), infra.
10. The oath prescribed by statute, 5 USC § 3331, is as follows: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."
11. See § 11.1, infra.
    Parliamentarian's Note: The additional oath is the same one administered to Members, since the formal language of it is applicable to any office to which a Member is about to enter. See 5 USC § 3331.
12. See §§ 11.2, 11.3, infra.
13. For previous treatment of the oath of office of the Speaker pro tempore see 1 Hinds' Precedents § 229, 2 Hinds' Precedents §§ 1386, 1394; 6 Cannon's Precedents §§ 274, 280.
    Parliamentarian's Note: For reasons of efficiency a designated Speaker pro tempore is not administered the oath of office as Speaker pro tempore, even though upon his designation he also assumes a new office. The elected and the designated and approved Speakers pro tempore are administered the oath because they assume not only a new office but also new duties, e.g., the signing, in the place of the Speaker, of enrolled bills and joint resolutions.
14. See § 11.4, infra.
15. See § 11.5, infra.

proved,[16] Speaker pro tempore when the Speaker is absent.

The term of office of a Speaker pro tempore can be for various time periods under various circumstances. For example, the substitution may be: momentary,[17] for the day,[18] for a future specified day,[19] for two continuous days,[20] for two separate days,[1] for three legislative days,[2] for the balance of a week,[3] for more than three days with approval of the House,[4] or during the absence of the Speaker.[5]

The term of office does not begin until the chosen Member has accepted the office.[6] The term of office ordinarily ends when the Speaker resumes the Chair.[7]

16. See § 11.6, infra.
17. See § 11.7, infra.
18. See § 11.8, infra.
19. See § 11.9, infra.
20. See § 11.10, infra.
1. See § 11.11, infra.
2. See § 11.12, infra, and Rule I clause 7, *House Rules and Manual* § 633 (1973).
3. See § 11.13, infra.
4. See § 11.14, infra; Rule I clause 7, *House Rules and Manual* § 633 (1973).
5. See § 11.15, infra; Rule I clause 7, *House Rules and Manual* § 633 (1973).
6. See § 11.16, infra.
7. See § 11.14, infra.

Oath of Office

§ 11.1 Besides his oath as a Member, an elected Speaker pro tempore is also administered an oath of office as Speaker pro tempore.

On Nov. 18, 1963,[8] Speaker John W. McCormack, of Massachusetts, designated Representative Carl Albert, of Oklahoma, Speaker pro tempore while the Speaker journeyed to Boston upon the death of his brother. A resolution was introduced to elect Mr. Albert Speaker pro tempore during the absence of the Speaker. The resolution was agreed to and Mr. Albert took the oath of office as Speaker pro tempore.

§ 11.2 Besides his oath as a Member, a designated Speaker pro tempore who is approved by the House is administered the oath of office as Speaker pro tempore, according to recent precedent.

On Feb. 24, 1949,[9] a resolution was introduced indicating the approval of the House of the designation of Representative John W. McCormack, of Massachusetts, as Speaker pro tempore. Upon

8. 109 Cong. Rec. 22015, 88th Cong. 1st Sess.
9. 95 Cong. Rec. 1489, 81st Cong. 1st Sess.

agreement to the resolution, Representative McCormack was administered the oath of office as Speaker pro tempore.

§ 11.3 A designated Speaker pro tempore who is approved by the House has not always been administered the oath of office as Speaker pro tempore.

On Apr. 7, 1930,[10] Speaker Nicholas Longworth, of Ohio, designated a Speaker pro tempore and the House approved the designation. No additional oath of office was administered, according to the *Congressional Record*.

Administration of Oath by Speaker

§ 11.4 An elected Speaker pro tempore is administered his oath of office by the Speaker when the Speaker is present.

On Aug. 15, 1941,[11] Speaker Sam Rayburn, of Texas, invited the election of a Speaker pro tempore and subsequently administered him the oath of office.

On Mar. 22, 1949,[12] Speaker Rayburn stated that it was necessary for him to be absent for a few days on important business. A resolution was introduced to elect Representative John W. McCormack, of Massachusetts, Speaker pro tempore. Upon passage of the resolution, the Speaker administered the oath to Mr. McCormack as Speaker pro tempore.[13]

Administration of Oath by Member

§ 11.5 An elected Speaker pro tempore designates a Member to administer the oath to him in the absence of the Speaker.

On Apr. 2, 1940[14] Speaker William B. Bankhead, of Alabama, invited an election of a Speaker pro tempore. On the day next following the election of Representative Sam Rayburn, of Texas, as Speaker pro tempore, in the absence of the Speaker, Mr. Rayburn asked Representative John W. McCormack, of Massachusetts, to administer to him the oath of office:

> THE SPEAKER PRO TEMPORE: . . . The present occupant of the chair re-

10. 72 CONG. REC. 6661, 71st Cong. 2d Sess.

11. 87 CONG. REC. 7194, 7195, 77th Cong. 1st Sess.

12. 95 CONG. REC. 2968, 81st Cong. 1st Sess.

13. *Parliamentarian's Note:* The *Congressional Record* does not explicitly refer to the Speaker's administering the oath, but such did in fact take place.

14. 86 CONG. REC. 3925, 76th Cong. 3d Sess.

quests the gentleman from Massachusetts [Mr. McCormack] to administer the oath of office as Speaker pro tempore.

Mr. McCormack appeared at the well of the House and administered the oath. . . .

On Jan. 10, 1966,[15] Speaker John W. McCormack, of Massachusetts, designated Representative Carl Albert, of Oklahoma, Speaker pro tempore while the Speaker journeyed to Boston upon the death of his brother. A resolution was introduced to elect Mr. Albert Speaker pro tempore during the absence of the Speaker. The resolution was agreed to and Mr. Albert asked the Dean of the House, Representative Emanuel Celler, of New York, to administer the oath of office.[16]

§ 11.6 A designated Speaker pro tempore who is approved by the House and who is administered the oath of office as Speaker pro tempore may designate the Member to administer him the oath of office.

On Feb. 24, 1949,[17] a resolution was introduced indicating the approval of the House of the designation of Hon. John W. McCormack, of Massachusetts, as Speaker pro tempore. Once approved the Speaker pro tempore designated a Member to administer him the oath of office.

Terms of Office

§ 11.7 A term of office of a Speaker pro tempore may be only momentary.

On Apr. 15, 1958,[18] designated Speaker pro tempore John W. McCormack, of Massachusetts, himself designated Representative Carl Albert, of Oklahoma, as Speaker pro tempore during the election of Mr. McCormack as Speaker pro tempore during the absence of Speaker Sam Rayburn, of Texas.

On Nov. 18, 1963,[19] designated Speaker pro tempore Albert, who

15. 112 CONG. REC. 5, 6, 89th Cong. 2d Sess.

16. *Parliamentarian's Note:* The *Congressional Record* does not explicitly refer to Mr. Albert's designation of Mr. Celler to administer the oath, but such did in fact take place.

17. 95 CONG. REC. 1489, 81st Cong. 1st Sess.

18. 104 CONG. REC. 6436, 85th Cong. 2d Sess.

19. 109 CONG. REC. 22015, 88th Cong. 1st Sess.

Parliamentarian's Note: On Nov. 17, 1963, Speaker McCormack's brother died in Boston. On Nov. 18 Speaker McCormack in writing designated the Honorable Carl Albert to act as Speaker pro tempore for the day. The Speaker remained in Boston until Nov. 21. Although the *Congressional Record* does not explicitly refer to it, the momentary designation of Hale Boggs (La.) as Speaker

was about to be elected as Speaker pro tempore, himself designated another Speaker pro tempore during the election.

On Jan. 10, 1966,[20] Speaker John W. McCormack, of Massachusetts, designated Representative Carl Albert, of Oklahoma, as Speaker pro tempore for the day in writing.[21] During Mr. Albert's election as Speaker pro tempore, he designated another Speaker pro tempore to preside over the House momentarily during the election:

> THE SPEAKER PRO TEMPORE: The Chair requests the gentleman from Louisiana [Mr. Boggs] to assume the chair.
>
> Mr. Boggs assumed the chair as Speaker pro tempore.
>
> THE SPEAKER PRO TEMPORE (Mr. [Hale] Boggs): The Chair recognizes the gentleman from New York [Mr. Keogh].
>
> MR. [EUGENE J.] KEOGH: Mr. Speaker, on account of the unavoidable absence of the Speaker due to the death of his beloved brother, and at his request, I offer a resolution and ask for its immediate consideration.
>
> The Clerk read the resolution, as follows:
>
> H. RES. 627
>
> *Resolved,* That Hon. Carl Albert, a Representative from the State of Oklahoma, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.
>
> *Resolved,* That the President and the Senate be notified by the Clerk of the election of the Honorable Carl Albert as Speaker pro tempore during the absence of the Speaker.
>
> The resolution was agreed to.
>
> A motion to reconsider was laid on the table.
>
> Mr. Albert assumed the chair as Speaker pro tempore and Mr. Celler administered the oath of office.

On Sept. 27 (legislative day, Sept. 25), 1961,[1] the Speaker pro tempore John W. McCormack, of Massachusetts, momentarily designated Representative Carl Albert, of Oklahoma, as Speaker pro tempore during the comments of Mr. McCormack on the accomplishments of the session.

§ 11.8 A term of office of a Speaker pro tempore may be for the day.

On Nov. 25, 1963,[2] Speaker John W. McCormack, of Massa-

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pro tempore during the election of Mr. Albert as Speaker pro tempore during the absence of the Speaker did in fact take place. Immediately upon the laying on the table of a motion to reconsider the resolution electing Mr. Albert, Mr. Boggs left the Chair and Mr. Albert resumed it.

20. 112 CONG. REC. 5, 6, 89th Cong. 2d Sess.

21. *Parliamentarian's Note:* Since the duration of the Speaker's absence was uncertain it was considered essential to elect a Speaker pro tempore.

1. 107 CONG. REC. 21545, 87th Cong. 1st Sess.

2. 109 CONG. REC. 22694, 88th Cong. 1st Sess.

chusetts, designated a Speaker pro tempore for the day.

The Speaker pro tempore laid before the House the following communication from the Speaker:

THE SPEAKER'S ROOM,
November 25, 1963.

I hereby designate the Honorable Jim Wright to act as Speaker pro tempore today.

JOHN W. MCCORMACK,
Speaker.

§ 11.9 A Speaker pro tempore may be designated for one specific day in the future.

On Jan. 19, 1965,[3] Speaker John W. McCormack, of Massachusetts, designated Representative Emanuel Celler, of New York, to act as Speaker pro tempore when the House convened on Jan. 20, 1965, preceding the inaugural ceremonies:

THE SPEAKER: The Chair designates the Honorable Emanuel Celler, of New York, to act as Speaker pro tempore tomorrow, January 20, 1965.

§ 11.10 The term of office of a Speaker pro tempore may be for a specified and continuous two day period.

On May 7, 1956,[4] a Speaker pro tempore was designated by Speaker Sam Rayburn, of Texas, for a specific two-day period.

The Speaker pro tempore laid before the House the following communication from The Speaker:

MAY 7, 1956.

I hereby designate the Honorable John W. McCormack to act as Speaker pro tempore on May 7 and 8, 1956.

SAM RAYBURN,
Speaker.

§ 11.11 The term of office of a Speaker pro tempore may be for two separate days in the future.

On Oct. 29, 1942,[5] Speaker Sam Rayburn, of Texas, designated a Speaker pro tempore to serve as Speaker on two specified days during intermittent adjournment of the House.

MR. [JERE] COOPER [of Tennessee]: Mr. Speaker, I ask unanimous consent that when the House adjourns today it stand adjourned until Monday next, that when the House adjourns on Monday next it stand adjourned until Thursday, November 5, and that when the House adjourns on Thursday, November 5, it stand adjourned until the following Monday, November 9.

THE SPEAKER: Without objection, it is so ordered.

There was no objection. . . .

THE SPEAKER: The Chair designates the gentleman from Tennessee [Mr. Cooper] to act as Speaker pro tempore

3. 111 CONG. REC. 946, 89th Cong. 1st Sess.

4. 102 CONG. REC. 7588, 84th Cong. 2d Sess.

5. 88 CONG. REC. 8688–90, 77th Cong. 2d Sess.

on Monday, November 2, and Thursday, November 5.

§ 11.12 The term of office of a Speaker pro tempore may be for three legislative days.

On Mar. 11, 1940,[6] Speaker William B. Bankhead, of Alabama, designated a Speaker pro tempore for a period of three legislative days in the event of the Speaker's absence:

> THE SPEAKER: In the event of the absence of The Speaker for the next 3 legislative days, the Chair designates the gentleman from Texas [Mr. Rayburn] as the Speaker pro tempore.

§ 11.13 The term of office of a Speaker pro tempore may be for the balance of a week.

On Thursday, Apr. 29, 1948,[7] Speaker Joseph W. Martin, Jr., of Massachusetts, made the following announcement:

> THE SPEAKER: The Chair wishes to state that he appoints as Speaker pro tempore for the balance of the week the Honorable Charles A. Halleck, of Indiana.

§ 11.14 The term of office of a Speaker pro tempore may be for more than three days, where the House gives its approval.

On Apr. 7, 1930,[8] Speaker Nicholas Longworth, of Ohio, made the following announcement:

> The Chair designates the gentleman from Connecticut [Mr. Tilson] to act as Speaker pro tempore for 3 days, and the Chair asks unanimous consent that thereafter, until the return of the Chair, which will in all probability be on Monday, the gentleman from Connecticut may be permitted to continue in that office. Is there objection?
>
> There was no objection.

§ 11.15 A term of office of a Speaker pro tempore may be for the duration of the absence of The Speaker.

On Apr. 15, 1958,[9] a resolution was offered electing Representative John W. McCormack of Massachusetts, Speaker pro tempore during the absence of Speaker Sam Rayburn, of Texas.

§ 11.16 The Speaker, after designating a Member as Speaker pro tempore, may withdraw the name of that Member before his term begins and designate another in his place.

On Apr. 2, 1947,[10] Speaker Joseph W. Martin, Jr., of Massachu-

6. 86 CONG. REC. 2665, 76th Cong. 3d Sess.
7. 94 CONG. REC. 5036, 80th Cong. 2d Sess.
8. 72 CONG. REC. 6661, 71st Cong. 2d Sess. See also § 12.1, infra.
9. 104 CONG. REC. 6436, 85th Cong. 2d Sess.
10. 93 CONG. REC. 3075, 80th Cong. 1st Sess.

setts, made the following announcement:

> THE SPEAKER: The Chair wishes to announce that the gentleman from Michigan [Mr. Michener], whom he has just designated as Speaker pro tempore on Thursday and Monday next, has illness in his family which may preclude him from accepting the appointment; therefore, the Chair withdraws the designation and designates the gentleman from Indiana [Mr. Halleck] to act as Speaker pro tempore on Thursday and Monday next.

§ 12. Designation of Speaker Pro Tempore

The appointment of a Speaker pro tempore by simple designation—that is, without formal House approval—is permitted for periods that do not extend beyond three legislative days.[11] The Speaker[12] (or Speaker pro tempore)[13] may orally designate a Member as Speaker pro tempore either in open House[14] or informally and off the record. The designation must be in formal writing when the Speaker[15] (or Speaker pro tempore)[16] cannot be present at the beginning of a day's session.

The Speaker may, likewise, withdraw a designation of someone as Speaker pro tempore.[17]

The designated Speaker pro tempore is characteristically a "stand-in" Speaker. He must ordinarily seek the consent of the House before carrying out the more sensitive activities that a Speaker would handle without the House's consent and as a matter of course.[18]

Examples of the functions assumed by a designated Speaker pro tempore from the Speaker include: administering the oath of office to a Member-elect with the consent of the House;[19] appointing conferees with the unanimous consent of the House;[20] spreading upon the Journal a veto message from the President with the consent of the House;[1] referring

11. Rule I clause 7, House Rules and Manual § 633 (1973).

12. See § 12.1, infra.

13. See § 12.3, infra.

Parliamentarian's Note: Simple designation of a Speaker pro tempore is the Speaker's right under Rule I clause 7 of the House Rules and Manual. From the custom and the practice of the House, it is presumed that a Speaker pro tempore assumes this right upon entering the office.

14. See illustrations under §§ 12.1, 12.3, infra.

15. See § 12.2, infra.

16. See § 12.4, infra.

17. See § 12.6, infra.

18. See §§ 12.8-12.14, infra.

19. See § 12.8, infra.

20. See §§ 12.9, 12.10, infra.

1. See § 12.11, infra.

Presidential messages to committees with the unanimous consent of the House;[2] appointing Members to attend funerals by direction of the Speaker and with the unanimous consent of the House;[3] and calling the House to order in the absence of the Speaker.[4]

Normally, but not always, it is the designated Speaker pro tempore who is elected Speaker pro tempore during the absence of the Speaker when certain functions require that the Speaker pro tempore be elected, and not simply designated.[5]

Oral Designation by Speaker

§ 12.1 A Speaker may orally designate a Speaker pro tempore.

On Apr. 7, 1930,[6] Speaker Nicholas Longworth, of Ohio, made the following announcement:

> THE SPEAKER: The Chair desires to prefer a request for unanimous consent. The Chair has in mind this afternoon to go to southern climes, frankly, for the purpose of rest and recreation for a few days. . . .
>
> The Chair designates the gentleman from Connecticut [Mr. Tilson] to act as Speaker pro tempore for 3 days, and the Chair asks unanimous consent that thereafter, until the return of the Chair, which will in all probability be on Monday, the gentleman from Connecticut may be permitted to continue in that office. Is there objection?
>
> There was no objection.
>
> MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, I offer a resolution and ask its immediate consideration.
>
> THE SPEAKER: The gentleman from New York [Mr. Snell] offers a resolution, which the Clerk will report.
>
> The Clerk read as follows:
>
> > *Resolved*, That the designation of Hon. John Q. Tilson, a Representative from the State of Connecticut, as Speaker pro tempore be approved by the House and that the President and the Senate be notified thereof.
>
> THE SPEAKER: The question is on agreeing to the resolution.
>
> The resolution was unanimously agreed to.

On Mar. 11, 1940,[7] Speaker William B. Bankhead, of Alabama, made the following announcement:

> THE SPEAKER: In the event of the absence of The Speaker for the next 3 legislative days, the Chair designates the gentleman from Texas [Mr. Rayburn] as the Speaker pro tempore.

On Apr. 29, 1948,[8] Speaker Joseph W. Martin, Jr., of Massachu-

2. See §§ 12.12, 12.13, infra.
3. See § 12.14, infra.
4. See §§ 12.15, 12.16, infra.
5. See § 12.17, infra.
6. 72 CONG. REC. 6661, 71st Cong. 2d Sess.
7. 86 CONG. REC. 2665, 76th Cong. 3d Sess.
8. 94 CONG. REC. 5036, 80th Cong. 2d Sess.

setts, made the following announcement:

> THE SPEAKER: The Chair wishes to state that he appoints as Speaker pro tempore for the balance of the week the Honorable Charles A. Halleck, of Indiana

On Sept. 14, 1962,[9] Speaker John W. McCormack, of Massachusetts, made the following announcement:

> THE SPEAKER: The Chair will be absent on Monday and Tuesday of next week and designates as Speaker pro tempore on Monday and Tuesday the gentleman from Oklahoma, Mr. Albert.

Written Designation by Speaker

§ 12.2 A Speaker who is absent at the beginning of a day's session may designate a Speaker pro tempore in formal writing.

On June 1, 1961,[10] the proceedings below took place in the House:

> The House met at 12 o'clock noon and was called to order by the Speaker pro tempore, Mr. McCormack.
>
> THE SPEAKER PRO TEMPORE: The Clerk will read the following communication [from Speaker Rayburn].
>
> The Clerk read as follows:
>
> I hereby designate the Honorable John W. McCormack to act as Speaker pro tempore today.
>
> SAM RAYBURN,
> *Speaker.*

On July 5, 1962,[11] the following action took place in the House:

> THE SPEAKER PRO TEMPORE: (Mr. Albert) laid before the House the following communication from [Speaker McCormack], which was read:
>
> I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.
>
> JOHN W. MCCORMACK,
> *Speaker.*

On Dec. 27, 1963,[12] Speaker John W. McCormack, of Massachusetts, was absent at the beginning of the session and designated in writing Carl Albert, of Oklahoma, to be Speaker pro tempore for the day:

> The House met at 12 o'clock noon and was called to order by The Speaker pro tempore (Mr. Albert).
>
> THE SPEAKER PRO TEMPORE (Mr. Albert): The Clerk will read the following communication.
>
> The Clerk read as follows:
>
> THE SPEAKER'S ROOMS
>
> I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.
>
> JOHN W. MCCORMACK,
> *Speaker.*

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9. 108 CONG. REC. 19516, 87th Cong. 2d Sess.

10. 107 CONG. REC. 9330, 87th Cong. 1st Sess.

11. 108 CONG. REC. 12703, 87th Cong. 2d Sess.

12. 109 CONG. REC. 25591, 88th Cong. 1st Sess.

Oral Designation by Speaker Pro Tempore

§ 12.3 A Speaker pro tempore may orally designate another Speaker pro tempore.

On Sept. 27 (legislative day, Sept. 25), 1961,[13] elected Speaker pro tempore John W. McCormack, of Massachusetts, orally designated Representative Carl Albert, of Oklahoma, as Speaker pro tempore during Mr. McCormack's comments on the first session of the 87th Congress.

Written Designation by a Speaker Pro Tempore

§ 12.4 If a Speaker pro tempore is to be absent at the beginning of a day's session, he may exercise his right to designate another Speaker pro tempore, but only in writing.

On June 20, 1932,[14] the elected Speaker pro tempore Henry T. Rainey, of Illinois, designated in writing a Speaker pro tempore for the day.

The House was called to order at 12 o'clock noon by the Clerk of the House of Representatives.

The Clerk read the following communication from the Speaker pro tempore [Mr. Rainey].

THE SPEAKER'S ROOMS,
House of Representatives of the United States, Washington, D.C.

I hereby designate Hon. William B. Bankhead to act as Speaker pro tempore today.

HENRY T. RAINEY,
Speaker pro tempore.

Mr. Bankhead took the Chair as Speaker pro tempore.[15]

On Dec. 26, 1940,[16] elected Speaker pro tempore William P. Cole, Jr., of Maryland, designated in writing another Speaker pro tempore to serve for the day.

The House met at 12 o'clock noon, and was called to order by The Speaker pro tempore, Mr. Ramspeck.

The Clerk read the following communication from The Speaker pro tempore, Mr. Cole of Maryland:

THE SPEAKER'S ROOM,
The House of Representatives, United States, Washington, D.C.

I hereby designate Hon. Robert Ramspeck to act as Speaker pro tempore today.

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13. 107 CONG. REC. 21545, 87th Cong. 1st Sess.

14. 75 CONG. REC. 13502, 72d Cong. 1st Sess.

15. *Parliamentarian's Note:* On June 13, 1932, upon being advised by the doctor that The Speaker would not be able to attend for several days, Mr. Crisp (Ga.) offered a resolution electing Mr. Rainey as Speaker pro tempore. Mr. Crisp administered the oath to Mr. Rainey as Speaker pro tempore. Mr. Rainey under the terms of the resolution electing him served as Speaker pro tempore until June 21 when The Speaker returned to his duties. On June 18, however, Mr. Rainey, finding it necessary to be absent on June 20, designated Mr. Bankhead (Ala.) as Speaker pro tempore.

16. 86 CONG. REC. 14000, 76th Cong. 3d Sess.

WILLIAM P. COLE, JR.,
Speaker pro tempore.

Reasons for Designation

§ 12.5 A Speaker may designate a Speaker pro tempore for various reasons, including illness.

On Aug. 31, 1961,[17] Speaker Sam Rayburn, of Texas, designated in writing Representative Carl Albert, of Oklahoma, to act as Speaker pro tempore for the day. Mr. Rayburn was leaving to go to his home because he was ill.[18]

Withdrawal of Designation

§ 12.6 The designation of a Speaker pro tempore may be withdrawn.

On Apr. 2, 1947,[19] Speaker Joseph W. Martin, Jr., of Massachusetts, made the following announcement:

> THE SPEAKER: The Chair wishes to announce that the gentleman from Michigan [Mr. Michener], whom he has just designated as Speaker pro tempore on Thursday and Monday next, has illness in his family which may preclude him from accepting the appointment; therefore, the Chair withdraws that designation and designates the gentleman from Indiana [Mr. Halleck] to act as Speaker pro tempore on Thursday and Monday next.

Designation of Minority Party Member

§ 12.7 On rare ceremonial occasions, a Speaker may designate a member of the minority party as Speaker pro tempore.

On Jan. 31, 1951,[1] Speaker Sam Rayburn, of Texas, was praised for his record of service as Speaker of the House. At that time, he requested a member of the minority party, Mr. Joseph W. Martin, Jr., of Massachusetts, to take the Chair:

> THE SPEAKER: The Chair will ask the gentleman from Massachusetts [Mr. Martin] to kindly take the chair at this time.
>
> Mr. Martin assumed the Chair.

Duties, Powers, and Functions

§ 12.8 A designated Speaker pro tempore, in the absence of The Speaker, may admin-

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17. 107 CONG. REC. 17765, 17766, 87th Cong. 1st Sess.

18. *Parliamentarian's Note:* Speaker Rayburn last presided over the House on Aug. 30, 1961. On Nov. 16, 1961, he died in Bonham, Tex.

For other examples of the reasons for designating a Speaker pro tempore, see §§ 12.1, supra, and 12.7, infra.

19. 93 CONG. REC. 3075, 80th Cong. 1st Sess.

1. 97 CONG. REC. 778, 82d Cong. 1st Sess.

ister to a Member-elect his oath of office.

On Mar. 11, 1940,[2] Speaker William B. Bankhead, of Alabama, orally designated Representative Sam Rayburn, of Texas, as Speaker pro tempore in the event of his absence for the ensuing three legislative days. On Mar. 12, 1940,[3] in the absence of The Speaker, Speaker pro tempore Rayburn administered to a Member-elect his oath of office by unanimous consent of the House:

> THE SPEAKER PRO TEMPORE: The present occupant of the chair will administer the oath of office to the Member-elect if there is no objection.
>
> There being no objection [the Member-elect] appeared at the bar of the House and took the oath of office.

§ 12.9 A designated Speaker pro tempore is authorized to appoint conferees only with the unanimous consent of the House.

On May 28, 1959,[4] Speaker pro tempore John W. McCormack, of Massachusetts, with the unanimous consent of the House appointed conferees. The proceedings were as follows:

> MR. [BRENT] SPENCE [of Kentucky]: Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (S. 1094) to amend the Bretton Woods Agreements Act, with House amendment thereto, insist on the House amendment, and agree to the conference requested by the Senate.
>
> The Clerk read the title of the bill.
>
> THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Kentucky?
>
> There was no objection.
>
> THE SPEAKER PRO TEMPORE: Without objection, the Chair appoints the following conferees: Messrs. Spence, Brown of Georgia, Patman, Rains, Kilburn, Widnall, and Hiestand.
>
> There was no objection.

On Oct. 9, 1969,[5] the designated Speaker pro tempore appointed conferees with the unanimous consent of the House. The proceedings were as follows:

> MR. [ROBERT E.] JONES of Alabama: Mr. Speaker, I ask unanimous consent to take from The Speaker's table the bill (H.R. 4148) to amend the Federal Water Pollution Control Act, as amended, and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.
>
> THE SPEAKER PRO TEMPORE [Richard Bolling, of Missouri]: Is there objection to the request of the gentleman from Alabama? The Chair hears none, and, without objection, appoints the following conferees: Messrs. Blatnik, Jones of Alabama, Wright, Fallon, Cramer, Harsha, and Grover.
>
> There was no objection.

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2. 86 CONG. REC. 2665, 76th Cong. 3d Sess.

3. 86 CONG. REC. 2724, 76th Cong. 3d Sess.

4. 105 CONG. REC. 9334, 86th Cong. 1st Sess.

5. 115 CONG. REC. 29346, 91st Cong. 1st Sess.

On July 8, 1970,[6] The Speaker pro tempore, Hale Boggs, of Louisiana, appointed conferees by unanimous consent of the House.

MR. [JOSEPH L.] EVINS of Tennessee: Mr. Speaker, I ask unanimous consent to take from The Speaker's table the bill (H.R. 17548) . . . with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate. . . .

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Tennessee? The Chair hears none, and, without objection, appoints the following conferees: Messrs. Evins of Tennessee, Boland, Shipley, Giaimo, Marsh, Pryor of Arkansas, Mahon, Jonas, Talcott, McDade, Del Clawson, and Bow.

There was no objection.

On Oct. 8, 1970,[7] Speaker pro tempore Charles M. Price, of Illinois, appointed conferees with the unanimous consent of the House.

MR. [PAUL G.] ROGERS of Florida: Mr. Speaker, I ask unanimous consent to take from The Speaker's table the bill (H.R. 18583) to amend the Public Health Service Act . . . with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Florida? The Chair hears none, and, without objection, appoints the following conferees: Messrs. Staggers, Jarman, Rogers of Florida, Satterfield, Springer, Nelsen, and Carter.

There was no objection.

§ 12.10 A designated Speaker pro tempore is authorized to appoint additional conferees on a bill only with unanimous consent of the House.

On Apr. 29, 1948,[8] unanimous consent was requested to authorize the designated Speaker pro tempore, Charles A. Halleck, of Indiana, to appoint additional conferees on a bill. Without objection the designated Speaker pro tempore appointed additional conferees.

MR. [PAUL W.] SHAFER [of Michigan]: Mr. Speaker, I ask unanimous consent that The Speaker pro tempore be authorized to appoint two additional conferees on the bill (S. 1641) to establish the Women's Army Corps in the regular Army, to authorize the enlistment and appointment of women in the regular Army and Marine Corps and the Naval and Marine Corps Reserve, and for other purposes.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Michigan? [After a pause.] The Chair hears none, and, without objection, appoints the gentleman from New York [Mr. Andrews] and the gentleman from Texas [Mr. Johnson].

There was no objection.

6. 116 CONG. REC. 23141, 91st Cong. 2d Sess.

7. 116 CONG. REC. 35866, 35867, 91st Cong. 2d Sess.

8. 94 CONG. REC. 5066, 80th Cong. 2d Sess.

THE SPEAKER PRO TEMPORE: The Clerk will notify the Senate thereof.

§ 12.11 A designated Speaker pro tempore may order spread upon the Journal the veto message of a President.

On Sept. 13, 1966,[9] Speaker pro tempore Hale Boggs, of Louisiana, ordered a veto message of the President spread upon the Journal with the unanimous consent of the House.

The Speaker pro tempore laid before the House the following veto message from the President of the United States:

To the House of Representatives:

. . . In returning this measure, I do so in the hope that the Congress will adopt the insurance proposals I submitted earlier. Such a measure would be fiscally responsible. It would be consistent with the wage-price guide posts. I would be proud to sign it.

LYNDON B. JOHNSON,
The White House,
September 12, 1966.

THE SPEAKER PRO TEMPORE: Without objection, the objections of the President will be spread at large upon the Journal.

There was no objection.

§ 12.12 A designated Speaker pro tempore refers a Presidential message to committee only with unanimous consent of the House.

On Aug. 31, 1967,[10] Speaker pro tempore Carl Albert, of Oklahoma, referred a Presidential message to committee with unanimous consent of the House:

The Speaker pro tempore (Mr. Albert) laid before the House the following message from the President of the United States, which was read, as follows:

To the Congress of the United States:

I am pleased to transmit the annual report of the Office of Alien Property, Department of Justice, for the fiscal Year ended June 30, 1966, in accordance with section 6 of the Trading With the Enemy Act.

LYNDON B. JOHNSON,
The White House,
August 31, 1967.

THE SPEAKER PRO TEMPORE (Mr. Albert): Without objection, the message, together with the accompanying papers, is referred to the Committee on Interstate and Foreign Commerce.

There was no objection.

§ 12.13 A designated Speaker pro tempore refers a Presidential message to committee and orders it printed (sometimes with illustrations) only with the unanimous consent of the House.

On Sept. 8, 1966,[11] Speaker pro tempore Hale Boggs, of Louisiana, laid before the House a

9. 112 CONG. REC. 22411, 89th Cong. 2d Sess.

10. 113 CONG. REC. 24843, 24844, 90th Cong 1st Sess.

11. 112 CONG. REC. 22049–52, 89th Cong. 2d Sess.

message from the President and, without objection, referred the message to a committee and ordered it printed.

On Apr. 21, 1970,[12] Speaker pro tempore Robert O. Tiernan, of Rhode Island, referred a Presidential message to committee and ordered it printed with the unanimous consent of the House.

On Jan. 24, 1966,[13] Speaker John W. McCormack, of Massachusetts, laid before the House a message from the President. Speaker McCormack having left the Chair during the reading of the message from the President, the designated Speaker pro tempore referred the message to committee and ordered it printed, with illustrations.

§ 12.14 A designated Speaker pro tempore appoints Members to attend a funeral following the directions of the Speaker and with the unanimous consent of the House.

On Nov. 25, 1963,[14] designated Speaker pro tempore James C. Wright, Jr., of Texas, appointed a committee of 100 Members of the House to attend the funeral of President John F. Kennedy, following the directions of the Speaker and with the unanimous consent of the House.

§ 12.15 A designated Speaker pro tempore calls the House to order in the absence of the Speaker.

On June 1, 1961,[15] Representative John W. McCormack, of Massachusetts, having been designated in writing as Speaker pro tempore by Speaker Sam Rayburn, of Texas, called the House to order in the absence of the Speaker.

§ 12.16 A designated Speaker pro tempore calls the House to order at the beginning of a session of Congress in the absence of the Speaker.

On Jan. 10, 1966,[16] Speaker John W. McCormack, of Massachusetts, being absent because of the death of his brother,[17] designated Speaker pro tempore Carl

12. 116 CONG. REC. 12581, 91st Cong. 2d Sess.

13 112 CONG. REC. 909–17, 89th Cong. 2d Sess.

14. 109 CONG. REC. 22695, 22696, 88th Cong. 1st Sess.

15. 107 CONG. REC. 9330, 87th Cong. 1st Sess.

16. 112 CONG. REC. 5, 89th Cong. 2d Sess.

17. *Parliamentarian's Note:* Speaker John W. McCormack was not in Washington for the convening of the second session of the 89th Congress because of the death of his brother, Donald J. McCormack.

Albert, of Oklahoma, called the House to order at the beginning of the session of the Congress, and laid before the House the following communication from the Speaker:

THE SPEAKER'S ROOMS,
U.S. House of Representatives,
Washington, D.C.

I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.

JOHN W. MCCORMACK,
Speaker.

Time for Election of Designee

§ 12.17 A designated Speaker pro tempore is elected by the House as Speaker pro tempore during the absence of the Speaker when the need arises for the performance of certain functions.

On Aug. 31, 1961,[18] the following actions took place in the House:

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore (Mr. [Carl] Albert [of Oklahoma]).

THE SPEAKER PRO TEMPORE: The Chair lays before the House a communication which the Clerk will read.

The Clerk read as follows:

AUGUST 31, 1961.

THE SPEAKER'S ROOMS,
House of Representatives,
Washington, D.C.

I hereby designate Hon. Carl Albert to act as Speaker pro tempore today.

SAM RAYBURN,
Speaker.

* * * * *

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, I send to the Speaker's table a resolution (H. Res. 445) and ask for its immediate consideration.

The Clerk read as follows:

H. RES. 445

Resolved, That Hon. John W. McCormack, a Representative from the State of Massachusetts, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. John W. McCormack as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Hon. John W. McCormack assumed the Chair and the oath of office was administered to him by Mr. Walter.[19]

18. 107 CONG. REC. 17765, 17766, 87th Cong. 1st Sess.

19. *Parliamentarian's Note:* Speaker Sam Rayburn last presided over the House on Wednesday, Aug. 30, 1961, during a call of Calendar Wednesday business. Because of illness, he departed for his home in Bonham, Tex., on the morning of Aug. 31. Speaker Rayburn died there on Nov. 16, 1961.

On Nov. 18, 1963,[1] Speaker John W. McCormack, of Massachusetts, in writing designated Carl Albert, of Oklahoma, to act as Speaker pro tempore for the day.[2] After laying the designation before the House, Mr. Albert designated another Speaker pro tempore to serve during his election as Speaker pro tempore in the absence of the Speaker.[3]

The House met at 12 o'clock noon and was called to order by the Speaker pro tempore, Mr. Albert.

The Speaker pro tempore laid before the House the following communication from [Speaker McCormack]:

THE SPEAKER'S ROOM

I hearby designate the Honorable Carl Albert to act as Speaker pro tempore today.

JOHN T. MCCORMACK,
Speaker.

* * * * *

Mr. [Hale] Boggs [of Louisiana] assumed the chair.

MR. [CARL] VINSON [of Georgia]: Mr. Speaker, I send to the desk a privileged resolution and ask for its immediate consideration.

The Clerk read the resolution [H. Res. 567] as follows:

Resolved, That Honorable Carl Albert, a Representative from the State of Oklahoma, be, and he is hereby elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Honorable Carl Albert as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to.

The motion to reconsider was laid on the table.

Mr. Albert resumed the chair.

MR. ALBERT: The Chair requests the gentleman from Georgia, dean of the House, to administer the oath. Mr. Albert took the oath of office as Speaker pro tempore administered by Mr. Vinson.

On Jan. 10, 1966,[4] Speaker John W. McCormack, of Massachusetts, was absent because of the death of his brother. Speaker McCormack designated in writing a Speaker pro tempore for the day. The designated Speaker pro tempore was elected Speaker pro tempore during the absence of the Speaker.[5]

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1. 109 CONG. REC. 22015, 88th Cong. 1st Sess.

2. *Parliamentarian's Note:* Speaker McCormack's brother, Edward, died in Boston on Sunday, Nov. 17. The Speaker remained in Boston until Nov. 21.

3. *Parliamentarian's Note:* Although the Congressional Record does not explicitly refer to Mr. Albert's designation of a second Speaker pro tempore, such in fact did take place.

4. 112 CONG. REC. 5, 6, 89th Cong. 2d Sess.

5. *Parliamentarian's Note:* Since the duration of The Speaker's absence was uncertain and since there were new Members present to be sworn, the House chose to elect a Speaker pro tempore.

. . . [T]he Members of Congress met in their hall, and at 12 o'clock were called to order by the Speaker pro tempore Hon. Carl Albert, a Representative from the State of Oklahoma.

The Speaker pro tempore (Mr. Albert) laid before the House the following communication:

THE SPEAKER'S ROOMS,
U.S. House of Representatives,
Washington, D.C.

I hereby designate the Honorable Carl Albert to act as Speaker pro tempore today.

JOHN W. MCCORMACK,
Speaker.

* * * * *

THE SPEAKER PRO TEMPORE: The Chair requests the gentleman from Louisiana [Mr. Boggs] to assume the Chair.

Mr. Boggs assumed the Chair as Speaker pro tempore.

THE SPEAKER PRO TEMPORE: (Mr. Hale Boggs): The Chair recognizes the gentleman from New York [Mr. Keogh].

MR. [EUGENE J.] KEOGH: Mr. Speaker, on account of the unavoidable absence of The Speaker due to the death of his beloved brother, and at his request, I offer a resolution and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 627

Resolved, That Hon. Carl Albert, a Representative from the State of Oklahoma, be, and he is hereby, elected Speaker pro tempore during the absence of The Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of the Honorable Carl Albert as Speaker pro tempore during the absence of The Speaker.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. Albert assumed the Chair as Speaker pro tempore and Mr. Celler administered the oath of office.

§ 13.—House Approval

The House rules provide:

[The Speaker] shall have the right to name any Member to perform the duties of the Chair, but such substitution shall not extend beyond three legislative days: *Provided,* however, That in case of his illness, he may make such appointment for a period not exceeding ten days, with the approval of the House at the time the same is made. . . .[6]

The approval of the House has been obtained by The Speaker pursuant to a unanimous-consent request where The Speaker, though not ill, wished to appoint a Speaker pro tempore who could serve beyond three legislative days[7] and to allow a designated Speaker pro tempore to sign enrolled bills during the period of his designation.[8]

Because of this procedure's infrequent use in modern times it

6. Rule I clause 7 of the *House Rules and Manual* § 633 (1973).

7. See § 13.1, infra.

8. See § 13.2, infra.

appears that a Speaker will more often invite the election of a Speaker pro tempore when the necessity arises, thus enabling him to sign enrolled bills and joint resolutions and vesting in him the fuller powers of an elected officer.[9]

The President and Senate are notified when a designated Speaker pro tempore has been given the approval of the House.[10]

House Approval of Designated Speaker Pro Tempore

§ 13.1 On rare occasions a Speaker, though not ill, will designate a Speaker pro tempore and the House will approve the designation so that the designated Speaker pro tempore may serve beyond three legislative days.

On Apr. 7, 1930,[11] Speaker Nicholas Longworth, of Ohio, designated a Speaker pro tempore to serve for a three-day period and "thereafter" until his return from a brief vacation.

> MR. [BERTRAND H.] SNELL [of New York]: Mr. Speaker, I offer a resolution and ask its immediate consideration.
>
> The Speaker: The gentleman from New York [Mr. Snell] offers a resolution, which the Clerk will report.
>
> The Clerk read as follows:
>
> *Resolved,* That the designation of Hon. John Q. Tilson, a Representative from the State of Connecticut, as Speaker pro tempore be approved by the House and that the President and the Senate be notified thereof.
>
> THE SPEAKER: The question is on agreeing to the resolution.
>
> The resolution was unanimously agreed to.

§ 13.2 A designated Speaker pro tempore must be formally approved by the House in order to sign enrolled bills during the period of time of his designation.

On Feb. 24, 1949,[12] the designated Speaker pro tempore John W. McCormack, of Massachusetts, received the approval of the House in order that he might sign enrolled bills.

> MR. [MIKE] MANSFIELD [of Montana]: Mr. Speaker, I offer a privileged resolution (H. Res. 116) and ask for its immediate consideration
>
> The Clerk read the resolution, as follows:
>
> *Resolved,* That the designation of Hon. John W. McCormack, a Representative from the State of Massachusetts, as Speaker pro tempore be approved by the House, and that the President of the United States and the Senate be notified thereof.

9. See § 14, infra.

10. See §§ 13.1, 13.2, infra.

11. 72 CONG. REC. 6661, 71st Cong. 2d Sess. See also 12.1, supra.

12. 95 CONG. REC. 1489, 81st Cong. 1st Sess.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Speaker, will the gentleman yield?

MR. MANSFIELD: I yield to the gentleman from South Dakota.

MR. CASE of South Dakota: As I understand, this is the customary resolution to meet a situation, so that bills may be duly enrolled and presented for signature?

MR. MANSFIELD: The gentleman is correct.

THE SPEAKER PRO TEMPORE: The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE: The Chair requests the gentleman from Montana [Mr. Mansfield] to administer the oath of office to the Chair.

Mr. Mansfield administered the oath of office as Speaker pro tempore to Mr. McCormack.

§ 14. Election of Speaker Pro Tempore

A House rule[13] provides for the election of a Speaker pro tempore when The Speaker is absent and has omitted designating a Speaker pro tempore.

This rule has been rarely invoked. Ordinarily, The Speaker will invite the election of a Speaker pro tempore before leaving[14] or the House will elect a Speaker pro tempore after The Speaker has already designated one.[15]

A Speaker pro tempore is elected by formal resolution and the President and Senate are notified of his election.[16]

When a previously designated Speaker pro tempore is the Member who is to be elected Speaker pro tempore, he momentarily designates another Speaker pro tempore during the election process.[17]

An elected Speaker pro tempore is more than a "stand-in" Speaker. Indicative of this is the requirement that he swear a new oath upon his entering the office of Speaker pro tempore.[18]

Moreover, an elected Speaker pro tempore assumes a much greater scope of authority from The Speaker than a designated Speaker pro tempore. Being elected, he does not have to have the

13. Rule I clause 7, *House Rules and Manual* § 633 (1973).

14. See §§ 14.3–14.5, infra.

15. See § 14. 6, infra.

Parliamentarian's Note: As the illustrations under § 14.6 indicate, normally the Member designated Speaker pro tempore by the Speaker is the person the House elects. However, the House has the inherent power, and has exercised it, to elect a person other than the Member so designated. See § 14.7, infra.

16. See §§ 14.1, 14.2, infra, respectively.

17. See §§ 14.6, 14.7, infra.

18. See § 11, supra.

unanimous consent of the House, as does the designated Speaker pro tempore, to carry out many of the more sensitive, but normal, duties that The Speaker would handle if present.[19] He must, however, be authorized by the House to perform certain duties even though he has been elected by the House, and not simply designated by The Speaker.[20]

Examples of the kinds of duties, powers, and functions assumed by an elected Speaker pro tempore from The Speaker include: administering the oath of office to new Members;[1] appointing conferees;[2] appointing committees to wait on the President and to inform him that the session's work is completed;[3] or that a quorum of both Houses is ready to receive his state of the Union message;[4] signing enrolled bills and joint resolutions during the adjournment of the House;[5] declaring recesses during a session;[6] and presiding at a joint session of the Congress.[7]

Election by Resolution

§ 14.1 A Speaker pro tempore is elected by formal resolution.

On Apr. 15, 1958,[8] Speaker pro tempore John W. McCormack, of Massachusetts, was elected by formal resolution to the office of Speaker pro tempore.

> THE SPEAKER PRO TEMPORE: The Chair requests the gentleman from Oklahoma [Mr. (Carl) Albert] to assume the Chair.
>
> Mr. Albert assumed the chair.
>
> MR. [CHARLES M.] PRICE [of Illinois]: Mr. Speaker, I offer a resolution which I send to the Clerk's desk.
>
> The Clerk read as follows:
>
> HOUSE RESOLUTION 527
>
> *Resolved, etc.,* That Hon. John W. McCormack, a Representative from the State of Massachusetts, be, and he is hereby, elected Speaker pro tempore during the absence of The Speaker.
>
> *Resolved*. That the President and the Senate be notified by the Clerk of the election of Hon. John W. McCormack as Speaker pro tempore during the absence of The Speaker.
>
> THE SPEAKER PRO TEMPORE [Mr. Albert]: The question is on the resolution.

19. See §§ 14.8–14.12, infra.

20. See §§ 14.13–14.16, infra. See also § 4, supra, wherein it is indicated that the Speaker also must be authorized to sign enrolled bills and joint resolutions during the adjournment of the House.

1. See § 14.8, infra.

2. See §§ 14.9, 14.10, infra.

3. See § 14.11, infra.

4. See § 14.13, infra.

5. See § 14.14, infra.

6. See §§ 14.15, 14.16, infra.

7. See § 14.12, infra.

8. 104 CONG. REC. 6436, 85th Cong. 2d Sess.

The resolution was agreed to and a motion to reconsider was laid on the table.

Notification of President and Senate

§ 14.2 The President and the Senate are notified by the Clerk of the election of a Speaker pro tempore.

On Apr. 15, 1958,[9] House Resolution 527 was offered to elect the Speaker pro tempore John W. McCormack, of Massachusetts, as Speaker pro tempore during the absence of the Speaker:

MR. [CHARLES M.] PRICE [of Illinois]: Mr. Speaker, I offer a resolution. . . .

Resolved, That Hon. John W. McCormack, a Representative from the State of Massachusetts, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of the Hon. John W. McCormack as Speaker pro tempore during the absence of the Speaker.

The resolution was adopted.

Election by Invitation of Speaker

§ 14.3 A Speaker who is ill may, under House practice, invite the election of a Speaker pro tempore to serve during the absence of the Speaker.

On Apr. 2, 1940,[10] Speaker William B. Bankhead, of Alabama, having contracted a case of influenza, invited the election of a Speaker pro tempore.

THE SPEAKER: The Chair desires to make a brief personal statement to the House.

I dislike very much to do so, but, unfortunately, a few weeks ago I contracted a very severe case of influenza which seems to be holding on to me with great tenacity. My physician has advised me to take a little rest, and I am sure the Members of the House will be pleased to accord me this privilege.

Mr. [John W.] McCormack [of Massachusetts]: Mr. Speaker, I offer a resolution and ask for its immediate consideration.

The Clerk read as follows:

HOUSE RESOLUTION 451

Resolved, That Hon. Sam Rayburn, a Representative from the State of Texas, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. Sam Rayburn as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to, and a motion to reconsider was laid on the table.

§ 14.4 A Speaker who is not ill and who has not designated

9. 104 CONG. REC. 6436, 85th Cong. 2d Sess.

10. 86 CONG. REC. 3846, 76th Cong. 3d Sess.

a Speaker pro tempore may invite the election of a Speaker pro tempore.

On Mar. 24, 1944,[11] Speaker Sam Rayburn, of Texas, invited the election of a Speaker pro tempore.

THE SPEAKER: The Chair desires to make a statement.

The Chair hopes by next Thursday a concurrent resolution will be passed recessing the Congress over until the 11th or 12th of April. It will be impossible for the present occupant of the chair to be in Washington next week, and therefore he has asked the gentleman from Georgia [Mr. (Robert C. W.) Ramspeck] to offer a resolution.

MR. RAMSPECK: Mr. Speaker, I offer the following resolution (H. Res. 483) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That Hon. John W. McCormack, a Representative from the State of Massachusetts, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. John W. McCormack as Speaker pro tempore during the absence of the Speaker. The resolution was agreed to.

§ 14.5 A Speaker pro tempore may be elected for reasons other than the illness of the Speaker.

On May 21, 1937,[12] Speaker William B. Bankhead, of Alabama, desiring to deliver a commencement address at the University of Alabama, invited the election of a Speaker pro tempore during that period of time when he would be absent.

THE SPEAKER: The Chair would like to make a brief statement.

I have accepted an invitation to deliver the commencement address at the University of Alabama, my alma mater, on Monday next. While I am that far away, very candidly, I will state to you gentlemen that I should like the privilege of remaining at my home for just a few days. Under the rules of the House I could appoint a Speaker pro tempore for three days, but under the circumstances, by the indulgence of the House, I have requested the gentleman from Texas, the majority leader [Sam Rayburn], to introduce a resolution touching on the question.

MR. RAYBURN: Mr. Speaker, I send to the Clerk's desk a resolution at the request of the Speaker.

The Clerk read as follows:

HOUSE RESOLUTION 218

Resolved, That Hon. Lindsay C. Warren, a Representative from the State of North Carolina, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. Lindsay C.

11. 90 CONG. REC. 3114, 78th Cong. 2d Sess.

12. 81 CONG. REC. 4898, 75th Cong. 1st Sess.

Warren as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to, and a motion to reconsider was laid on the table.

On July 1, 1939,[13] Speaker William B. Bankhead, of Alabama, invited the election of a Speaker pro tempore while he took a period of recreation and rest.

THE SPEAKER: The Speaker desires the indulgence of the House to make a personal statement.

It is realized that we have been in continuous session now for six months and it has been a rather arduous, strenuous session of the House. Under our system of government, The Speaker of the House cannot make visits of recreation or take a rest, except by the indulgence of the membership. I must confess I am a little bit tired. Next week will not be a tremendously heavy week, so far as our legislative program is concerned, and I have therefore requested the gentleman from North Carolina [Mr. (Robert L.) Doughton] to introduce a resolution which will give me a short leave of absence.

MR. DOUGHTON: Mr. Speaker, I submit a resolution and ask for its immediate consideration.

The Clerk read the resolution as follows:

HOUSE RESOLUTION 240

Resolved, That Hon. Sam Rayburn, a Representative from the State of Texas, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. Sam Rayburn as Speaker pro tempore during the absence of The Speaker.

The resolution was agreed to.

On Aug. 15, 1941,[14] Speaker Sam Rayburn, of Texas, invited the election of a Speaker pro tempore when he desired to leave for a short vacation beyond 10 days.

THE SPEAKER: The Chair desires at this time to make a short statement. As you all know, for something like three years, and especially the last 19½ months, the Chair has been very closely tied to Washington. Although I have enjoyed hugely being here with you ladies and gentlemen, I do have the very great desire of for a few days sniffing a different atmosphere.

I am homesick. I want to go home tomorrow. To all of you who go home—and I hope you do—I trust you will find things fine at home and that you will come back with a renewed vigor, imbued again with the sentiment of your constituents. . . .

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Speaker, in offering the following resolution for the election of a Speaker pro tempore and asking for its immediate consideration I know I state the sentiments of all the Members when I say that I hope that you have a most enjoyable rest in your white house and in future White Houses.

The Clerk read the resolution (H. Res. 298), as follows:

13. 84 CONG. REC. 8520, 8521, 76th Cong. 1st Sess.

14. 87 CONG. REC. 7194, 7195, 77th Cong. 1st Sess.

Resolved, That Hon. Clifton A. Woodrum, a Representative from the State of Virginia, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. Clifton A. Woodrum as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to.

THE SPEAKER: The gentleman from Virginia [Mr. Woodrum] will present himself at the bar of the House for the purpose of taking the oath.

Mr. Woodrum of Virginia took the oath of office as Speaker pro tempore.

On June 9, 1949,[15] Speaker Sam Rayburn, of Texas, invited the election of a Speaker pro tempore when he desired to be away for two days and where the signing of enrolled bills would be necessary.

THE SPEAKER: It will not be possible for The Speaker to be here on Monday or Tuesday of next week. For that reason, the Chair recognizes the gentleman from Tennessee [Mr. (Albert A.) Gore].

MR. GORE: Mr. Speaker, I offer a resolution (H. Res. 243) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That Hon. John W. McCormack, a Representative from the State of Massachusetts, be, and he is hereby, elected Speaker pro tempore during the absence of the Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. John W. McCormack as Speaker pro tempore during the absence of the Speaker.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: This action is taken for two reasons: First, The Speaker will not be here Monday and Tuesday, and the immediate necessity is that there might be some enrolled bills that must be signed.

Mr. McCormack appeared at the bar of the House and took the oath of office.

Member Elected

§ 14.6 When the need arises for an elected Speaker pro tempore, the designated Speaker pro tempore normally, but not always, is the person elected.

On Mar. 15, 1966,[16] Speaker John W. McCormack, of Massachusetts, having designated Representative Carl Albert, of Oklahoma, as Speaker pro tempore, a resolution was introduced to elect Mr. Albert as Speaker pro tempore during the absence of the Speaker.

MR. [EUGENE J.] KEOGH [of New York]: Mr. Speaker, I offer a privileged resolution and ask for its immediate consideration.

15. 95 CONG. REC. 7509, 81st Cong. 1st Sess.

16. 112 Cong. Rec. 5823, 5824, 89th Cong. 2d Sess.

The Clerk read the resolution as follows:

H. RES. 779

Resolved, That Hon. Carl Albert, a Representative from the State of Oklahoma, be, and he is hereby, elected Speaker pro tempore during the absence of The Speaker.

Resolved, That the President and the Senate be notified by the Clerk of the election of the Honorable Carl Albert as Speaker pro tempore during the absence of The Speaker.

MR. KEOGH: Mr. Speaker, I want to mention that this resolution is being offered at the request of the distinguished Speaker of the House of Representatives.

THE SPEAKER PRO TEMPORE: (Mr. [Wilbur D.] Mills [of Arkansas]):[17] The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. Albert assumed the Chair and the oath of office was administered to him by Mr. [Emanuel] Celler, a Representative from the State of New York.[18]

17. *Parliamentarian's Note:* Mr. Mills was designated as Speaker pro tempore during the election of the Speaker pro tempore Carl Albert.

18. *Parliamentarian's Note:* Speaker McCormack left for Boston at 4:30 p.m. on Mar. 15, 1966, to address a joint session of the Massachusetts General Court (the legislature) on Mar. 16 and participated in St. Patrick's Day festivities on the 17th. Mr. Albert was elected as Speaker pro tempore so that he could sign the Tax Adjustment Act of 1966 (H.R. 12752), which the President wanted to sign later that day.

§ 14.7 On rare occasions a Member other than the one designated Speaker pro tempore by The Speaker is elected Speaker pro tempore by the House.

On Aug. 31, 1961,[19] the House was called to order by Speaker pro tempore Carl Albert, of Oklahoma, who laid before the House a letter from Speaker Sam Rayburn, of Texas. The proceedings were as follows:

THE SPEAKER PRO TEMPORE: The Chair lays before the House a communication [from Speaker Rayburn] which the Clerk will read.

The Clerk read as follows:

THE SPEAKER'S ROOMS,
U.S. House of Representatives,
Washington, D.C.

I hereby designate the Hon. Carl Albert to act as Speaker pro tempore today.

SAM RAYBURN,
Speaker.

* * * * *

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, I send to the Speaker's table a resolution (H. Res. 445) and ask for its immediate consideration.

The resolution called for the election of Representative John W. McCormack, of Massachusetts,

19. 107 CONG. REC. 17765, 17766, 87th Cong. 1st Sess.

as Speaker pro tempore during the absence of the Speaker. The resolution was agreed to.

Mr. McCormack assumed the Chair and the oath of office was administered to him.[20]

Duties, Powers, Functions

§ 14.8 In the absence of the Speaker, an elected Speaker pro tempore administers the oath of office to new Members, without the requirement of unanimous consent of the House.

On Jan. 10, 1966,[1] elected Speaker pro tempore Carl Albert, of Oklahoma, administered the oath of office to new Members without the requirement of unanimous consent of the House.[2]

§ 14.9 An elected Speaker pro tempore appoints conferees without the requirement of the unanimous consent of the House.

On Sept. 20, 1961,[3] elected Speaker pro tempore John W. McCormack, of Massachusetts, appointed conferees for the House without requesting the unanimous consent of the House to make such appointments.

> MR. [JOHN L.] MCMILLAN [of South Carolina]: Mr. Speaker, I ask unanimous consent that the gentleman from Mississippi [Mr. Abernethy] be excused as a conferee on the bill H.R. 5968, and that another Member be designated as a conferee in his place.
>
> THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from South Carolina?
>
> There was no objection.
>
> THE SPEAKER PRO TEMPORE: The Chair appoints to the committee of conference the gentleman from Alabama [Mr. Huddleston] vice the gentleman from Mississippi [Mr. Abernethy].
>
> The Clerk will notify the Senate of the appointment by the Speaker pro tempore.

§ 14.10 An elected Speaker pro tempore appoints successor conferees without the requirement of unanimous consent of the House.

On Sept. 5, 1961,[4] elected Speaker pro tempore John W.

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20. *Parliamentarian's Note:* Speaker Rayburn last presided over the House on Wednesday, Aug. 30, 1961, during a call of Calendar Wednesday business. Because of illness, he departed for his home in Bonham, Tex., on the morning of Aug. 31. Speaker Rayburn died there on Nov. 16, 1961.

1. 112 CONG. REC. 6, 89th Cong. 2d Sess.

2. *Parliamentarian's Note:* The Congressional Record does not explicitly refer to the administration of the oath of office to the new Members by the elected Speaker pro tempore, but such in fact did take place.

3. 107 CONG. REC.. 20491, 87th Cong. 1st Sess.

4. 107 CONG. REC. 18183, 87th Cong. 1st Sess.

McCormack, of Massachusetts, appointed a successor conferee to replace a Member who was resigning as a conferee. He laid before the House the Member's letter of resignation, saying:

> The Chair appoints the gentleman from Michigan, Mr. Meader, as a manager on the part of the House at the conference on S. 1653, vice the gentleman from New York, Mr. Miller, who has been excused; and the Clerk will notify the Senate thereof.

§ 14.11 An elected Speaker pro tempore appoints a committee to wait on the President and inform him that the House has completed the business of the session and is ready to adjourn.

On Sept. 27 (legislative day, Sept. 25), 1961,[5] the House agreed on a resolution enabling elected Speaker pro tempore John W. McCormack, of Massachusetts, to appoint a committee to wait on the President to notify him that the two Houses had completed the business of the session and were ready to adjourn unless the President had some other communication to make to the Congress. After the House had agreed to a resolution for the appointment of the committee, the Speaker pro tempore declared:

> The Chair appoints the gentleman from Oklahoma [Mr. Albert] and the gentleman from Illinois [Mr. Arends] to wait on the President.

§ 14.12 An elected Speaker pro tempore presides at a joint session of Congress to hear an address by the President.

On June 10, 1952,[6] elected Speaker pro tempore John W. McCormack, of Massachusetts, presided at the joint session of the Congress to hear an address by President Harry S. Truman on the crisis in the steel industry.

> The recess having expired, the House was called to order by the Speaker pro tempore at 12 o'clock and 24 minutes p.m. . . .
>
> The Speaker pro tempore presided.
>
> . . . [T]he Vice President took the chair at the right of the Speaker pro tempore. . . .
>
> THE SPEAKER PRO TEMPORE: On the part of the House the Chair appoints as members of the committee to escort the President of the United States into the Chamber, the gentleman from Tennessee, Mr. Priest; the gentleman from North Carolina, Mr. Doughton; and the gentleman from Massachusetts, Mr. Martin.
>
> THE VICE PRESIDENT [Alben W. Barkley, of Kentucky]: On the part of the Senate, the Chair appoints as members of the committee of escort the Senator from Arizona, Mr. McFarland; the Senator from New Hampshire, Mr. Bridges; and the Senator from South Carolina, Mr. Maybank. . . .

5. 107 CONG. REC. 21518, 21528, 87th Cong. 1st Sess.

6. 98 CONG. REC. 6928–30, 82d Cong. 2d Sess.

At 12:30 o'clock p.m. the Doorkeeper announced the President of the United States.

The President of the United States, escorted by the committee of Senators and Representatives, entered the Hall of the House of Representatives and stood at the Clerk's desk. [Applause, the Members rising.]

THE SPEAKER PRO TEMPORE: Members of the Congress, I have the distinguished honor of presenting to you the President of the United States.

THE PRESIDENT: Mr. President, Mr. Speaker, Members of the Congress, I should like to report to the Congress on certain events that have happened in connection with the current dispute in the steel industry since I last communicated with Congress on that subject. . . .

At 12 o'clock; and 50 minutes p.m., the President, accompanied by the committee of escort, retired from the Hall of the House of Representatives. . . .

THE SPEAKER PRO TEMPORE: The Chair declares the joint session of the two Houses now dissolved.

Thereupon (at 12 o'clock and 52 minutes p.m.) the joint session of the two Houses was dissolved.

Actions Requiring Authorization

§ 14.13 Even though the Speaker pro tempore is elected, he must be authorized by resolution to appoint a committee to notify the President that a quorum of each House has assembled and is ready to receive his state of the Union message.

On Jan. 10, 1966,[7] elected Speaker pro tempore Carl Albert, of Oklahoma, pursuant to a resolution authorizing him to do so, appointed a committee to notify the President that a quorum of each House had assembled and that the Congress was ready to receive any communication that he may be pleased to make.

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, I offer a preferential resolution and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 628

Resolved, That a committee of three members be appointed by the Speaker pro tempore on the part of the House of Representatives to join with the committee on the part of the Senate, to notify the President of the United States that a quorum of each House is assembled, and Congress is ready to receive any communication that he may be pleased to make.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER PRO TEMPORE: The Chair appoints as members of the committee on the part of the House to join with the committee on the part of the Senate to notify the President of the United States that a quorum of each

7. 112 CONG. REC. 6, 89th Cong. 2d Sess.

House is assembled and that the Congress is ready to receive any communication he may be pleased to make, the gentleman from Louisiana [Mr. Boggs], the gentleman from New York [Mr. Celler], and the gentleman from Michigan [Mr. Gerald R. Ford].

§ 14.14 Even though the Speaker pro tempore is elected, he must be authorized to sign enrolled bills and joint resolutions during an adjournment of the House.

On July 7, 1958,[8] Speaker Sam Rayburn, of Texas, designated John W. McCormack, of Massachusetts, Speaker pro tempore in writing. That same day Speaker pro tempore McCormack was elected Speaker pro tempore during the absence of the Speaker.

On July 10, 1958,[9] unanimous consent was requested that notwithstanding the adjournment of the House Speaker pro tempore McCormack be authorized to sign any enrolled bills and joint resolutions duly passed by the two Houses.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that notwithstanding the adjournment of the House until Monday next, the clerk be authorized to receive messages from the Senate and that the Speaker pro tempore be authorized to sign any enrolled bills and joint resolutions duly passed by the two Houses and found truly enrolled.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

On Sept. 21, 1961,[10] unanimous consent was requested that notwithstanding the adjournment of the House, elected Speaker pro tempore John W. McCormack, of Massachusetts, be authorized to sign enrolled bills and joint resolutions during the adjournment.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that notwithstanding the adjournment of the House until tomorrow, the Speaker pro tempore [Mr. McCormack] be authorized to sign any enrolled bills and joint resolutions duly passed by the two Houses and found truly enrolled.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

§ 14.15 Even though a Speaker pro tempore is elected, in the absence of the Speaker he must be authorized to declare recesses during a session.

On Aug. 31, 1961, the Honorable John W. McCormack, of Mas-

8. 104 CONG. REC. 13061, 85th Cong. 2d Sess.

9. 104 CONG. REC. 13418, 85th Cong. 2d Sess.

10. 107 CONG REC. 20572, 87th Cong. 1st Sess.

sachusetts, was elected as Speaker pro tempore in the absence of Speaker Sam Rayburn, of Texas, because of illness.

On Sept. 16, 1961,[11] a unanimous-consent request was offered by Representative Carl Albert, of Oklahoma, enabling Speaker pro tempore McCormack to declare recesses subject to the call of the Chair during the rest of the session.

> MR. ALBERT: And if the gentleman will yield for the purpose, I would like also to ask unanimous consent that any time during the remainder of this session it may be in order for the Speaker pro tempore to declare recesses subject to the call of the Chair. . . .
>
> MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, reserving the right to object, may I say in connection with this request that this matter has been called to my attention. It is standard procedure as we come up to the end of a session. I sincerely hope it is not objected to, because its adoption will very materially expedite the business of the House of Representatives to the objective of sine die adjournment.
>
> THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Oklahoma?
>
> There was no objection

§ 14.16 An elected Speaker pro tempore who is authorized to declare recesses at any time during the remainder of a session may declare a recess despite an objection to a unanimous-consent request that the House adjourn.

On Sept. 23 (legislative day, Sept. 22), 1961,[12] unanimous consent was requested to adjourn to meet at an hour other than that prescribed as the daily hour of meeting. When objection was heard, elected Speaker pro tempore John W. McCormack, of Massachusetts, declared a recess.

> MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 10 o'clock a.m. tomorrow.
>
> THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Oklahoma?
>
> MR. [H. CARL] ANDERSEN of Minnesota: I object. . . .
>
> THE SPEAKER PRO TEMPORE: The House will stand in recess until 10 o'clock tomorrow morning.

11. 107 CONG. REC. 19800, 87th Cong. 1st Sess.

12. 107 CONG. REC. 20854, 20867, 87th Cong. 1st Sess.

C. HOUSE OFFICERS

§ 15. Qualifications

This division[13] discusses the officers of the House (other than the Speaker and Speaker pro tempore)—the Clerk, Sergeant at Arms, Doorkeeper, Postmaster[14] and Chaplain; it discusses their election,[15] compensation,[16] duties,[17] and the problem of vacancies and the selection of successors.[18]

Every officer of the Congress is authorized to determine the qualifications of all individuals before appointing them to subordinate positions and to discipline any employee under his supervision.[19] And any officer who violates the statutory prohibitions against assigning employees to positions for which they were not appointed,[20] against dividing salaries,[1] or against subletting duties of employees[2] may be removed from office.[3]

The House rules provide that no person who is an agent for the prosecution of any claim against the government, or who is interested in such claim other than as an original claimant, may serve as an officer or continue as an employee of the House.[4]

§ 16. Election

Although the Constitution[5] provides that, "The House . . . shall chuse their Speaker and other officers . . .", it neither names the officers nor sets forth their method of selection. This gap has been filled by Rule II of the *House Rules and Manual* which provides that the Clerk, Sergeant at Arms, Doorkeeper, Postmaster, and Chaplain shall be elected "by viva voce vote" at the commence-

13. Generally see 1 Hinds' Precedents Ch. 6 and 6 Cannon's Precedents Ch. 153, for precedents prior to 1936 which relate to House officers.

14. The Postmaster, whose duties are outlined in Rule VI of the *House Rules and Manual* § 654 (1973), is an officer of the House. See 1 Hinds' Precedents §§ 269–271 and 6 Cannon's Precedents § 34.

15. See § 16, infra.

16. See § 17, infra.

17. See §§ 18–21, infra.

18. See § 22, infra.

See also Ch. 37, infra, relating to resignations, and Ch. 38, infra, relating to deaths of officers.

19. 2 USCA § 60–1(a).

20. 2 USC § 85.

1. 2 USC § 86.

2. 2 USC § 87.

3. 2 USCA § 90.

4. Rule XLI, *House Rules and Manual* § 937 (1973).

5. U.S. Const. art. I, § 2.

ment of each Congress.[6] Despite this language, officers are usually chosen by resolution.[7]

At the commencement of a Congress, each party's caucus selects one nominee for each office.[8] The majority submits its slate of nominees and the minority usually submits a substitute resolution containing its slate.[9] The House then votes on these resolutions. Because of this practice, officers are actually chosen by party caucuses.

Procedure at Commencement of Congress

§ 16.1 The House elects its officers by resolution.

At the commencement of the 92d Congress, the chairman of the majority party caucus offered a resolution containing names of persons selected by it to serve as House officers:[10]

MR. [OLIN E.] TEAGUE of Texas [Chairman of the Democratic Caucus]: Mr. Speaker, I offer a resolution (H. Res. 1) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1

Resolved, That W. Pat Jennings, of the Commonwealth of Virginia, be, and he is hereby, chosen Clerk of the House of Representatives;

That Zeake W. Johnson, Jr., of the State of Tennessee, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives;

That William M. Miller, of the State of Mississippi, be, and he is hereby, chosen Doorkeeper of the House of Representatives;

That H. H. Morris, of the Commonwealth of Kentucky, be, and he is hereby, chosen Postmaster of the House of Representatives;

That Reverend Edward O. Latch D.D., of the District of Columbia, be, and he is hereby, chosen Chaplain of the House of Representatives.

Following introduction of this resolution, the chairman of the minority party caucus,[11] offered a substitute amendment containing the names of persons selected by the minority caucus to serve as officers:

MR. [JOHN B.] ANDERSON of Illinois [Chairman of the Republican Conference]: Mr. Speaker, I offer a substitute amendment. . . .

The Clerk read the substitute amendment, as follows:

6. See 1 Hinds' Precedents § 187 for origin of the provision dealing with viva voce vote.

7. See §§ 16.1 et seq.

8. See Ch. 3, supra, for a discussion of the nomination of House officers in the party caucus.

9. See for example, § 16.1, infra, for an instance in which resolutions were offered. But see 111 CONG. REC. 20, 89th Cong. 1st Sess., Jan. 4, 1965, in which the minority did not offer a substitute resolution.

10. 117 CONG. REC. 13, 92d Cong. 1st Sess., Jan. 21, 1971.

11. Compare 111 CONG. REC. 20, 89th Cong. 1st Sess., Jan. 4, 1965, for an instance in which the minority did not offer a substitute amendment.

Amendment offered by Mr. Anderson of Illinois as a substitute for the remainder of House Resolution 1:

Resolved, That Joe Bartlett, of the State of Ohio, be, and he is hereby, chosen Clerk of the House of Representatives;

"That Robert T. Hartmann, of the State of Maryland, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives;

"That William R. Bonsell, of the Commonwealth of Pennsylvania, be, and he is hereby, chosen Doorkeeper of the House of Representatives;

"That Tommy Lee Winebrenner, of the State of Indiana, be, and he is hereby, chosen Postmaster of the House of Representatives."

After the substitute amendment was offered, the Speaker called for votes first on the amendment and then on the majority resolution:

THE SPEAKER [John W. McCormack, of Massachusetts]: The question is on the substitute amendment.

The substitute amendment was rejected.

THE SPEAKER: The question is on the resolution offered by the gentleman from Texas (Mr. Teague).

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE SPEAKER: Will the officers elected present themselves at the bar of the House and take the oath of office?

The officers-elect presented themselves at the bar of the House and took the oath of office.

§ 16.2 Where the minority does not contest the majority's nominee for Chaplain, it may request a separate vote for that office.

Under the normal procedure for electing House officers, the chairman of the majority caucus offers a resolution which contains the names of the party's nominees for officers. The chairman of the minority caucus offers a substitute resolution containing the names of his party's nominees. However, when the minority does not contest the majority's nominee for a particular office, the chairman of the minority caucus may ask for a division of the House so that Members may have a separate vote on the uncontested office.

For example, on Jan. 10, 1967,[12] and Jan. 3, 1969,[13] members of the minority, Mr. Leslie C. Arends, of Illinois, and Mr. John B. Anderson, of Illinois, respectively, requested a division on the resolution so that a separate and unanimous vote could be held for the office of the Chaplain because the minority caucus, the Republican Conference, did not offer a candidate for that office. Thus, Mr. Anderson made the following statement.[14]

MR. ANDERSON of Illinois [Chairman of the Republican Conference]: Mr.

12. 113 CONG. REC. 27, 90th Cong. 1st Sess.

13. 115 CONG. REC. 35, 91st Cong. 1st Sess.

14. 115 CONG. REC. 34, 91st Cong. 1st Sess., Jan. 3, 1969.

Speaker, I have a substitute to offer to the resolution [majority resolution for the election of officers], but before offering the substitute I request that there be a division on the question on the resolution so that we may have a separate vote on the office of Chaplain.

THE SPEAKER [John W. McCormack, of Massachusetts]: The gentleman from Illinois demands a division in relation to the election of the Chaplain.

The question is on agreeing to that portion of the resolution providing for the election of the Chaplain [which was agreed to]. . . .

Sergeant at Arms

§ 16.3 The Clerk has been elected to serve concurrently as Sergeant at Arms, following the death of the incumbent.

On July 8, 1953,[15] following the death that day of the Sergeant at Arms, William F. Russell, a Member, Charles A. Halleck, of Indiana, offered and the House agreed to the following resolution (H. Res. 323):

> *Resolved,* That Lyle O. Snader, of the State of Illinois, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives to serve in that capacity until another person is chosen by the House of Representatives to be and duly qualifies as Sergeant at Arms: *Provided,* That the said Lyle O. Snader shall serve as Sergeant at Arms notwithstanding his concurrent incumbency as Clerk of the House of Representatives, but for his additional duties as Sergeant at Arms he shall receive no compensation additional to that he receives as Clerk of the House of Representatives.

On the same date, the House[16] and Senate[17] passed the following joint resolution (H.J. Res. 292):[18]

> *Resolved.* That Lyle O. Snader, of the State of Illinois, be, and he is hereby, authorized, notwithstanding the provisions of any other law, to serve concurrently as Clerk and Sergeant at Arms of the House of Representatives until another person is chosen by the House of Representatives to be and duly qualifies as Sergeant at Arms; and while the said Lyle O. Snader is so serving the compensation received by him as Clerk of the House of Representatives shall be in full discharge for any services rendered by him to the House of Representatives during such period of concurrent services.

The joint resolution was offered in the House by Mr. Halleck, the Majority Leader.

§ 16.4 A temporary appointee to the office of Sergeant at Arms has been elected Sergeant at Arms.

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15. 99 CONG. REC. 8242, 83d Cong. 1st Sess.

16. *Id.*

17. 99 CONG. REC. 8203, 83d Cong. 1st Sess.

18. *Parliamentarian's Note:* This joint resolution was enacted to remove doubt about the necessity to pay dual compensation, a practice prohibited by statute (5 USC § 58). See also § 17.3, infra.

On Jan. 11, 1954,[19] the House agreed to the following resolution:

> *Resolved,* That William R. Bonsell of the State of Pennsylvania, be, and he is hereby, chosen Sergeant at Arms of the House of Representatives.

Mr. Bonsell had served as acting Sergeant at Arms since appointment by the Speaker, pursuant to 2 USCA 75a–1(a), on Sept. 15, 1953.[20]

§ 16.5 A Sergeant at Arms was elected following the resignation of the incumbent.

On Sept. 25, 1972,[1] the Sergeant at Arms, Zeake W. Johnson, Jr., of Tennessee, having tendered his resignation, Mr. Olin E. Teague of Texas, offered and the House agreed to the following resolution (H. Res. 1134):

> *Resolved,* That Kenneth R. Harding of the Commonwealth of Virginia be, and he is hereby chosen Sergeant at Arms of the House of Representatives, effective on October 1, 1972.

Mr. Harding, the Sergeant at Arms-elect, presented himself at the bar of the House and took the oath of office.[2]

19. 100 CONG. REC. 134, 83d Cong. 2d Sess.

20. See § 22.2, infra, for discussion of appointment of Mr. Bonsell as acting Sergeant at Arms.

1. 118 CONG. REC. 31999, 32000, 92d Cong. 2d Sess.

2. See § 22.3, infra, for discussion of circumstances preceding the election of Mr. Harding.

Doorkeeper

§ 16.6 A Doorkeeper was elected following the death of the incumbent.

On Feb. 5, 1943,[3] the House agreed to the following resolution:

> *Resolved,* That Ralph R. Roberts, of the State of Indiana, be, and he is hereby, chosen Doorkeeper of the House of Representatives.

The incumbent Doorkeeper, Joseph J. Sinnott, had died on Jan. 27, 1943.[4]

Chaplain

§ 16.7 A Chaplain who resigned because of illness was elected Chaplain emeritus.

On Jan. 30, 1950,[5] Mr. John W. McCormack, of Massachusetts, offered and the House agreed to the following House resolution (H. Res. 453):

> *Resolved,* That immediately following his resignation as Chaplain of the House of Representatives, James Shera Montgomery be, and he is hereby, appointed Chaplain emeritus of the House of Representatives, with salary at the basic rate of $2,350 per annum, payable monthly, to be paid out of the contingent fund

3. 89 CONG. REC. 634, 78th Cong. 1st Sess.

4. See 89 CONG. REC. 421, 78th Cong. 1st Sess., Jan. 28, 1943, for announcement of Doorkeeper's death.

5. 96 CONG. REC. 1095, 81st Cong. 2d Sess.

of the House until otherwise provided by law.[6]

§ 16.8 A Chaplain was elected following resignation of the incumbent.

On Jan. 30, 1950,[7] Mr. Francis E. Walter, of Pennsylvania, offered and the House agreed to the following House resolution (H. Res. 454):

> *Resolved*, That Rev. Bernard Braskamp, of the District of Columbia, be, and he is hereby, chosen Chaplain of the House of Representatives.

Rev. Braskamp succeeded Rev. Montgomery.

§ 16.9 A temporary appointee as Chaplain during one Congress was elected Chaplain at the commencement of the next Congress.

On Jan. 10, 1967,[8] at the commencement of the 90th Congress, Rev. Edward Gardiner Latch, D.D., L.H.D., who had served as acting Chaplain since his appointment on Mar. 14, 1966,[9] was elected Chaplain of the House in an uncontested vote.

§ 17. Oath; Compensation

Rule II of the *House Rules and Manual* provides that each person who is elected to the office of Clerk,[10] Sergeant at Arms, Doorkeeper, Postmaster, or Chaplain, ". . . shall take an oath to support the Constitution of the United States, and for the true and faithful discharge of the duties of his office to the best of his knowledge and ability, and to keep the secrets of the House . . ."[11]

The officers of the House take the following oath:

> I, AB, do solemnly swear (or affirm) that I will support and defend the Con-

6. After the House agreed to the above resolution, the Speaker laid before the House a letter of resignation from Rev. Montgomery which indicated that the reason for his action was illness. The resignation was accepted without objection.

See also 6 Cannon's Precedents § 31, for letter of resignation of Rev. Henry N. Couden as Chaplain and House resolution electing him Chaplain emeritus. Rev. Montgomery succeeded Rev. Couden.

7. 96 Cong. Rec. 1097, 81st Cong. 2d Sess.

8. 113 Cong. Rec. 27, 90th Cong. 1st Sess.

9. See § 22.4, infra, for appointment of Rev. Latch.

10. Administration of the oath to the Clerk by the Speaker is required by statute, 2 USC § 25. Although the Speaker is not required to administer the oath to any other officer, he does so in practice (see 1 Hinds' Precedents § 81).

11. See 1 Hinds' Precedents § 187, indicating that the requirement that the officers be sworn to keep the secrets of the House is obsolete.

stitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God. (5 USCA § 3331.)

The compensation of House officers is determined by statute, and adjustments thereto are sometimes effected by resolution. Statutes establish the compensation for the Clerk,[12] Sergeant at Arms,[13] Doorkeeper,[14] Postmaster,[1] and Chaplain.[2]

The House by resolution has established,[3] increased,[4] and adjusted the amount of an officer's compensation;[5] and it has by the same method suspended statutory salaries and replaced them with an administrative schedule.[6] Resolutions have also been passed to prevent payment of dual compensation to one person who held two offices concurrently.[7]

12. See 2 USCA § 60e–13, which provides that compensation of the Clerk of the House of Representatives shall equal that of the Secretary of the Senate and Sergeant at Arms of the Senate.

13. See 2 USCA § 60e–13, which provides that compensation of the Sergeant at Arms of the House shall equal that of the Secretary of the Senate and Sergeant at Arms of the Senate.

2 USCA § 77 provides that the Sergeant at Arms shall receive no compensation in addition to the salary prescribed by law.

14. See 2 USCA § 76–1, which provides that the compensation of the House Doorkeeper shall equal that of the Clerk and Sergeant at Arms of the House.

1. 2 USCA § 84–1.

2. 2 USCA § 84–2.

3. See § 17.4, infra.

4. See § 17.5, infra.

5. See § 17.6, infra.

6. See § 17.7, infra.

7. See § 17.3, infra, for joint resolution and § 16.3, supra, for simple resolution disallowing dual compensation to the clerk during the period he served concurrently as Sergeant at Arms.

8. 99 CONG. REC. 8242, 83d Cong. 1st Sess.

See § 16.3, supra, for a discussion of election of the clerk as Sergeant at Arms.

Oath

§ 17.1 An officer elected to hold an additional office concurrently takes a separate oath for the additional office.

When he was chosen to serve concurrently as Sergeant at Arms on July 8, 1953,[8] Lyle O. Snader, of Illinois, appeared at the bar of the House to take the oath as Sergeant at Arms notwithstanding the fact that he had taken an oath when he was elected Clerk.

§ 17.2 A person elected as a permanent officer appears at

the bar of the House to take the oath administered by the Speaker.[9]

Parliamentarian's Note: As a general rule, a person designated by the Speaker to act as a temporary officer pursuant to 2 USCA § 75a–1 does not appear at the bar of the House to take the oath but subscribes to it in writing when he accepts the appointment.[10]

Compensation

§ 17.3 The House and Senate by joint resolution have prevented payment of dual compensation to a person who held two offices.

On July 8, 1953, the House[11] and Senate[12] passed the following joint resolution (H.J. Res. 292:[13]

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Lyle O. Snader, of the State of Illinois, be, and he is hereby, authorized, notwithstanding the provisions of any other law, to serve concurrently as Clerk and Sergeant-at-Arms of the House of Representatives until another person is chosen by the House of Representatives to be and duly qualifies as Sergeant-at-Arms; and while the said Lyle O. Snader is so serving the compensation received by him as Clerk of the House of Representatives shall be in full discharge for any services rendered by him to the House of Representatives during such period of concurrent service.

Parliamenatarian's Note: Because a statute (5 USCA § 58) prohibited anyone from receiving dual compensation from the government, the joint resolution was enacted to remove all doubt of the necessity to pay dual compensation, which if paid or required to be paid, might have made it illegal for one person to occupy two offices. A House resolution was also passed on this occasion.[14]

§ 17.4 The House has established a base rate of compensation for an officer to be paid as long as the office is held by the present incumbent.

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9. See for example 96 CONG. REC. 1311, 81st Cong. 2d Sess., Feb. 1, 1950, administration of oath to Rev. Bernard Braskamp after election as Chaplain of the House.

10. But see § 22.3, infra, for a discussion of appointment of Zeake W. Johnson, Jr., as temporary Sergeant at Arms following his resignation as Sergeant at Arms. On that occasion, Mr. Johnson appeared at the bar of the House to take the oath as acting Sergeant at Arms from Speaker Carl Albert (Okla.).

11. 99 CONG. REC. 8242, 83d Cong. 1st Sess.

12. *Id.* at p. 8203.

13. Pub. L. No. 83–106, 83d Congress, approved July 9, 1953, 67 Stat. 141.

14. See § 16.3, supra, for a discussion of the clerk's election as Sergeant at Arms and the House resolution offered on this occasion.

On Feb. 2, 1961,[15] a Member, John W. McCormack, of Massachusetts, offered and the House agreed to the following resolution (H. Res. 138):

> *Resolved*, That effective February 1, 1961, the basic compensation of the Deputy Sergeant at Arms (charge of pairs), Office of the Sergeant at Arms, shall be at the rate of $7,000 per annum so long as held by the present incumbent. The additional amounts necessary to carry out this resolution shall be paid out of the contingent fund until otherwise provided by law.

§ 17.5 The House has provided additional compensation for an officer to be paid as long as the office is held by the present incumbent.

On July 31, 1953,[16] a Member, Karl M. LeCompte, of Iowa, offered and the House agreed to the following resolution (H. Res. 355):

> *Resolved*, That effective August 1, 1953, there shall be paid out of the contingent fund of the House until otherwise provided by law additional compensation at the gross rate of $1,254 per annum to the Chaplain of the House of Representatives so long as the position is held by the present incumbent.

§ 17.6 The House by simple resolution has adjusted a salary established by statute.

On Mar. 31, 1965,[17] a Member, Carl Albert, of Oklahoma, offered and the House agreed to the following resolution (H. Res. 313):

> *Resolved*, That, effective April 1, 1965, the compensation of the Chaplain of the House of Representatives shall be at a gross per annum rate which is equal to the gross per annum rate of compensation of the Chaplain of the Senate. The additional sums necessary to carry out this resolution shall be paid out of the contingent fund of the House until otherwise provided by law.

Parliamentarian's Note: This resolution was intended to remove the inequity in the Federal Employee's Salary Act of 1964 which increased the salary of the House Chaplain from $10,000 to $12,500 (2 USCA § 84–2) while at the same time raising the salary of the Chaplain of the Senate to $15,000 (2 USCA § 61d).

§ 17.7 The House by simple resolution has suspended fixed salaries for certain officers and substituted an administrative compensation schedule.

On Oct. 4, 1972,[18] a Member, Wayne L. Hays, of Ohio, on behalf of the Committee on House Administration, offered and the

15. 107 Cong. Rec. 1682, 87th Cong. 1st Sess.

16. 99 Cong. Rec. 10671, 83d Cong. 1st Sess.

17. 111 Cong. Rec. 6412, 89th Cong. 1st Sess.

18. 118 Cong. Rec. 33744, 92d Cong. 2d Sess.

House passed the following resolution (H. Res. 890):

> *Resolved*, That, (a) until otherwise provided by law, the per annum gross rate of compensation of the Clerk, the Doorkeeper, the Sergeant at Arms, and the Chief of Staff of the Joint Committee on Internal Revenue Taxation of the House of Representatives, shall be equal to the annual rate of basic pay fixed for level IV of the Executive Schedule under section 5315 of title 5, United States Code.
>
> (b) Until otherwise provided by law, such amounts as may be necessary to carry out subsection (a) of this resolution shall be paid out of the contingent fund of the House of Representatives.
>
> (c) This resolution shall become effective on the effective date of the first adjustment, following the effective date of this resolution, in the annual rate of basic pay of offices and positions under the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

In offering the resolution, the Chairman of the Committee on House Administration, Mr. Hays, explained:

> . . . [T]he intent of the resolution is that if and when there is another adjustment in salaries of Members of Congress that the officers mentioned herein will be placed in a lower grade level so that there will be a wider gap between the salary of the Doorkeeper and that of a Member of Congress. At the present time the salary of a Member of Congress, as the gentleman from Missouri well knows, is $42,500. The Doorkeeper's salary is $40,000. There has been a lot of criticism and comment. This does not do anything to him and the others now. It does not do anything to him and others until and unless there is an increase in the income of Members, and then it puts them at a lower level.
>
> For example, if a Member of Congress say—and I am picking a figure out of the air—went up to $47,500, the Office of Doorkeeper would go up to something like $42,000 instead of $45,000.

The provisions of this resolution relating to compensation of the Clerk, Sergeant at Arms, and Doorkeeper were enacted as Public Law No. 92–607, Oct. 31, 1972, 86 Stat. 1509.

§ 18. Duties of the Clerk

The duties of the Clerk are prescribed by statute and by the rules of the House.[19] The Clerk's responsibilities include (1) preparing for and presiding at the commencement of Congress and after the death of a Speaker;[20] (2) assisting the House in legislative and nonlegislative business;[1] (3) receiving and submit-

19. See Rule III, House Rules and Manual §§ 637–647 (1973) for general duties of the Clerk.

20. See Rule III clause 1, *House Rules and Manual* §§ 637, 638 (1973); 2 USC § 26.

1. See, for example, Rule III clause 3, House Rules and Manual §§ 641–646 (1973), 2 USC § 109, and §§ 18.3–18.8, infra.

ting documents;[2] (4) assisting individual Members;[3] and (5) paying the officers and employees of the House.[4]

Prior to the commencement of the first session of each Congress, the Clerk prepares the roll of Representatives-elect.[5] At the first session of each Congress,[6] he calls Members to order, calls the roll of Members by states in alphabetical order, and pending the election of a Speaker or Speaker pro tempore, preserves order and decides all questions of order subject to appeal by any Member.

The Clerk also announces receipt of credentials, recognizes nominations for Speaker, appoints tellers for the roll call vote for Speaker, announces the vote, and appoints a committee to escort the Speaker-elect to the Chair.[7]

To assist the House in its consideration of bills and resolutions, the Clerk,[8] notes all questions of order and decisions thereon and places them in the Journal, which he prints and distributes at the close of each session, and certifies to the passage of all bills and resolutions. He allows no papers out of his custody[9] except by order of the House;[10] reports disorderly words of a Member who has been called to order;[11] reads bills;[12] makes corrections during engrossment of a bill when authorized by the House;[13] reads names alphabetically;[14] and presents enrolled bills to the Speaker for signature and transmits them to the Senate.[15]

The Clerk announces pairs after votes;[16] places bills on the Con-

2. See § 23.8, infra, for a discussion of the procedure when the Clerk receives a subpena.

3. See, for example, Rule III clause 2, *House Rules and Manual* § 640 (1973) and 2 USC § 26; see also § 18.9, infra.

4. See for example Rule III clause 3, *House Rules and Manual* § 646 (1973) and 2 USC §§ 60d and 60e; see also § 18.10, infra.

5. 2 USC § 26. See, generally, Chs. 1 and 2, supra.

6. Rule III clause 1, House Rules and Manual §§ 637–639 (1973).

7. See §§ 18.1, 18.2, infra, relating to announcing credentials. Generally, see Ch. 1, supra.

8. Rule III clause 3, *House Rules and Manual* §§ 641, 643 (1973).

9. See Jefferson's Manual, *House Rules and Manual* § 352 (1973).

10. Rule XXXVII, *House Rules and Manual* § 933 (1973).

11. Jefferson's Manual, *House Rules and Manual* § 368, and Rule XIV clause 5, § 761 (1973).

12. Jefferson's Manual, *House Rules and Manual* § 428 (1973).

13. Jefferson's Manual, *House Rules and Manual* § 479 (1973).

14. Jefferson's Manual, § 504, and Rule XV clause 1, *House Rules and Manual* § 765 (1973).

15. Jefferson's Manual, *House Rules and Manual* § 575 (1973).

16. Rule VIII clause 2, *House Rules and Manual* § 660 (1973).

sent Calendar;[17] reads motions;[18] receives all petitions, memorials, and private bills;[19] transmits copies of amendments offered in the Committee of the Whole to the majority and minority tables and cloakrooms;[20] retains custody of discharge petitions and provides a place where Members may sign them;[1] and supervises the preparation of the Daily Record which includes legislative programs and committee meetings for each day.[2]

The Clerk assists the House by performing duties not directly related to consideration of bills and resolutions. For example, he makes or approves all agreements relative to furnishing any matter or thing, or for the performance of any labor for the House;[3] attests and affixes the seal of the House to all writs, warrants, and subpenas issued by order of the House;[4] retains in his office library two copies of all books and documents deposited there;[5] designates an official in his office to serve as Clerk during his temporary absence;[6] receives reports of personnel and accounting of funds from committees;[7] receives all documents referred to and evidence taken by committees after the final adjournment of Congress;[8] obtains all noncurrent records of the House and each

17. Rule XIII clauses 2 and 4, respectively, *House Rules and Manual* §§ 743, 746 (1973).

18. Rule XVI clause 2, *House Rules and Manual* § 776 (1973).

19. Rule XXII clause 1, *House Rules and Manual* § 849 (1973).

20. Rule XXIII clause 5, *House Rules and Manual* § 870 (1973).

1. Rule XXVII clause 4, *House Rules and Manual* § 908 (1973).

2. 44 USC § 905.

3. Rule III clause 3, House Rules and Manual § 644 (1973).

The Clerk must purchase American goods in preference to foreign goods of similar quality (2 USC § 109) and is prohibited from using House funds for expenses of the House barbershops (2 USC § 96).

The Clerk, not the Assistant Postmaster, was held to be responsible for making contracts following the death of the Postmaster (5 Hinds' Precedents § 7235).

4. Rule III clause 3, House Rules and Manual § 642 (1973).

5. Rule III clause 3, *House Rules and Manual* § 641 (1973).

6. Rule III clause 4, *House Rules and Manual* § 647 (1973). See 6 Cannon's Precedents § 26 for form of this designation; see also § 18.17, infra, for a resolution authorizing the Clerk to designate a subordinate to perform his duties.

7. Rule XI clause 30, *House Rules and Manual* § 738 (1973).

8. Rule XXXVI clause 1, *House Rules and Manual* § 932 (1973). See § 18.16, infra, for form of Clerk's report of committee reports received during an adjournment.

committee and transfers them to the General Services Administration for preservation subject to House order;[9] sends to each state Governor a certificate informing him of the number of Representatives to which his state is entitled following each decennial census;[10] arranges with the Board of Education of the District of Columbia for the education of congressional and Supreme Court pages;[11] operates the House recording studio;[12] and obtains stationery.[13]

The Clerk is required both to submit and receive certain documents. For example, he submits to the House at the commencement of each Congress detailed statements disclosing names of clerks employed in his office and expenditures from the contingent fund.[14] He also reports amounts received and expended by his office,[15] as well as receipts and expenditures of funds available for disbursement.[16] He also submits accounts to the General Accounting Office monthly[17] and quarterly.[18]

The Clerk receives records and other documents in connection with campaigns for the House,[19] lobbying,[20] contested elections,[1] and contractual actions for national defense from each department and agency.[2]

9. Rule XXXVI clause 2, House Rules and Manual § 932 (1973) and 44 USC § 2114.

10. 2 USC § 2a.

11. 2 USC § 88a.

12. 2 USC § 123c.

13. 2 USC § 100; 44 USC § 734. See also 5 Hinds' Precedents § 7322.

14. 2 USC § 102.

See § 18.12, infra, which stases that responsibility for printing this report has been assumed by the Committee on House Administration.

15. 2 USC §§ 103, 113.

16. The Clerk is authorized to require from his subordinate disbursing officers precise and analytical statements and receipts for all funds expended by them (2 USC § 103). 2 USC § 104a.

17. 31 USC § 496.

18. 31 USC § 497. 31 USC § 72 (paragraph 8) provides that the General Accounting Office shall receive the accounts of the House of Representatives and certify balances arising thereon to the Clerk.

19. See 2 USC §§ 431 et seq., which require the Clerk to receive reports from political committees and candidates and prescribes information to be disclosed by them.

20. See 2 USC §§ 261 et seq., which require the Clerk to receive registration information from lobbyists and statements of accounts from persons receiving contributions.

1. See 2 USC §§ 381 et seq., which require the Clerk to receive notice of contested elections and all documents and depositions relating to such contests.

2. 50 USC § 1434(b).

The Clerk performs many duties for the House membership. For example, he furnishes a list of reports required to be made to Congress.[3] He procures postage,[4] approves vouchers for payment of home district office expenses,[5] furnishes electrical and mechanical office equipment,[6] and reimburses Members a fixed amount for long distance telephone calls.[7]

The Clerk pays the officers and employees of the House,[8] as well as clerks designated by the membership.[9]

Duties Prior to Election of a Speaker

§ 18.1 The Clerk, after receiving a certificate of election filed in due form, has placed the name of the Member so named on the roll notwithstanding the fact that the secretary of state of the Member-elect's state was restrained by court order from certifying the election of a Representative from that district.

On Jan. 3, 1949,[10] the Clerk, Ralph R. Roberts, made the following announcement to the House:

STATEMENT REGARDING CERTAIN CREDENTIALS

THE CLERK: A certificate of election is on file in the Clerk's office, showing the election of John C. Davies as a Representative-elect to the Eighty-first Congress from the Thirty-fifth Congressional District of the State of New York.

Several communications have been received from the executive deputy sec-

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3. Rule III clause 2, *House Rules and Manual* § 640 (1973).

4. 2 USC § 42.

5. 2 USC §§ 22, 56.

6. 2 USC § 112e.

7. 2 USC § 46g–1.

8. 2 USC §§ 60d and 60e. See also Rule III clause 3, *House Rules and Manual* § 646 (1973).

9. 2 USC § 92.

The Clerk makes a monthly certificate stating whether persons listed as employees were actually present (2 USC § 89) and is authorized to withhold from compensation any amount which an employee owes to the House (2 USC § 89a).

Congress enacted two statutes dealing with continuity of disbursement. One, codified as 2 USC § 75a, authorizes the disbursing clerk to continue the accounts, make payments, and sign checks in the name of the former Clerk for a period not extending beyond the quarter during which a new Clerk is elected and qualified. The other, codified as 2 USC § 49, authorizes the Clerk to sign certificates for monthly compensation during the recess between the first and second sessions. the Speaker signs these certificates (2 USC § 48) when the House holds sessions.

10. 95 CONG. REC. 8, 81st Cong. 1st Sess.

retary of state for the State of New York informing the Clerk that a case is pending before the supreme court, Albany County, N. Y., and that the said secretary of state is restrained from certifying the election of a Representative from this congressional district. However, in view of the fact that a certificate of election in due form has been filed with the Clerk by John C. Davies, the Clerk has therefore placed his name on the roll. . . .

The Clerk made this announcement after the quorum call and before the election of the Speaker.(11)

§ 18.2 Following the death of a Speaker during a Congress, the Clerk presides until a new Speaker is elected and appoints a committee to escort the Speaker-elect to the Chair.(12)

On Thursday, June 4, 1936,(13) the Clerk, South Trimble, called the House to order and made the following announcement:

THE CLERK: Gentlemen of the House of Representatives, it becomes my sad and painful duty to announce to the House the sudden death of your beloved Speaker, the Honorable Joseph W. Byrns, a Representative from the State of Tennessee.

Speaker Byrns presided over the House on yesterday, presumably in his accustomed good health, but shortly after his arrival at his apartment he was stricken and soon thereafter passed away. In his death this House has suffered the loss of an able, fair, and impartial presiding officer; the country a legislator of long experience, a statesman of courage and marked ability; and his State of Tennessee a noteworthy citizen.

The duty of selecting one to preside over the deliberations of the House now rests upon you.

MR. [JOHN J.] O'CONNOR [of New York]: Mr. Clerk, in view of the unfortunate circumstances in which we find ourselves, and with no disrespect to our beloved Speaker who has left us, it becomes necessary, in order that the House may function and the machinery of government may not stop, that the House proceed to the election of a Speaker.

I present the following resolution and move its adoption.

The Clerk read as follows:

HOUSE RESOLUTION 543

Resolved, That Hon. William B. Bankhead, a Representative from the State of Alabama, be, and he is hereby, elected Speaker of the House of Representatives.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. William B. Bankhead as Speaker of the House of Representatives.

THE CLERK: The question is on agreeing to the resolution.

11. See § 18.19, infra, for the form of the Clerk's announcement of receipt of a certificate of election.

12. See Ch. 1, supra, for a discussion of the Clerk's duty to preside until a Speaker is elected at the commencement of each Congress.

13. 80 CONG. REC. 9016, 9017, 74th Cong. 2d Sess.

The resolution was agreed to.

A motion to reconsider was laid on the table.

THE CLERK: The Clerk appoints the gentleman from New York [Mr. O'Connor], the gentleman from New York [Mr. Snell], and the gentleman from Colorado [Mr. Taylor] to escort the gentleman from Alabama [Mr. Bankhead] to the chair.

The committee escorted Mr. Bankhead into the Chamber, and he assumed the chair. The oath of office was administered to the Speaker-elect by Mr. Sabath.(14)

On Monday, Sept. 16, 1940,(15) the Clerk, South Trimble, called the House to order and made the following announcement:

THE CLERK: Members of the House of Representatives, it becomes my sad and painful duty, as Clerk of the House of Representatives, to inform you officially that your beloved Speaker [William B. Bankhead, of Alabama] passed away yesterday morning at the Naval Hospital in this city.

America has lost one of her greatest statesmen and patriots, the House of Representatives a most able and eloquent Speaker, and the State of Alabama a noble and courageous son.

In accordance with the rules and practices of the House of Representatives, it now becomes the duty of this House to elect a Speaker. What is the pleasure of this House?

MR. [JOHN W.] MCCORMACK [of Massachusetts]: Mr. Clerk, in view of the unfortunate circumstances in which the House finds itself, and with a feeling of very profound respect for the memory of our beloved Speaker who has left us, it becomes necessary, in order that the House may continue to function and the machinery of Government may go on, that the House proceed to the election of a Speaker.

I therefore offer the following resolution, and move its adoption.

The Clerk read as follows:

HOUSE RESOLUTION 602

Resolved, That Hon. Sam Rayburn, a Representative from the State of Texas, be, and he is hereby, elected Speaker of the House of Representatives.

Resolved, That the President and the Senate be notified by the Clerk of the election of Hon. Sam Rayburn as Speaker of the House of Representatives.

The resolution was agreed to.

THE CLERK: The Clerk appoints the gentleman from Massachusetts [Mr. McCormack], the gentleman from Massachusetts [Mr. Martin], and the gentleman from North Carolina [Mr. Doughton] to escort the gentleman from Texas [Mr. Rayburn] to the chair.

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14. *Parliamentarian's Note:* Joseph W. Byrns (Tenn.) was the first Speaker to die while Congress was in session. Speaker Michael C. Kerr (Ind.) died on Aug. 19, 1876, between sessions. Following the death of Speaker Kerr, the Clerk, George M. Adams, called the House to order at the commencement of the second session on Dec. 4, 1876 (see 5 CONG. REC. 2–6, 44th Cong. 2d Sess., and 1 Cannon's Precedents § 214). Speaker Henry T. Rainey (Ill.) died on Aug. 19, 1934, after the second session of the 73d Congress had adjourned.

15. 86 CONG. REC. 12231, 76th Cong. 3d Sess.

The committee escorted Mr. Rayburn into the Chamber, and he assumed the chair.

The oath of office was administered to the Speaker-elect by Mr. Sabath.

MR. [ROBERT L.] DOUGHTON: Ladies and gentlemen of the House, I present the newly elected Speaker of the House of Representatives, a worthy successor to our late beloved Speaker the Honorable William B. Bankhead, the gentleman from Texas [Mr. Rayburn].

THE SPEAKER: The Chaplain will offer prayer.

On Jan. 10, 1962,[16] the Clerk, Ralph R. Roberts, called the House to order and made the following announcement:

Members of the House of Representatives, the time has arrived for the meeting of the 2d session of the 87th Congress. Since the last session of Congress the great and beloved Speaker of the House [Sam Rayburn, of Texas] has departed this life.

The Clerk of the House, in conformity with the rules, has called the House to order for the purpose of electing a Speaker. The roll will be called to ascertain whether a quorum is present.

The Clerk will call the roll. . . .

Following a quorum call, the Clerk proceeded to the election of the Speaker.

ELECTION OF SPEAKER

THE CLERK: Nominations for Speaker of the House of Representatives are now in order.

The Clerk recognizes the gentleman from Pennsylvania [Mr. Francis Eugene Walter].

MR. WALTER: Mr. Clerk, as chairman of the Democratic caucus I am directed by the unanimous vote of that caucus to present for election to the office of Speaker of the House of Representatives the name of the Honorable John W. McCormack, a Representative from the State of Massachusetts.

THE CLERK: The gentleman from Iowa [Mr. Hoeven] is recognized.

MR. [CHARLES B.] HOEVEN: Mr. Clerk, by authority, by direction, and by unanimous vote of the Republican conference, I nominate for Speaker of the House of Representatives the Honorable Charles A. Halleck, a Representative from the State of Indiana.

THE CLERK: The Honorable John W. McCormack of Massachusetts and the Honorable Charles A. Halleck of Indiana have been nominated for Speaker.

Are there further nominations? [After a pause.] If there are no further nominations, the Clerk will appoint the following Members to act as tellers: the gentleman from Texas [Mr. Burleson]; the gentlewoman from Missouri [Mrs. Sullivan]; the gentleman from Ohio [Mr. Schenck]; and the gentlewoman from Tennessee [Mrs. Reece].

The tellers will please take their places at the desk in front of the Speaker's rostrum.

The roll will now be called, and Members responding to their names will indicate by surname the candidate of their choice.

The Clerk will call the roll. . . .

THE CLERK: The tellers agree in their tally. The total number of votes

16. 108 CONG. REC. 5, 87th Cong. 2d Sess.

cast was 414, of which the Honorable John W. McCormack received 248, and the Honorable Charles A. Halleck received 166. Two voted "present." Therefore, the Honorable John W. McCormack of Massachusetts is the duly elected Speaker of the House of Representatives for the 87th Congress.

The Clerk appoints the following Members to escort the Speaker-elect to the Chair: The gentleman from Indiana [Mr. Halleck] and the gentleman from Oklahoma [Mr. Albert].

(The Doorkeeper announced the Speaker-elect of the House of Representatives, who was escorted to the Chair by the committee of escort.[17])

Reports to the House

§ 18.3 The Clerk reported to the House delivery of a message to the Supreme Court.

On Mar. 14, 1930,[18] the Clerk read the following letter:

The Speaker of the House of Representatives.

SIR: I have the honor to inform you that pursuant to the direction of the House I did this day deliver to the Supreme Court of the United States, in session, copies of the resolutions adopted by the House of Representatives on March 10, 1930, expressing the sorrow of the House because of the death of William Howard Taft, former Chief Justice, and of Edward Terry Sanford, late associate justice of the Supreme Court.

Mr. Chief Justice Hughes, on behalf of the court expressed appreciation of the action of the House of Representatives and directed that the resolutions be spread upon the court's records.

Respectfully,

WILLIAM TYLER PAGE,
Clerk of the House of Representatives.

§ 18.4 The Clerk has reported to the House receipt of a message from a former President.

On June 16, 1969,[19] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following letter from the Clerk:

JUNE 11, 1969.

The Honorable the SPEAKER,
U.S. House of Representatives.

DEAR SIR: I have the honor to transmit herewith a letter of thanks to the Members of the House of Representatives from the Honorable Harry S. Truman, for the resolution of the Congress of the United States of America extending best wishes on the occasion of Mr. Truman's 85th birthday.

With kindest regards, I am,

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17. *Parliamentarian's Note:* Speaker Rayburn presided over the House for the last time on Aug. 30, 1961. On Aug. 31, 1961, John W. McCormack by resolution was elected Speaker pro tempore "during the absence of the Speaker."

The first session of the 87th Congress adjourned *sine die* on Sept. 27, 1961. Speaker Rayburn died on Nov. 16, 1961, in Bonham, Tex.

18. 72 CONG. REC. 5330, 71st Cong. 2d Sess.

19. 115 CONG. REC. 15822, 91st Cong. 1st Sess.

Sincerely,
W. PAT JENNINGS,
Clerk,
U.S. House of Representatives.

Roll Call Duties

§ 18.5 Prior to implementation of electronic voting, the Clerk called the roll at the direction of the Chair when the Committee of the Whole lacked a quorum.

On May 3, 1933,[20], the Clerk called the roll after receiving a direction from the Chair, Samuel Davis McReynolds, of Tennessee. Chairman McReynolds had overruled a point of order that the roll call was not in order in the Committee of the Whole. The Committee did not have a quorum and rejected a motion to rise. The Chair ordered the roll call pursuant to Rule XXIII clause 2, of the *House Rules and Manual.*[1]

20. 77 CONG. REC. 2834, 73d Cong. 1st Sess.

1. Under the electronic voting system adopted in January 1973, the Chairman ordinarily directs the Members to record their presence by electronic device when the Committee of the Whole lacks a quorum, thereby obviating the need for the Clerk to call the roll. See Rule XXIII clause 2, *House Rules and Manual* § 863 (1973). Generally, see Ch. 30, infra, noting that the Clerk still calls the roll under certain circumstances.

Renumbering of Bill Sections

§ 18.6 During a meeting of the House, but not the Committee of the Whole, the Clerk may be authorized to renumber sections of a bill following an amendment made in the Committee.

On Apr. 29, 1969,[2] a Member, Hastings Keith, of Massachusetts, made a parliamentary inquiry regarding the Clerk's authority to renumber sections of a bill:

> MR. KEITH: Mr. Chairman, I, of course, have no objection to this amendment but I do have a parliamentary inquiry.
>
> THE CHAIRMAN [Jacob H. Gilbert, of New York]: The gentleman will state the parliamentary inquiry.
>
> MR. KEITH: Mr. Chairman, if the amendment is adopted and I hope and trust it will be; would that not require the renumbering of the lines in which the earlier amendments have been incorporated into the existing legislation?
>
> THE CHAIRMAN: The gentleman may request that the Clerk be authorized to renumber accordingly.
>
> MR. KEITH: I would so request.
>
> THE CHAIRMAN: The gentleman may make the request that the Clerk be authorized to renumber the sections accordingly after the Committee rises and we are in the House.[3]

2. 115 CONG. REC. 10753, 91st Cong. 1st Sess.

3. See Jefferson's Manual, *House Rules and Manual* § 479 (1973) for authority to amend section numbers pursuant to resolution.

Duties Related to the Seal of the House

§ 18.7 The Clerk has been authorized to purchase a new seal for the House.

On Dec. 18, 1963,[4] a Member, Samuel N. Friedel, of Maryland, offered and the House passed the following resolution (H. Res. 560):

> *Resolved,* That the Clerk of the House of Representatives shall procure a new seal and press for the use of the House of Representatives, which shall possess fifty stars, emblematic of the fifty States of the Union, and shall depict the Capitol as it currently appears.
>
> *Resolved,* That upon approval of the new seal by the Committee on House Administration, the chairman shall notify the Speaker and it shall then become the official great seal of the House of Representatives.
>
> *Resolved,* That the Clerk shall furnish an impression of the new official great seal of the House of Representatives to the Administrator of General Services.
>
> *Resolved,* That the necessary expenses for procuring the new seal shall be paid out of the contingent fund of the House on vouchers signed by the Clerk and approved by the Committee on House Administration.

The resolution was agreed to and the motion to reconsider was laid on the table.

4. 109 Cong. Rec. 24912, 88th Cong. 1st Sess.

Keeping Custody of House Records

§ 18.8 At the direction of the House, the Clerk may make available certain records.

On June 16, 1953,[5] by direction of the committee on House Administration, a Member, Karl M. LeCompte, of Iowa, offered and the House agreed to the following resolution (H. Res. 288):

> *Resolved,* That the Clerk of the House is authorized to permit the Administrator of General Services to make available for use—
>
> (1) any records of the House of Representatives, transferred to the National Archives, which have been in existence for not less than 50 years, except when he determines that the use of such records would be detrimental to the public interest; and
>
> (2) any records of the House of Representatives, transferred to the National Archives, which have previously been made public.
>
> Sec. 2. Such permission may continue so long as it is consistent with the rights and privileges of the House of Representatives.

On Oct. 2, 1964,[6] a Member, Omar T. Burleson, of Texas, offered and the House passed the following House resolution (H. Res. 902):

> *Resolved,* That upon assurances of proper protection, preservation, and re-

5. 99 Cong. Rec. 6641, 83d Cong. 1st Sess.

6. 110 Cong. Rec. 23785, 88th Cong. 2d Sess.

turn, the Clerk of the House of Representatives is directed to make available to the Administrator of General Services the records of the House of Representatives relating to the First Federal Congress for reproduction and publication in accordance with the historical objectives of Public Law 88–383.[7]

On July 23, 1947,[8] a Member, Justin Leroy Johnson, of California, offered and the House passed the following resolution (H. Res. 325):

Resolved, That the Clerk of the House of Representatives be, and he is hereby, authorized to transmit to the California State Library at Sacramento, Calif., photostatic copies of the memorial and attendant papers in the files of the House relating to the bill H.R. 3818 of the Forty-fourth Congress entitled "An act for the relief of John A. Sutter," the cost of such photostatic copies to be paid by the California State Library.

Parliamentarian's Note: The papers referred to in this precedent were stored in the National Archives.

Identification Cards

§ 18.9 The House by resolution has authorized the Clerk to furnish identification cards for House and Members' employees.

On July 1, 1965,[9] a Member, Wayne L. Hays, of Ohio, by direction of the Committee on House Administration, introduced and the House passed the following resolution (H. Res. 261):

Resolved . . .

That, upon the request of the Speaker, a Member, elected officer of the House of Representatives, or the chairman of any committee of the House, the Clerk of the House of Representatives shall furnish cards of identification to such employees under their jurisdiction as they may designate. Each such card shall be signed by the Speaker, Member, officer, or committee chairman concerned, and shall not be valid for a longer period than the duration of one session of a Congress.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Payroll Duties

§ 18.10 The House by resolution has authorized the Clerk to transfer funds from balances available to him in several accounts under his administrative control to meet employee payrolls pending enactment of an appropriation bill carrying funds for that purpose.

7. Pub. L. No. 88–383 (see 44 USCA § 2504 note) authorized a historical compilation of records of the First Congress.

8. 93 Cong. Rec. 9885, 80th Cong. 1st Sess.

9. 111 Cong. Rec. 15501, 15502, 89th Cong. 1st Sess.

On May 28, 1969,[10] Mr. Samuel N. Friedel, of Maryland, by direction of the Committee on House Administration offered and the House agreed to the following resolution (H. Res. 425):

> *Resolved,* That the Clerk of the House and Sergeant at Arms be and is hereby directed to pay such sum as may be necessary, from the balance available of the 1968 appropriation and the various funds of the 1969 appropriation, where balances may be available, for the House of Representatives to meet the May and June payroll of Members, officers of the House, and employees of the House. Moneys expended from these funds and/or appropriations by the Sergeant at Arms and the Clerk will be repaid to the funds and/or appropriations from the Sergeant at Arms and Clerk's supplemental appropriation upon its approval.[11]

Computer Services

§ 18.11 The Clerk's responsibility for computer operations has been assumed by the Committee on House Administration.

On Nov. 9, 1971,[12] the Committee on House Administration assumed responsibility for the computer operations of the House. By direction of this committee, Mr. Frank J. Thompson, Jr., of New Jersey, offered and the House agreed to the following resolution (H. Res 601):

> *Resolved,* That during the Ninety second Congress, the Committee on House Administration is authorized to incur such expenses (not in excess of $1,500,000) as the committee considers advisable to provide for maintenance and improvement of ongoing computer services for the House of Representatives and for the investigation of additional computer services for the House of Representatives, including expenditures for the employment of technical, clerical, and other assistants, for the procurement of services of individual consultants or organizations thereof pursuant to section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i)), and for the procurement of equipment by contract or otherwise. Such expenses shall be paid out of the contingent fund of the House on vouchers authorized and approved by such committee, and signed by the chairman thereof. Not to exceed $1,000,000 of the total amount provided by this resolution may be used to procure the temporary or intermittent services of individual consultants or organizations thereof pursuant to section 202(i) of the Legislative Reorganization. Act of 1946 (2 U.S.C. 72a(i)); but this monetary limitation on the procurement of such services shall not prevent the use of such funds for any other authorized purpose.
>
> Sec. 2. No part of the funds authorized by this resolution shall be avail-

10. 115 CONG. REC. 14165–67, 91st Cong. 1st Sess.

11. *Parliamentarian's Note:* This resolution was passed to provide payroll funds because the Committee on House Administration had been advised that funds previously appropriated were exhausted.

12. 117 CONG. REC. 40015–17, 92d Cong. 1st Sess.

able for expenditures in connection with the study or investigation of any subject matter which is being investigated for the same purpose by any other committee of the House.

Sec. 3. Funds authorized by this resolution shall be expended pursuant to regulations established by the Committee on House Administration in accordance with existing law.

Parliamentarian's Note: Prior to passage of the above resolution, the Data Processing Office of the Clerk had responsibility for computer operations.

Contingent Fund Reports

§ 18.12 The Clerk's responsibility for printing the Clerk's report dealing with the contingent fund has been assumed by the Committee on House Administration.

On Sept. 23, 1961,[13] the Committee on House Administration assumed responsibility for printing the report of the Clerk of the House, dealing with the contingent fund, pursuant to 2 USCA § 102. By direction of the Committee on House Administration, Mr. Omar T. Burleson, of Texas, offered and the House agreed to the following resolution (H. Res. 476):

Resolved, That, until otherwise provided by law, the Committee on House Administration shall have exclusive responsibility for prescribing the form of, and having printed, the portion of the report of the Clerk of the House under section 60 of the Revised Statutes (2 USC 102) dealing with the contingent fund of the House.

Parliamentarian's Note: Prior to adoption of this resolution, the Clerk printed the report of the Clerk of the House.

Receipt of Messages and Reports

§ 18.13 The Clerk is sometimes authorized by resolution to receive messages during adjournments.

On June 22, 1940,[14] for example, Mr. Sam Rayburn, of Texas, offered and the House agreed to the following resolution (H. Res. 545)

Resolved, That notwithstanding the recess or the adjournment of the House until July 1, 1940, the Clerk of the House is hereby authorized to receive messages from the Senate and the Speaker be, and he is hereby, authorized to sign any enrolled bills or joint resolutions duly passed by the two

13. 107 CONG. REC. 20946, 87th Cong. 1st Sess.

14. 86 CONG. REC. 9085, 76th Cong. 3d Sess.

See also 108 CONG. REC. 577, 87th Cong. 2d Sess., Jan. 22, 1962; 108 CONG. REC. 9524, 87th Cong. 2d Sess., May 31, 1962; 110 CONG. REC. 16248, 16249, 88th Cong. 2d Sess., July 20, 1964, for similar instances.

Houses and which have been examined by the Committee on Enrolled Bills and found truly enrolled.

The resolution was agreed to.

§ 18.14 The Clerk reports receipt during adjournment of a message from the President to the Speaker who lays it before the House.

When the clerk during an adjournment receives a message from the President[15] he transmits the message with a covering letter to the Speaker who lays both communications before the House.

For example on Feb. 20, 1969,[16] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following communication from the Clerk:

The Honorable the SPEAKER,
U.S. House of Representatives.

DEAR SIR: I have the honor to transmit herewith a sealed envelope addressed to the Speaker of the House of Representatives, said to contain a message from the President wherein he transmits a special study regarding the administration of the Headstart program. This envelope was received in the Office of the Clerk at 3:55 p.m. on Wednesday, February 19, 1969.

Sincerely,

PAT JENNINGS,
Clerk.

15. See § 18.4, supra, for procedure when receiving a message from a former President.

16. 115 CONG. REC 4088, 91st Cong. 1st Sess.

§ 18.15 The Clerk reports receipt of a message from the Senate to the Speaker who lays the matter before the House.

When the Clerk during an adjournment receives a message from the Senate, he transmits it with a covering letter to the Speaker who lays both communications before the House.[17] For example, on June 28, 1965,[18] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following communication:

JUNE 25, 1965.

The Honorable the SPEAKER,
House of Representatives.

SIR: Pursuant to authority granted on June 24, 1965, the Clerk received from the Secretary of the Senate today, the following message:

That the Senate passed H.J. Res. 541, entitled "Joint resolution to extend the Area Redevelopment Act for a period of 2 months."

Respectfully yours,

RALPH R. ROBERTS,
Clerk,
U.S. House of Representatives.

§ 18.16 The Clerk reports receipt of committee reports received during adjournment

17. See for example, 103 CONG. REC. 13161, 85th Cong. 2d Sess., July 7, 1958; and 103 CONG. REC. 13675, 85th Cong. 2d Sess., July 14, 1958, for similar instances.

18. 111 CONG. REC. 14845, 89th Cong. 1st Sess.

to the Speaker who lays the communication before the House.

On Jan. 10, 1947,[19] the Speaker, Joseph W. Martin, Jr., of Massachusetts, laid before the House the following communication:

JANUARY 8, 1947.

The Honorable the SPEAKER
House of Representatives.

SIR: During the interim between the adjournment of the second session of the Seventy-ninth Congress and the convening of the Eightieth Congress, the following reports were received and printed by the Clerk of the House:

House Report No. 2729, Seventy-ninth Congress: Reconversion experience and current economic problems. Submitted by Mr. Colmer, from the Special Committee on Postwar Economic Policy and Planning, pursuant to House Resolution 60. Filed December 12, 1946. . . .

House Report No. 2730, Seventy-ninth Congress: Operation of national sales programs of surplus property by War Assets Administration. Submitted by Mr. Slaughter, from the Select Committee To Investigate Disposition of Surplus Property, pursuant to House Resolution 385. Filed September 30, 1946....

Very truly yours,
JOHN ANDREWS,
Clerk of the
House of Representatives

Designation of Subordinate

§ 18.17 The Clerk has been authorized by resolution to designate a subordinate temporarily to perform his duties.

For example, on July 26, 1947,[20] the following occurred:

MR. [CHARLES A.] HALLECK [of Indiana]: Mr. Speaker, I offer a resolution (H. Res. 351) and ask for its immediate consideration. .

Resolved, That in order that the duties of his office may be discharged in case of his absence or disability or in case his office should become vacant, the Clerk of the House of Representatives on or before July 26, 1947, shall designate a subordinate in his office to perform the duties thereof in any such contingencies until the commencement of the second session of the Eightieth Congress. Such designee when acting under this authorization, shall subscribe himself as Acting Clerk of the House of Representatives.

The Clerk of the House shall promptly communicate to the Speaker the name of the employee designated hereunder for the information of the House.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 18.18 The Clerk designates a subordinate to perform his duties temporarily and informs the Speaker who lays the communication before the House.

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19. 93 CONG. REC. 236, 237, 80th Cong. 1st Sess.

20. 93 CONG. REC. 10518, 80th Cong. 1st Sess.

See for example, 92 CONG. REC. 10781, 79th Cong. 2d Sess., Aug. 2, 1946; and 94 CONG. REC. 9348, 80th Cong. 2d Sess., June 19, 1948, for other resolutions.

On July 26, 1947,[1] the Speaker, Joseph W. Martin, Jr., of Massachusetts, laid before the House the following communication[2] which was read by the Clerk:

JULY 26, 1947.

The Honorable the SPEAKER,
House of Representatives.

SIR: Pursuant to the provisions of House Resolution 351 adopted by the House today, I have designated Mr. Harry Newlin Megill, an official in my office, to discharge the duties contemplated by said resolution.

Respectfully yours,

JOHN ANDREWS,
Clerk of the
House of Representatives.

1. 93 CONG. REC. 10518, 80th Cong 1st Sess., July 26, 1947. See also Ch. 1 § 5, supra, form for designation of an acting Clerk to preside until election of a Speaker and Rule III clause 4, House Rules and Manual § 647 (1973), which authorizes the Clerk to designate an official in his office to sign all papers and perform other acts, except such as are provided by statute, that may be required under the rules and practice of the House to be done by the Clerk.

Clerks have designated authority to subordinates for temporary periods both with and without authorizing resolutions passed prior to the designations. Compare 92 CONG. REC 10768, 10781, 79th Cong. 2d Sess., Aug. 2, 1946; 93 CONG. REC. 10518, 80th Cong. 1st Sess., July 26, 1947; and 93 CONG. REC. 9348, 80th Cong. 2d Sess., June 19, 1948, instances where resolutions authorized designations, with, for example, 109 CONG. REC. 10025, 88th Cong. 2d Sess., May 5, 1964; 111 CONG. REC. 2759, 89th Cong. 1st Sess., Feb. 16, 1965; and 114 CONG. REC. 30617, 90th Cong. 2d Sess., Oct. 10, 1968, instances where no resolutions preceded the designations.

2. See also 6 Cannon's Precedents § 26, for another form of designation.

Receipt of Election Certificate

§ 18.19 The Clerk reports receipt of an election certificate for a vacant seat to the Speaker who lays the communication before the House.

On Feb. 23, 1966,[3] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following communication:

FEBRUARY 22, 1966.

The Honorable the SPEAKER,
House of Representatives.

SIR: A certificate in due form of law showing the election of Theodore R. Kupferman as a Representative-elect to the 89th Congress from the 17th Congressional District of the State of New York, to fill the vacancy caused by the resignation of John V. Lindsay, is on file in this office.

Respectfully yours,

RALPH R. ROBERTS,
Clerk,
U.S. House of Representatives.

3. 112 CONG. REC. 3667, 89th Cong. 2d Sess.

§ 19. Duties of the Sergeant at Arms

This section describes and discusses the duties of the Sergeant at Arms.[4]

The general duties of the Sergeant at Arms are prescribed by the House rules (Rule IV clause 1) and by statute. Under these provisions, the Sergeant at Arms maintains order, including execution of arrest warrants for persons cited for contempt of the House or a committee, and keeps accounts for the pay mileage and pays Members, Delegates, and the Resident Commissioner from Puerto Rico. The symbol of his office is a mace, which is borne by him while enforcing order on tire floor.[5]

Other rules and statutes impose specific duties to maintain order. As the officer charged with enforcing the authority of the House, the Sergeant at Arms, under the rules, strictly enforces the prohibition against Members walking across or out of the Hall of the House while the Speaker addresses the House,[6] appoints officers to send for and arrest absent Members when so ordered by the Speaker after a call of the House by 15 Members including the Speaker,[7] and brings absent Members before the House.[8]

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4. See other chapters for discussions of those functions and duties of the Sergeant at Arms relating to House facilities and Capitol grounds (Ch. 4, supra), subpenas served on him (Ch. 11, infra), contempt proceedings (Ch. 13, infra), investigations and inquiries (Ch. 15, infra), and calls of the House (Ch. 20, infra).

5. Rule IV clause 2, *House Rules and Manual* § 650 (1973); 2 USCA § 79.

Collateral reference: Johnson, Zeake W., Jr., The Mace of the House of Representatives of the United States, 7th ed., Government Printing Office. Washington, D.C. (1969).

6. Rule XIV clause 7, *House Rules and Manual* § 763 (1973).

7. Rule XV clause 2, *House Rules and Manual* § 768 (1973).

8. Rule XV clause 4, *House Rules and Manual* § 773 (1973).

During a call of the House, the Sergeant at Arms is required to arrest absent Members wherever they may be found (4 Hinds' Precedents § 3017), detains those who are present, and brings in absentees (4 Hinds' Precedents §§ 3045–3048). Pursuant to a proper motion, he reports progress in securing a quorum (6 Cannon's Precedents § 770).

By order of the House, after a Member's complaint of unlawful arrest, the Sergeant at Arms on one occasion investigated and amended the return of his warrant (4 Hinds' Precedents § 3021). See also 6 Cannon's Precedents § 686, form of resolution for the arrest of Members absent without leave; and 4 Hinds Precedents § 3043, form of warrant and discussion of authority to issue warrants.

It should also be noted that the Speaker, under Rule I clauses 2 and 3 (requiring the Speaker to preserve order and have general control of the Hall, corridors, and passages of the House), may impose certain additional duties on the Sergeant at Arms. For example, at the direction of the Speaker, the Sergeant at Arms has enforced order with the mace,[9] cleared the galleries,[10] and, on one occasion, arrested a spectator and confined him briefly.[11]

The Sergeant at Arms has been granted statutory authority to preserve order outside the Hall of the House. He is one of those who sits on the Capitol Police Board, which directs the activities of the Capitol Police.[12] With the Sergeant at Arms of the Senate, he develops regulations to preserve the peace and to secure the Capitol from defacement; and he may arrest and detain any person violating these regulations until such person can be brought before the proper authorities for trial.[13]

Several statutes deal with the duty of the Sergeant at Arms to keep the accounts and pay Members.[14] Continuity of disbursement is ensured by statute. For example, to prevent an interruption in disbursement after a Congress adjourns, the Sergeant at Arms remains in office until his successor is chosen.[15] In case of the disability of the Sergeant at Arms, the Treasurer of the United States disburses the pay of Members, Delegates, and the Resident Commissioner from Puerto Rico.[16] The Sergeant at Arms is authorized to purchase insurance to protect the funds of his office. The premiums are paid out of the contingent fund of the House until otherwise provided by law.[17] He may not receive additional com-

9. See Cannon's Precedents § 258.

10. 2 Hinds' Precedents § 1352.

11. 2 Hinds' Precedents § 1605.

12. 40 USCA § 212a. In this capacity the Sergeant at Arms controls the regulation of vehicular traffic (40 USCA § 2121 ; selects officers (40 USCA § 206 and 206a); pays salaries (40 USCA § 207); selects uniforms (40 USCA § 210); and approves suspensions made by the captain (40 USCA § 208).

13. 40 USCA § 193.

14. Pay and mileage to be paid to Members (2 USC §§ 78, 80); statement of sums disbursed (2 USC § 84); adjustment of accounts during a fixed fiscal year (2 USC § 81). See also 2 USC § 39, which provides for deduction of salary for absence from House; 2 USC § 40a, which provides for deduction from salary for delinquent indebtedness; and 2 USC § 80a, which provides for disbursement of gratuity appropriations.

15. 2 USC 83.

16. 31 USC § 148.

17. 2 USC § 81c. See also § 19.4, infra.

pensation for performing his duties.[18]

The Sergeant at Arms, at the commencement of each regular session, submits to the House a written statement of sums drawn and disbursed and periodically reports accounts to the General Accounting Office,[19] which receives and examines his accounts and certifies to him balances arising thereon according to the character of the account.[20] And he conducts on the-spot audits of the appropriated and trust funds of his office not less frequently than once each six months.[1] Amounts necessary to adjust for incorrect payments resulting from errors not caused by bad faith or lack of due care in the trust fund account of the Sergeant at Arms may be paid out of the contingent fund of the House on vouchers authorized and approved by the Committee on House Administration.[2]

In addition to his major duties of preserving order and keeping accounts of pay and mileage, the Sergeant at Arms has several other duties imposed by rules, statutes, and precedents. He has a duty, in the absence of the Clerk, (1) to preside until a Speaker is elected,[3] (2) to prepare the roll of Members-elect prior to the commencement of a Congress,[4] and (3) to send a certificate of the number of Representatives to which each state is entitled to the Governors following each decennial census.[5] The Sergeant at Arms secures suitable office space in home districts of Members,[6] ensures that a monument is erected whenever a deceased Member is interred in the Congressional Cemetery,[7] and, with the Architect of the Capitol and the Sergeant at Arms of the Senate, serves on the Capitol Guide Board which oversees the Capitol Guide Service.[8]

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18. 2 USC § 77.

19. 31 USC §§ 496, 497.

20. 31 USC § 72. See § 19.3, infra, for discussion of *Romney* v *United States*, 167 F2d 521 (D.C. Cir. 1948), cert. denied 334 U.S. 847 (1948), which held that 31 USC § 72, 496, and 497, apply to the Sergeant at Arms.

1. 2 USC § 81a.

2. 2 USC § 81b.

3. As a "duty imposed by law or custom relative to the organization of the House", presiding before the election of a Speaker is a statutory responsibility imposed by 2 USC § 26.

See also § 20.8, infra, in which the Doorkeeper presided because the Clerk had died and the Sergeant at Arms was absent.

4. 2 USC § 26.

5. 2 USC § 2a(b).

6. 2 USC § 122.

7. 2 USC § 51.

8. 40 USC § 851.

Keeping Accounts of Pay and Mileage

§ 19.1 The House by resolution has authorized the Sergeant at Arms to transfer funds from balances available to him in several accounts under his administrative control to meet Members' payrolls pending enactment of an appropriations bill carrying funds for that purpose.

On May 28, 1969,[9] a Member, Samuel N. Friedel, of Maryland, by direction of the Committee on House Administration, offered and the House agreed to the following resolution (H. Res. 425):

> *Resolved,* That the Clerk of the House and Sergeant at Arms be and is hereby directed to pay such sum as may be necessary, from the balance available of the 1968 appropriation and the various funds of the 1969 appropriation, where balances may be available, for the House of Representatives to meet the May and June payroll of Members, officers of the House, and employees of the House. Moneys expended from these funds and/or appropriations by the Sergeant at Arms and the Clerk will be repaid to the funds and/or appropriations from the Sergeant at Arms and Clerk's supplemental appropriation upon its approval.[10]

§ 19.2 The House by resolution may authorize the payment to the Sergeant at Arms of an amount to cover additional mileage for Members for attendance at a meeting of the Congress at a date earlier than that to which it adjourned.

On Aug. 7, 1948,[11] a Member, Ralph A. Gamble, of New York, offered the following resolution (H. Res. 715):

> *Resolved,* That the Clerk of the House of Representatives is authorized and directed to pay to the Sergeant at Arms of the House of Representatives not to exceed $171,000 out of funds appropriated under the head "Contingent expenses of the House," fiscal year 1949, for additional mileage of Members of the House of Representatives, Delegates from Territories, and the Resident Commissioner from Puerto Rico, at the rate authorized by law. . . .
>
> THE SPEAKER [Joseph W. Martin, Jr., of Massachusetts]: . . . The question is on suspending the rules and passing the resolution.
>
> Two-thirds having voted in favor thereof, the rules were suspended and the resolution was passed.

§ 19.3 The Sergeant at Arms must periodically report ac-

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9. 115 CONG. REC. 14165–67, 91st Cong. 1st Sess.

10. *Parliamentarian's Note:* This resolution was passed to provide payroll funds because the Committee on House Administration had been advised that funds previously appropriated were exhausted.

11. 94 CONG. REC. 10247, 80th Cong. 2d Sess.

counts to the General Accounting Office.

The alleged embezzlement of funds by a Sergeant at Arms led to a judicial review of the applicability of statutes which require accounts to be reported to the General Accounting Office.[12] Applying statutes dealing with duties of the Sergeant at Arms to keep accounts for the pay and mileage of Members[13] and draw requisitions for the compensation and mileage of Members,[14] as well as other statutes,[15] the Court of Appeals for the District of Columbia Circuit affirmed the conviction of the former Sergeant at Arms, Kenneth Romney, for presenting to the General Accounting Office certain false statements of accounts and concealing a shortage by trick, scheme, and device (18 USC § 80).[16]

In reaching this decision, the court held that a statute requiring the General Accounting Office to receive and examine all accounts[17] applies to the House and that statutes requiring disbursing officers to submit accounts to the General Accounting Office monthly[18] or more frequently[19] apply to the Sergeant at Arms.[20] Mr. Romney's contention, based on statutes[1] and rules,[2] that these reporting duties do not apply to the House because that body acts as its own auditor, was rejected.

The court held that, "Cash in the hands of such an official [disbursing officer] manifestly con-

12. See *Romney* v *United States,* 167 F2d 521 (D.C. Cir. 1948); cert. den. 334 U.S. 847 (1948).

13. 2 USC § 78.

14. 2 USC § 80.

15. These statutes provide for: submitting to the House a statement of disbursements (2 USC § 84); inquiring into compliance with certain statutory provisions by the Committee on [House Administration (2 USC § 91); examining accounts by (2 USC § 72) and submitting accounts to (31 USC § 496, 497) the General Accounting Office.

16. See *Romney* v *United States,* 167 F2d 521, at 522, 528 (D.C. Cir. 1948); cert. den. 334 U.S. 847 (1948).

17. 31 USC § 72.

18. 31 USC § 496.

19. 31 USC § 497.

20. See *Romney* v *United States,* 167 F2d 521, at 524, 525 (D.C. Cir. 1948); cert. den. 334 U.S. 847 (1948).

1. 2 USC § 84, which requires the Sergeant at Arms to submit to the House a statement of disbursements; 2 USC § 91, which directs the Committee on House Administration to inquire into compliance with certain statutory provisions; and 2 USC § 97, which provides for the establishment of a temporary committee on accounts of the House.

2. Rule IV clause 1, *House Rules and Manual* § 648 and 649 (1973) which provides that the Sergeant at Arms keep accounts of pay and mileage of Members.

tinues to be the property of the government until it has actually been disbursed by him to persons lawfully entitled to receive it", and that 'cash drawn from the Treasury by the Sergeant at Arms is properly reported in his accounts current as part of the item styled 'Balance now due the United States.'"[3]

The court also rejected the appellant's contention that falsification of the item of cash on hand did not violate the false claims statute [18 USC § 80] because cash ceased to be government property and became Members' property at the moment the Sergeant at Arms received it from the Treasury. This contention was based on the appellant's view that he held the money not as a disbursing officer, but as a private person acting as an agent for other private persons.[4]

Following this decision, Congress enacted 63 Stat. 482 (codified as 2 USC § 81a)[5] which authorized the Comptroller General to detail employees of the General Accounting Office to make on-the-spot audits of all receipts and disbursements pertaining to fiscal records of the Sergeant at Arms not less frequently than once each six months.

Purchasing Insurance

§ 19.4 The Sergeant at Arms may protect funds of his office by purchasing insurance out of the contingent fund of the House when authorized by simple resolution.

On Apr. 1, 1947,[6] Apr. 1, 1949,[7] and July 24, 1956,[8] the House authorized the Sergeant at Arms to protect the funds of his office by purchasing insurance out of the contingent fund of the House.

In each instance, a Member introduced a resolution in the following form:

> Mr. Speaker, by direction of the Committee on House Administration, I

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3. See *Romney* v *United States,* 167 F2d 521, at 526, 527 (D.C. Cir. 1948); cert. den. 334 U.S. 847 (1948). [See also *Crain* v *United States,* 25 Ct. Cl. 204 (1890) which held that the Sergeant at Arms was a disbursing officer.]

4. See *Romney* at p. 525.

5. See 95 CONG. REC. 9475, 81st Cong. 1st Sess., July 14, 1949 (passage in House); 9. CONG. REC. 9755, 81st Cong. 1st Sess., July 20, 1949 (passage in Senate); 95 CONG. REC. 10487, 81st Cong. 1st Sess., Aug. 1, 1949 (announcement in House of approval by the President).

6. 93 CONG. REC. 2971, 80th Cong. 1st Sess.

7. 95 CONG. REC. 3703, 81st Cong. 1st Sess.

8. 102 CONG. REC. 14241. 84th Cong.

submit a privileged resolution . . . and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Sergeant at Arms of the House of Representatives is authorized and directed to protect the funds of his office by purchasing insurance [in stated amounts], providing protection against loss with respect to such funds. Until otherwise provided by law, premiums on such insurance shall be paid out of the contingent fund of the House on vouchers signed by the Sergeant at Arms and approved by the Committee on House Administration.

In each case the resolution was agreed to and a motion to reconsider was laid on the table.

Regulation of Parking

§ 19.5 The Sergeant at Arms assigns space for outdoor parking of automobiles under direction of the Select Committee to Regulate Parking.

On June 28, 1967,[9] a select committee charged with responsibility for outdoor parking on the House side of the Capitol was created.

MR. [B. F.] SISK [of California]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 514 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 514

Resolved, (a) That there is hereby created select committee to be composed of three Members of the House of Representatives to be appointed by the Speaker, one of whom shall be designated as chairman. Any vacancy occurring in the membership of the committee shall be filled in the same manner in which the original appointment was made.

(b) The said committee is hereby authorized to exercise direction over the Sergeant at Arms of the House of Representatives in the assignment of space for outdoor parking of automobiles in squares 639, south of 635, and G92, located adjacent to the House Office Buildings, and for all other outdoor parking of automobiles on the House side of the United States Capitol Grounds. . . .

The resolution was agreed to.

§ 20. Duties of the Doorkeeper

Under Rule V clause 1, of the *House Houses and Manual*,[10] the Doorkeeper enforces rules[11] relating to privileges of the Hall of the House. Under Rule V clause

9. 113 CONG. REC. 17791, 17792, 90th Cong. 1st Sess.

10. See 1 Hinds' Precedents § 260 for the origin of Rule V clause 1.

11. These rules include Rule XXXI *House Rules and Manual* § 918 (1973) relating to the Hall of the House; and Rule XXXII clauses 1, 2, *House Rules and Manual* § 919–921 (1973), relating to admission to the floor.

2,[12] he allows no person to enter the Hall of the House during sessions, and clears the floor of all persons not privileged to remain.

Before the 92d Congress, the Doorkeeper was responsible for making an inventory of all furniture, books, and other public property in committee rooms and other spaces.[13] However, the provision containing this directive, former Rule V clause 2, was deleted in the general revision of the rules effected by the Legislative Reorganization Act of 1970[14] because the duty of taking inventories and accounting for custody of furniture and other office equipment was placed in the Clerk by the House Office Building Commission.[15]

With the Sergeant at Arms, the Doorkeeper enforces the rule[16] relating to behavior of Members on the floor. Although Jefferson's Manual,[17] states that porters or the Sergeant at Arms keeps the doors, this duty is executed by the Doorkeeper and his assistants.

The Speaker in executing his own responsibilities under the rules imposes on the Doorkeeper duties in addition to those mentioned above. Thus, pursuant to his authority to exercise general control of the Hall of the House and corridors thereof under Rule I clause 3, the Speaker has directed the Doorkeeper to remove a placard posted by a Member in the lobby of the House,[18] or to clear[19] and close the galleries.[20]

Statutes also impose duties on the Doorkeeper. For example, he certifies his payroll each month,[1] and he reports position descriptions of all employee positions under the House Radio and Television Correspondents' Gallery and the House Periodical Press Gallery to the Committee on House Administration.[2]

The Doorkeeper performs supervisory responsibilities, which include appointing the superintendent of the Document Room[3] and the superintendent of the Publications Distribution Service (folding room).[4] The Doorkeeper oversees operations of

12. See 5 Hinds' Precedents § 7295 for the origin of clause 2.

13. See 1 Hinds' Precedents § 261.

14. 84 Stat. 1140.

15. 34 Stat. 1365.

16. Rule XIV clause 7, *House Rules and Manual* § 763 (1973).

17. *House Rules and Manual* § 380 (1973).

18. 6 Cannon's Precedents § 262.

19. See § 20.2, 20.3, infra.

20. See § 20.4, infra.

1. 2 USC § 89. A violation of this duty is deemed to be a cause for removal from office (see 2 USC § 90).

2. 2 USC § 294(b)(1).

3. 44 USC § 739.

4. 44 USC § 740.

a special as assistant,[5] telephone clerks,[6] doormen, and the pages that serve the House.[7]

With the Clerk of the House, the Secretary of the Senate, and Sergeant at Arms of the Senate, the Doorkeeper (a) sells waste-paper and useless documents that accumulate in his department,[8] and (b) invoices public documents stored in and about the Capitol at the convening of each regular session.[9]

In the absence of the Clerk and Sergeant at Arms, certain duties devolve upon the Doorkeeper including (a) calling the House to order before election of a Speaker,[10] (b) sending to Governors certificates of the number of Representatives to which each state is entitled after each decennial census,[11] and (c) making a roll of Representatives-elect before the meeting of each Congress.[12]

When the office of the Doorkeeper is declared vacant because of misconduct of an incumbent, the duties of the Doorkeeper devolve upon the Sergeant at Arms.[13]

The Doorkeeper with the aid of his appointees performs services not enumerated in the rules or statutes such as furnishing Members with printed copies of bills, reports, and other documents; conveying messages from Members; and keeping the Hall, galleries, and committee rooms in order[14]

Controlling Access to Galleries

§ 20.1 The distribution of tickets for seats in the gallery during special occasions is the responsibility of the Doorkeeper of the House.

On Feb. 28, 1945,[15] a Member raised an inquiry concerning distribution of gallery tickets to minority members:

> MR. [CLARE E.] HOFFMAN [of Michigan]: Mr. Speaker, I would like to make an inquiry of the Chair, although

5. 2 USC § 76a.

6. 2 USC § 76b.

The chief telephone clerk is chosen by the majority; the assistant chief telephone clerk is chosen by the minority.

7. See annotation to Rule V clause 1, *House Rules and Manual* § 652 (1973).

8. 2 USC § 117.

9. 44 USC § 741.

10. Rule III clause 1, *House Rules and Manual* § 639 (1973). See § 20.8, infra, in which the Doorkeeper presided at the commencement of the 80th Congress.

11. 2 USC § 2a(b).

12. 2 USC § 26.

13. 1 Hinds' Precedents § 288, 289.

14. 1 Hinds' Precedents § 262, note 9.

15. 91 CONG. REC. 1594, 79th Cong. 1st Sess.

I do not know that it is a parliamentary inquiry. Heretofore, when tickets have been distributed, there were a certain number of step tickets. Does the minority get any of those, or do they all go to the majority?

THE SPEAKER PRO TEMPORE: [16] That is a double-edged question. . . . The Chair does not undertake to answer the question, because no matter how it is answered, it is put in such manner as would make it appear that tickets have been distributed in the past contrary to the understanding of the Chair. That matter is left with the Doorkeeper. who is an officer of the House. . . .

§ 20.2 The Doorkeeper executes the Speaker's directive to clear the galleries issued in response to a Member's point of order.

On Jan. 18, 1972,[17] the Speaker, Carl Albert, of Oklahoma, during a speech by a Member, Bella S. Abzug, of New York, discussing her resolution to censure the President's conduct of the war in Indochina, twice admonished spectators that expressions of approval were not permitted under the rules. When all persons in one gallery stood and displayed signs indicating approval of proceedings on the floor, the Speaker ordered the galleries cleared.

THE SPEAKER: The Chair reminds our guests in the galleries that the Chair must enforce the rules of the House and that demonstrations from the galleries will not be permitted. . . .

POINT OF ORDER

MR. [DURWARD G.] HALL, [of Missouri]: Mr. Speaker, I demand that the gallery be cleared.

THE SPEAKER: The Chair will not tolerate demonstrations of approval or disapproval in the galleries.

MR. HALL: Mr. Speaker, I make a point of order that our guests and those in the galleries are not in order. I request that the gallery be cleared.

THE SPEAKER: The gentleman's point is well taken. The galleries will be cleared.

Parliamentarian's Note: The Doorkeeper cleared the gallery pursuant to the Speaker's directive. See 2 Hinds' Precedents § 1352 for an instance in 1836 wherein the Speaker had ordered the galleries cleared.

§ 20.3 The Doorkeeper executed the Speaker's order to clear certain spectator galleries but not others, as announced at the commencement of the day's sitting.

On May 9, 1972,[18] the Speaker, Carl Albert, of Oklahoma, ordered some spectator galleries to be cleared.

THE SPEAKER: The Chair desires to make the announcement that the

16. John W. McCormack (Mass.).

17. 118 CONG. REC. 9, 92d Cong. 2d Sess.

18. 118 CONG. REC. 16287, 92d Cong. 2d Sess

Chair did not order the clearing of the galleries except those on the Chair's left, where there was disorder.

Parliamentarian's Note: This order was given because some persons protesting the President's announcement on May 8, 1972, to mine the North Vietnamese harbor caused disorder in the galleries.

§ 20.4 The Doorkeeper executes the Speaker's order to close the galleries in anticipation of disturbances.

On May 10, 1972,[19] the Speaker, Carl Albert, of Oklahoma, ordered the galleries to be closed.

THE SPEAKER: The Chair desires to make a statement.

The Chair has received intelligence from the police force and other responsible authorities that there will be disturbances in the gallery today. On the basis of this information and their recommendation the Chair has ordered that the galleries be closed to the public for the time being.

Parliamentarian's Note: This decision, made after consultation with the Majority and Minority Leaders and the Parliamentarian, was based on reports from the Capitol Police that certain persons would demonstrate in the gallery against the Indochina war. The galleries were closed by the Doorkeeper from the commencement of business at 12:00 meridian until 2:52 p.m. when they were reopened.

§ 20.5 The Doorkeeper confiscated the film of a visitor who was ordered to leave the gallery for photographing the Members while in session.

On Feb. 22, 1942,[20] a visitor was ordered to remove himself or his camera because he was taking pictures from the gallery.

THE SPEAKER [Sam Rayburn, of Texas]: The Chair understands there is a camera in the gallery. Whoever has that camera will remove the camera or remove themselves and the camera immediately. That is a violation of the rules of the House.

The film in the camera of the person taking the pictures was confiscated by the Doorkeeper.

Closing or Locking Doors

§ 20.6 Upon a personal instruction by the Speaker during a call of the House under former Rule XV clause 2, the Doorkeeper locked all exits from the House Chamber and removed doorknobs from cloakroom doors to prevent Members from leaving during a call of the House.

19. 118 CONG. REC. 16576, 92d Cong. 2d Sess.

20. 88 CONG. REC. 2152, 77th Cong. 2d Sess.

On Oct. 8, 1968,[1] the Speaker ordered the doors to the Chamber closed and locked during a call of the House under former Rule XV clause 2, and instructed the Doorkeeper to enforce the rule and let no Members leave the Hall.

The Chair personally instructed the Doorkeepers to lock all exits from the House Chamber and to prohibit Members from leaving during the call of the House. Doors leading from the Chamber to the Speaker's lobby, as well as those opening from the cloakrooms to the north corridor in the House wing were locked. Doorknobs were removed in the cloakrooms to prevent doors being opened.

> THE SPEAKER [John W. McCormack, of Massachusetts]: The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.
>
> MR. [JOHN H.] DENT [of Pennsylvania]: Mr. Speaker, a point of order, which relates to the call of the roll. . . .
>
> . . . The point of order is the doors were ordered closed, and the doors to the outside of the Chamber are open in the cloakrooms.
>
> THE SPEAKER: The Chair has given instructions to close all doors and allow no Members out.

Parliamentarian's Note: The Speaker's order to lock the doors was permitted under former Rule XV clause 2; the rule in its present form refers merely to the doors being "closed" when so ordered by the Speaker. Rule XV clause 2(b).

§ 20.7 When proceedings under a call of the House pursuant to Rule XV clause 2 are dispensed with, doors to the Chamber are reopened by the Doorkeeper without further instructions from the Chair.

On Oct. 8, 1968,[2] a Member raised a parliamentary inquiry concerning doors locked during a call of the House:

> MR. [CRAIG] HOSMER [of California]: Mr. Speaker, I have a parliamentary inquiry.
>
> THE SPEAKER [John W. McCormack, of Massachusetts]: The gentleman will state it.
>
> MR. HOSMER: Mr. Speaker, a point of order having been made of no quorum, a quorum having been called, and a quorum having been found present, and the further proceedings under the call having been dispensed with, does that mean that the doors of the House are now unlocked?
>
> THE SPEAKER: The gentleman is correct.

Doorkeeper as Presiding Officer

§ 20.8 In the absence of the Clerk and Sergeant at Arms,

1. 114 CONG. REC. 30093, 90th Cong. 2d Sess.

2. 114 CONG. REC. 30093, 90th Cong. 2d Sess

the Doorkeeper calls the House to order when a Congress convenes and presides until a Speaker is elected and takes the chair.

On Jan. 3, 1947,[3] the Doorkeeper, Ralph R. Roberts, called the House to order at the commencement of the 80th Congress and presided until a Speaker was elected because the Clerk of the 79th Congress had died and the Sergeant at Arms was absent.

§ 21. Duties of the Chaplain

The Chaplain of the House is responsible for offering a prayer at the commencement of each day's sitting of the House under Rule VII of the *House Rules and Manual*.[4]

Although the prayer generally precedes the transaction of any business,[5] it follows the election of a new Speaker at the first meeting after the death of a Speaker.[6] And despite the general practice that a prayer be offered daily,[7] it was not offered on certain occasions.[8]

Application of Quorum Requirement to Prayer

§ 21.1 A quorum is not required for prayer by the Chaplain when a meeting commences, and the Speaker does not recognize Members for a point of order against the prayer based on the absence of a quorum.

On Mar. 19, 1941,[9] a Member raised a parliamentary inquiry:

> MR. [ROBERT F.] RICH [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.
>
> THE SPEAKER [Sam Rayburn, of Texas]: The gentleman will state it.
>
> MR. RICH: Mr. Speaker, when I was seeking recognition from the Speaker before the Chaplain offered prayer, I felt that there would be a call of the House and I thought it would be a good thing for all the Members to be here for once to hear the Chaplain offer prayer. What does the Speaker think about that? Would it be proper procedure for a Member to make the point of order that a quorum is not present before the Chaplain offers prayer?
>
> THE SPEAKER: As the Chair understands it, it has been held many times

3. 93 CONG REC. 33–35, 80th Cong. 1st Sess.
4. Rule VII *House Rules and Manual* § 650 (1973).
5. 4 Hinds' Precedents § 3056.
6. § 21.4, infra.
7. See § 21.2, infra.
8. See § 21.3, infra, for instances where no prayer was offered.
9. 87 CONG. REC. 2352, 77th Cong. 1st Sess.

that the prayer is not such business of the House that a quorum is required.[10]

When Prayers Are Offered

§ 21.2 As a general rule, a prayer is offered daily, whether the House had adjourned until the next day or had recessed at its previous sitting.

On June 18, 1948,[11] a prayer was offered by the Chaplain at the expiration of a recess.

On the legislative day of Sept. 22, 1961,[12] a prayer was offered at 10 o'clock a.m. after the Speaker pro tempore had recessed the House at 6:19 p.m. on the previous calendar day.[13]

§ 21.3 Notwithstanding the usual practice that a prayer be offered daily, it has not been offered where the House is meeting after a recess to transact business of the same legislative day, although a new calendar day may have begun.

On the legislative day of Aug. 31, 1960, after a recess begun at 3:37 a.m., no prayer was offered prior to resumption of business in the House at 12 o'clock noon on the same legislative day, although a new calendar day, Sept. 1, 1960, had begun.[14]

Prayers After Death of Speaker

§ 21.4 At the first meeting following the death of a Speaker during a Congress, the prayer is not offered by the Chaplain until the oath has been administered to the Speaker-elect.

Although a prayer normally precedes the transaction of any business under Rule XXIV clause 1,[15] including the election of a new Speaker at the commencement of a Congress,[16] the prayer follows

10. See also 6 Cannon's Precedents 663.

11. 94 CONG. REC. 8824, 80th Cong. 2d Sess.

12. 107 CONG. REC. 20888, 87th Cong. 1st Sess., Sept. 23, 1961.

13. 107 CONG. REC. 20869, 87th Cong. 1st Sess., Sept. 22, 1961.

14. See 106 CONG. REC. 18921 (recess on legislative day of Aug. 31, at 3:37 a.m., Sept. 1), 86th Cong. 2d Sess., Aug. 31, 1960; and 106 CONG. REC. 19113 (resumption of business for legislative day of Aug. 31 at 12:00 noon, Sept. 1), 86th Cong. 2d Sess., Sept. 1, 1960.

15. 4 Hinds' Precedents § 3056.

16. For instances involving the election at the commencement of Congress of a different Member to the office of Speaker when his predecessor has chosen not to seek reelection to the House, see 77 CONG. REC. 67, 73d Cong. 1st Sess., Mar. 9, 1933, election of Henry T. Rainey; 117 CONG. REC. 9, 92d Cong. 1st Sess., Jan. 21,

the administration of the oath to a Speaker-elect whose election was necessitated by the death of his predecessor.[1]

Printing of Prayers

§ 21.5 The House has authorized the printing of prayers offered by the Chaplain of the House.

On Mar. 11, 1965,[2] the House authorized the printing of prayers offered by the Chaplain of the House, Rev. Bernard Braskamp, as follows:

MR. [WAYNE L.] HAYS [of Ohio]: Mr. Speaker, by direction of the Committee on House Administration I call up House Resolution 230 and ask for its immediate consideration.

The Clerk read as follows:

H. RES. 230

Resolved, That the prayers offered by the Chaplain, the Reverend Bernard Braskamp, doctor of divinity, at the opening of the daily sessions of the House of Representatives of the United States during the Eighty-seventh and Eighty-eighth Congresses, be printed as a House document, and that two thousand additional copies be printed and bound for the use of the House of Representatives, to be distributed by the Chaplain of the House of Representatives.

With the following committee amendment:

On page 1, line 6, strike out "two" and insert "one".

The committee amendment was agreed to.

The resolution was agreed to.

Prayers Offered on Special Occasions

§ 21.6 On the day following the shooting in the House Chamber in which several Members were wounded, the Chaplain offered a special prayer when the House convened.

On Mar. 2, 1954,[3] the Chaplain of the House, Rev. Bernard Braskamp, D.D., offered the following prayer:

Almighty God, our Father, by whose mercies we have been spared and by

---

1971, election of Carl Albert after John W. McCormack did not seek reelection to the House in 1970.

1. See 80 CONG. REC. 9016, 74th Cong. 2d Sess., June 4, 1936, election of William B. Bankhead after death of Joseph W. Byrns on same date; and 86 CONG. REC. 12231, 76th Cong. 3d Sess., Sept. 16, 1940, election of Sam Rayburn after death of William B. Bankhead on Sept. 15, 1940.

   Compare 79 CONG. REC. 9, 74th Cong. 1st Sess., Jan. 3, 1935, election of Joseph W. Byrns, the prayer preceding the administration of the oath. The previous Speaker, Henry T. Rainey, died on Aug. 19, 1934, two months after adjournment of the second session of the 73d Congress on June 15, 1933.

2. 111 CONG. REC. 4766, 89th Cong. 1st Sess.

3. 100 CONG. REC. 2483, 83d Cong. 2d Sess.

whose powers we are sustained in our earthly pilgrimage, we are coming unto Thee with a humble spirit and a contrite heart.

Gird us now with courage and with confidence in Thy loving kindness for Thou art never closer unto us than when our hearts are wrung with sorrow and our heads are bowed in tribulation.

We commend unto Thy gracious care in keeping our beloved colleagues, beseeching Thee that Thou wilt share Thine eternal wisdom with the doctors and nurses for Thou art the Great Physician who canst mediate unto them divine skill and enable them to do that which is far beyond all that we can ask or think.

Grant unto the Members of the sorrowing and stricken families the consolidations of Thy grace and, as they bravely carry on and faithfully and patiently keep the vigil of faith, hope, and love, may they have the blessed companionship of that friend who sticketh closer than a brother.

We thank Thee for the beautiful spirit of Thy servant, so seriously ill, who has besought us to remember in our prayer those who have harmed us. May we also emulate the example of our blessed Lord who prayed, "Father, forgive them for they know not what they do."

To Thy name, through Jesus Christ our Lord and Saviour, we ascribe all the praise. Amen.

Absence of Chaplain

§ 21.7 The prayer may be offered by an acting Chaplain.

On Apr. 25, 1966,[4] Dr. Edward Gardiner Latch, acting Chaplain of the House, offered the following opening prayer:

God is our refuge and strength, a very present help in trouble. Therefore will we not fear.—Psalm 46:1.

O God, our Father, who art the refuge and strength of Thy people in every age and our refuge and our strength in this present hour, we pause in Thy presence to offer unto Thee once again the devotion of our hearts. Amid all the changes of this life, help us to rest our spirits upon those eternal foundations of truth and love which Thou hast laid for us. Save us from restlessness, from confusion, and from perpetual movement. Draw us unto Thyself that for this moment we may be still and know that Thou art God. With the assurance of Thy Spirit may we accept the responsibilities of This day and fulfill all our obligations with fidelity and honor. Into Thy loving arms we commit ourselves and our Nation—praying that together we may be one in Thee: through Jesus Christ our Lord. Amen.

Dr. Latch was appointed as acting Chaplain by the Speaker, John W. McCormack, of Massachusetts, on Mar. 14, 1966. Daily prayers during the period between that date and Apr. 25, were offered by visiting chaplains who had been scheduled by the Doorkeeper following the death of Chaplain Braskamp.

§ 21.8 In the absence of the Chaplain of the House, the Members rose for a silent prayer.

4. 112 CONG. REC. 8786, 89th Cong. 2d Sess.

On Oct. 5, 1949,[5] Members were asked to rise for a moment of silent prayer.

> The House met at 10 o'clock a.m.
>
> THE SPEAKER [Sam Rayburn, of Texas]: Will the membership rise for a moment in silent prayer?

Parliamentarian's Note: Although the Chaplain of the House had designated an acting Chaplain to serve during his absence, the acting Chaplain was unaware that the House had agreed to convene at 10 o'clock a.m. and arrived too late to open the House with a prayer.

§ 21.9 Visiting Chaplains offer prayers when the Chaplain of the House is absent.

On June 9, 1948,[6] the prayer was offered by a woman minister,[7] for the first time in the history of the Congress.

On June 21, 1965,[8] the prayer was offered in the House by Rev. Harold S. Horan, son of Walter F. Horan, a former Member (1943–55) from Washington.

5. 95 CONG. REC. 13897, 81st Cong. 1st Sess.
6. 94 CONG. REC. 7597, 7598, 80th Cong. 2d Sess.
7. Rev. Annalee Stewart, of Chicago and Boston.
8. 111 CONG. REC. 14097, 89th Cong. 1st. Sess.

§ 22. Vacancies; Selection of Successors

The unexpected death of the Sergeant at Arms, William F. Russell, on July 8, 1953,[9] dramatically underscored the need for a mechanism to select acting officers. On that date,[10] the House authorized Lyle O. Snader, Clerk of the House, to serve concurrently as Clerk and Sergeant at Arms with the proviso that he would receive no additional compensation for performing the duties of the Sergeant at Arms.[11] Later, Congress passed a statute (2 USCA § 75a–1) authorizing the Speaker to appoint a person to act as Clerk, Sergeant at Arms, Doorkeeper, Postmaster, or Chaplain whenever a vacancy occurs.[12]

Appointments by Speaker

§ 22.1 The Speaker is authorized by statute to appoint temporary officers to fill vacancies.

On July 28, 1953,[13] Mr. Charles A. Halleck, of Indiana, of-

9. See 99 CONG. REC. 8263, 83d Cong. 1st Sess. for announcement of the death of the Sergeant at Arms.
10. 99 CONG. REC. 8242, 83d Cong. 1st Sess.
11. See § 16.3, supra.
12. See § 22.1, infra, for text of resolution.
13. 99 CONG. REC. 10128, 83d Cong. 1st Sess.

fered and the House passed the following bill (H.R. 6571) which was codified as 2 USC § 75a–1 (approved Aug. 5, 1953):[14]

(a) In case of a vacancy, from whatever cause, in the office of Clerk, Sergeant at Arms, Doorkeeper, Postmaster, or Chaplain, of the House of Representatives, or in the case of the incapacity or inability of the incumbent of any such office to perform the duties thereof, the Speaker of the House of Representatives may appoint a person to act as, and to exercise temporarily the duties of, Clerk, Sergeant at Arms, Doorkeeper, Postmaster, or Chaplain, as the case may be, until a person is chosen by the House of Representatives and duly qualifies as Clerk, Sergeant at Arms, Doorkeeper, Postmaster, or Chaplain, as the case may be or until the termination of the incapacity or inability of the incumbent.

(b) Any person appointed pursuant to this section shall exercise all the duties, shall have all the powers, and shall be subject to all the requirements and limitations applicable with respect to one chosen by the House of Representatives to fill the office involved; but nothing in this section shall be held to amend, repeal, or otherwise affect section 7 of the Legislative Branch Appropriation Act, 1943 (2 U.S.C. sec. 75a).

(c) Any person appointed pursuant to this section shall be paid the compensation he would receive if he were chosen by the House of Representatives to fill the office involved, unless such person is concurrently serving in any office or position the compensation for which is paid from the funds of the United States, in which case he shall receive no compensation for services rendered pursuant to his appointment under this section, and his compensation for performing the duties of such office other than the one to which he is appointed pursuant to this section shall be in full discharge for all services he performs for the United States while serving in such dual capacity.

§ 22.2 The Speaker, pursuant to 2 USCA § 75a–1(a), appointed a Sergeant at Arms following resignation of the incumbent who concurrently held the office of Clerk.

On Jan. 6, 1954,[15] the Speaker, Joseph W. Martin, Jr., of Massachusetts, laid before the House the following communication from the Clerk:

> MY DEAR MR. SPEAKER: I submit herewith, effective at the close of business today, my resignation as Sergeant at Arms, House of Representatives, which additional duty I assumed pursuant to House Resolution 323, dated July 8, 1953, 83d Congress.
>
> Respectfully yours,
>
> LYLE O. SNADER,
> *Clerk of the House of Representatives.*

At the same time the Speaker made the following announcement:

> The Chair announces that, pursuant to the provisions of section

14. See also 99 CONG. REC. 10073, 83d Cong. 1st Sess., July 8, 1958, for passage in Senate.

15. 100 CONG. REC. 8, 83d Cong. 2d Sess.

208(a) of the Legislative Reorganization Act of 1946 [2 USCA 75a–1], he did on September 15, 1953, appoint William R. Bonsell, of the State of Pennsylvania, to act temporarily as Sergeant at Arms until the House chooses a person for that office.[16]

§ 22.3 The person who had resigned as permanent Sergeant at Arms was appointed to fill the office on a temporary basis until a successor could be chosen.

On June 30, 1972,[17] the Speaker, Carl Albert, of Oklahoma, laid before the House a letter of resignation from the Sergeant at Arms, Zeake W. Johnson, Jr., effective June 30, 1972, and, pursuant to 2 USC § 75a–1 (a) appointed him to act as and to exercise temporarily the duties of that office.

Parliamentarian's Note: Mr. Johnson resigned as permanent Sergeant at Arms on this date to qualify for certain retirement benefits available to persons who left government service on or before the last day of the 1972 fiscal year. He agreed to serve as acting Sergeant at Arms until the Democratic Caucus nominated a candidate for the office of Sergeant at Arms.

Mr. Johnson served as temporary Sergeant at Arms until Oct. 1, 1972. On Sept. 25, 1972,[18] the Speaker, laid before the House the following communication from the acting Sergeant at Arms:

> DEAR MR. SPEAKER: On June 30, 1972, pursuant to the provisions of the Legislative Reorganization Act of 1946, as amended (2 U.S.C. 75–1(a)), you appointed me to act and to exercise temporarily the duties of Sergeant at Arms of the House of Representatives effective July 1, 1972.
>
> Since the Democratic Caucus has nominated a candidate for the Office of Sergeant at Arms, I hereby tender my resignation effective midnight September 30, 1972.
>
> In my leave-taking, I want to thank you, Members of the House, and to say that words cannot adequately express my feelings of gratitude and fulfillment for the privilege that has been mine to serve the House of Representatives as Sergeant at Arms.
>
> Sincerely,
>
> ZEAKE W. JOHNSON, JR.,
> *Sergeant at Arms.*

§ 22.4 The Speaker appointed an acting Chaplain following the death of the incumbent.

On Mar. 14, 1966,[19] the Speaker, John W. McCormack, of Massachusetts, pursuant to 2 USC § 75a–1(a), appointed Rev. Edward Gardiner Latch, D.D., L.H.D., to

16. 100 CONG. REC. 8, 83d Cong. 2d Sess. See § 16.4, supra, for the election of Mr. Bonsell as permanent Sergeant at Arms.

17. 118 CONG. REC. 23665, 92d Cong. 2d Sess.

18. 118 CONG. REC. 31999, 32000, 92d Cong. 2d Sess.

19. Cong. Rec. 5712, 89th Cong. 2d Sess.

act as and exercise temporarily the duties of the Chaplain of the House of Representatives following the death of the Chaplain of the House, Rev. Bernard Braskamp.

Rev. Latch served as acting Chaplain until the end of the 89th Congress.[20]

D. AS PARTY DEFENDANT OR WITNESS

§ 23. In General; Immunities

This division focuses on the liability to suit or to judicial process of House officials or employees for acts committed by them in the performance of their duties for the House. Immunity arising under the Speech or Debate Clause of the U.S. Constitution (art. I, § 6) is discussed. Court opinions dealing with aides of individual legislators[1] and committee employees[2] are also taken up here.[3]

In the exercise of official duties, an officer of the House may become involved in litigation by receiving a summons to appear as a party defendant,[4] in which case he informs the Speaker,[5] and may request legal representation by the United States Attorney for the district in which the action is brought.[6] Or he may receive a

20. See § 16.9, supra, for the election of Rev. Latch as Chaplain.

1. *See Gravel* v *United States,* 408 U.S. 606 (1972), for example, which is discussed at § 23.13, infra. See also Ch. 7, infra, for a discussion of litigation involving Members generally.

2. *Dombrowski* v *Eastland,* 387 U.S. 82 (1967), *Stamler* v *Willis,* 415 F2d 1365 (7th Cir. 1969); cert. den. 399 U.S. 929 (1970), and *Doe* v *McMillan,* 412 U.S. 306 (1973), which are discussed at §§ 23.10, infra, 23.12, infra, and 23.14, infra, respectively.

3. See Ch. 11, which includes a discussion of the privilege of the House as related to subpenas served on Members or on House officers or employees.

4. See the reports of the Joint Committee on Congressional Operations Identifying Court Proceedings and Actions of Vital Interest to the Congress, for the record of legal actions involving House officers, beginning with the first cumulative report dated Oct. 20, 1971.

5. See §§ 23.1 and 23.2 infra, for precedents relating to receiving a summons and notifying the Speaker.

6. See USC § 118.

See §§ 93.3, infra, and 23.5, infra, for examples of requests for representation from the Clerk and the Sergeant at Arms, respectively.

subpena to appear and testify as a witness (subpena ad testificandum) or to produce records (subpena duces tecum), in which case he informs the Speaker who lays the matter before the House,[7] which may grant leave for the withdrawal of papers from its files.[8]

At one time, immunity from suit under the Speech or Debate Clause was considered to be broader for Members of Congress than for nonmembers who acted on their behalf, including officers of legislative bodies, staff personnel of committees, and aides to individual Members. For example, in *Kilbourn* v *Thompson,* 103 U.S. 168 (1881),[9] the U.S. Supreme Court held that although damages for false imprisonment could not be recovered in that case against Members of the House, they could be recovered against the Sergeant at Arms, who executed an arrest warrant pursuant to a resolution found to be an unconstitutional exercise of judicial authority by a legislative body. Likewise in *Dombrowski* v *Eastland,* 387 U.S. 82 (1967)[10] a criminal suit was dismissed as to a Senate subcommittee chairman, but remanded for a finding of facts on alleged illegal activities by the subcommittee counsel.

This double standard was applied in *Powell* v *McCormack,* 395 U.S. 606 (1969),[11] in which the Court dismissed a suit for declaratory, injunctive, and mandatory relief as to Members, but held that the Clerk, Sergeant at Arms, and Doorkeeper of the House could be held liable for refusal to perform services for a Member-elect who had been excluded from the office by an unconstitutional resolution. In *Stamler* v *Willis,* 415 F2d 1365 (7th Cir. 1969), cert. den. 399 U.S. 929 (1970),[12] a suit against members of a House committee, a lower federal court on its own motion granted plaintiffs leave to amend their complaint to include committee personnel to

Compare § 23.6, infra, for an instance in which the House by resolution authorized the Speaker to appoint and fix the compensation of special counsel to represent officers, Members, and the House in *Powell* v *McCormack.*

7. See §§ 23.7–23.9, infra, for precedents relating to receiving subpenas and notifying the Speaker.

8. Rule XXXVII, *House Rules and Manual* § 933 (1973).

9. See 2 Hinds' Precedents § 1611, for a discussion of *Kilbourn* v *Thompson.*

10. See § 23.10, infra.

Collateral reference: *Dombrowski* v *Eastland* Id—A Political Compromise and Its Impact. 22 Rutgers Law Review 1.27 (Fall 1967).

11. See § 23.11, infra.

12. See § 23.12, infra.

ensure that adequate relief could be obtained. At the same time, the Court dismissed the action as to the Members on the ground that their activities were protected by the Speech or Debate Clause.

The practice of recognizing greater immunity for Members than their agents was modified in *Gravel* v *United States*, 408 U.S. 606 (1972),[13] a criminal action which arose when an aide to the Senator who publicized the contents of the Pentagon Papers refused to respond to a subpena to appear before a grand jury and answer questions relating to assistance given by him to the Senator. Intervening to quash the subpena, the Senator contended that requiring the aide to testify about such assistance would violate the Senator's privilege under the Speech or Debate Clause. Adopting the position of the Senate, which filed a friend of the court brief and argued the cause, the Supreme Court held that the legislative process is such as to make the work of an aide so critical that he must be treated as a Member's alter ego to avoid frustration of the central purpose of the constitutional immunity. The Court ruled that "the Speech or Debate Clause applies not only to a Member, but also to his aides insofar as the conduct of the latter would be protected if performed by the Member himself." One year later the Court extended the Speech or Debate Clause immunity, granted to aides of individual Members in Gravel, to committee employees. See *Doe* v *McMillan*, 412 U.S. 306 (1973).[14]

Receipt of Summons

§ 23.1 When the Clerk receives a summons to appear as a party defendant in a court action, he informs the Speaker who lays the matter before the House.[15]

For example, on Oct. 24, 1967,[16] the Speaker, John W.

13. See § 23.13. infra.

14. See § 23.14, infra.

Collateral reference: *Constitution of the United States of America: Analysis and Interpretation*, "Privilege of Speech or Debate, Congressional Employees," pp. 120–22, S. Doc. No. 92–82, 92d Cong. 2d Sess.

15. See, for example, 113 CONG. REC. 6035, 6036, 90th Cong. 1st Sess., Mar. 9, 1967 (Clerk's receipt of summons in *Powell* v *McCormack);* 113 CONG. REC. 29821, 90th Cong. 1st Sess., Oct. 24, 1967 (receipt of summons in *Wilkinson* v *United States and Clerk of the House of Representatives);* 117 CONG. REC. 1503, 1504, 92d Cong. 1st Sess., Feb. 3, 1971 (receipt of summons in *Eckert* v *House of Representatives).*

16. 113 CONG. REC. 29821, 90th Cong. 1st Sess.

McCormack, of Massachusetts, laid before the House the following communication from the Clerk:

OCTOBER 19, 1967.

Re civil action file No. 2643–1967.
The Honorable the SPEAKER, HOUSE OF REPRESENTATIVES.

DEAR SIR: By this letter I am transmitting to you a summons in a civil action directed against the United States of America and the Clerk of the House of Representatives of the Congress of the United States.[17] I was served with this petition on the 17th of October by a Deputy United States Marshal. In addition to notifying you of this action in accordance with 2 U.S. Code 118 a copy of this summons is being forwarded to the U.S. District Attorney for the District of Columbia. In accordance with the provisions of this statute I am requesting the U.S. District Attorney to enter an appearance, file an answer and defend this civil action. Additionally I am notifying the Attorney General of the United States that this suit has been filed against me in my official capacity as Clerk of the House of Representatives of the Congress of the United States. Copies of these letters and notification are attached hereto.

This summons is attached and the matter is presented for such action as the House in its wisdom may see fit to take.

Respectfully submitted.

W. PAT JENNINGS,
Clerk,
U.S. House of Representatives.

THE SPEAKER: Without objection, the summons and pleadings will be printed in the Record.

There was no objection.

§ 23.2 When the Sergeant at Arms receives a summons to appear as a party defendant in a court action, he informs the Speaker who lays the matter before the House.

For example, on June 6, 1963,[18] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following communication from the Sergeant at Arms:

JUNE 6, 1963.

Hon. JOHN W. MCCORMACK,
Speaker, U.S. House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: I have in my official capacity as Sergeant at Arms of the House of Representatives been served in a civil action in the U.S. District Court for the District of Columbia (civil action file No. 137163).[19] Having in mind that the privileges of the House of Representatives may be involved, I am bringing this matter to your attention.

I did, on June 5, 1963, address letter to the Honorable David C. Acheson, U. S. attorney for the District

17. The suit referred to in the letter, Wilkinson v *United States of America et al.,* Civil Action File No. 26431967, sought statutory death benefits for the daughter of a deceased House employee.

18. 109 CONG. REC. 10359, 88th Cong. 1st Sess.

19. *Parliamentarian's Note:* The civil action referred to above alleged the failure of the Sergeant at Arms to withhold the salary of a Member (Adam C. Powell [N.Y.]) for periods of alleged absence from the House. It was dismissed with prejudice.

of Columbia, requesting assignment of counsel to represent the Sergeant at Arms as provided for in 2 United States Code 118. A copy of that letter is attached hereto.

Sincerely,

ZEAKE W. JOHNSON, JR.,
Sergeant at Arms.

Legal Representation

§ 23.3 When named as a party defendant in a legal action involving performance of official duties, the Clerk has requested representation from the United States Attorney for the district in which the action was brought.

A statute[20] provides that any officer of either House may request legal representation in any action involving the discharge of official duties. A representative illustration of one of these requests, a letter to the United States Attorney for the district in which the action was brought, was laid before the House by the Speaker, John W. McCormack, of Massachusetts, on Oct. 24, 1967:[1]

OCTOBER 19, 1967.

Re civil action file No. 2643–1967.
Hon. DAVID G. BRESS,
U.S. Attorney for the District of Columbia,
U.S. Courthouse, Washington, D.C.

DEAR MR. BRESS: I am sending you a copy of a summons in a civil action that was served on me in my official capacity as Clerk of the House of Representatives of the Congress of the United States. This service was accomplished on October 17 by a Deputy U.S. Marshal.

In accordance with 2 U.S. Code 118 I respectfully request that you enter an appearance, file an answer or take such other action as you may deem necessary in defense of this suit against the United States of America and the Clerk of the U.S. House of Representatives of the Congress of the United States.

This office will assist you in any way possible in preparation of your answer and defense. If you have any questions regarding this matter or if you need additional information please contact my legal advisor, Mr. Bill Hollowell.

Respectfully submitted.

W. PAT JENNINGS,
Clerk,
U.S. House of Representatives.

§ 23.4 In addition to informing the United States Attorney for the district in which the action was brought, an officer named as a party defendant sometimes notifies the Attorney General, although this latter notification is not required by statute.

For example, on Oct. 24, 1967,[2] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following letter from the Clerk:

20. 2 USC § 118.

1. 113 CONG. REC. 29821, 90th Cong. 1st Sess.

2. 113 CONG. REC. 29821, 90th Cong. 1st Sess.

OCTOBER 19, 1967.

Re civil action file No. 2643–1967.

Hon. RAMSEY CLARK,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. CLARK: I am sending you a copy of a summons in a civil action filed against the United States of America and the Clerk of the House of Representatives of the Congress of the United States. I was served with this summons on October 17 by a Deputy U.S. Marshal.

In accordance with 2 U.S. Code 118 I have sent a copy of this action to the U.S. District Attorney for the District of Columbia requesting that he enter an appearance and defend this action. Realizing that the defense of this action will be conducted under the supervision and direction of the Attorney General I am also sending you a copy of the summons as well as a copy of the letter that I am forwarding to the U.S. District Attorney.

Respectfully submitted.

W. PAT JENNINGS,
Clerk,
U.S. House of Representatives.

§ 23.5 The Sergeant at Arms has requested representation of the United States Attorney for the district where the action was brought in a lawsuit involving his official duties.

For example, on June 6, 1963,[3] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following communication requesting representation from the United States Attorney pursuant to 2 USC § 118:

JUNE 6, 1963.

Hon. DAVID C. ACHESON,
U.S. Attorney for the District of Columbia, U.S. Courthouse, Washington, D.C.

DEAR MR. ACHESON: I respectfully request that you assign counsel to represent the Sergeant at Arms of the House of Representatives, Zeake W. Johnson, Jr., in a civil action in the U.S. District Court for the District of Columbia (civil action file No. 1371–63) pursuant to 2 United States Code 118. I was served in my official capacity, on June 4, 1963, with instructions to answer the complaint within 60 days after service.

I am enclosing herewith a copy of the summons which was served on me. I may add that I will be available at any time to confer with any counsel that you may assign to this case.

Very truly yours,

ZEAKE W. JOHNSON, JR.,
Sergeant at Arms.

§ 23.6 In an action where both Members and officers were named as defendants, the House authorized the Speaker to appoint special counsel to represent both groups.

Although House officers by statute[4] may request representation by the United States Attorney in any action involving the discharge of their official duties, they did

3. 109 CONG. REC. 10359, 88th Cong. 1st Sess.

4. 2 USC § 118.

See § 23.3, supra, for a discussion of the procedure for requesting representation by the United States Attorney.

not exercise this authority in *Powell* v *McCormack,* 395 U.S. 606 (1967), a suit where both officers and Members were named as defendants. Instead, they were represented by special counsel appointed by the Speaker and paid out of the contingent fund.[5]

Thus, on Mar. 9, 1967, in the 90th Congress,[6] Mr. Hale Boggs, of Louisiana, offered and the House adopted House Resolution 376. The proceedings were as follows:

> MR. BOGGS: Mr. Speaker, I rise to a question of the privilege of the House, and offer a resolution (H. Res. 376) which I send to the Clerk's desk.
>
> THE SPEAKER [John W. McCormack, of Massachusetts]: The gentleman submits a resolution relating to the privilege of the House, which the Clerk will report.
>
> The Clerk read as follows:
>
> H. RES. 376
>
> Whereas Adam Clayton Powell, Jr., et al., on March 8, 1967, filed a suit in the United States District Court for the District of Columbia, naming as defendants certain Members and officers of the House of Representatives, and contesting certain actions of the House of Representatives; and
>
> Whereas this suit raises questions concerning the rights and privileges of the House of Representatives, the separation of powers between the legislative and judicial branches of the Government and fundamental constitutional issues: Now, therefore, be it
>
> *Resolved,* That the Speaker of the House of Representatives of the United States is hereby authorized to appoint and fix the compensation of such special counsel as he may deem necessary to represent the House of Representatives, its Members and officers named as defendants, in the suit filed by Adam Clayton Powell, Jr., et al. in the United States District Court for the District of Columbia, as well as in any similar or related proceeding brought in any court of the United States; and be it further
>
> *Resolved,* That any expenses incurred pursuant to these resolutions, including the compensation of such special counsel and any costs incurred thereby, shall be paid from the contingent fund of the House on vouchers authorized and signed by the Speaker of the House of Representatives and approved by the Committee on House Administration; and be it further
>
> *Resolved,* That the Clerk of the House of Representatives transmit a copy of these resolutions to the aforementioned court and to any other court in which related legal proceedings may be brought.

The resolution was agreed to. And on Feb. 17, 1969, in the 91st Congress[7] it was continued in ef-

5. See 2 Hinds' Precedents § 1611, n. 1, for references to other instances in which the House by resolution authorized an officer (the Sergeant at Arms) to retain counsel in a legal action (*Kilbourn* v *Thompson,* 103 U.S. 168 [1881]). These resolutions were passed prior to passage of 2 USC § 118.

6. See 113 CONG. REC. 6040 et seq., 90th Cong. 1st Sess.

7. 116 CONG. REC. 3359, 91st Cong. 1st Sess.

fect when a Member, Carl Albert, of Oklahoma, offered and the House-adopted the resolution (H. Res. 243) below.:

> MR. ALBERT: Mr. Speaker, I offer a privileged resolution (H. Res. 243) and ask for its immediate consideration.
>
> The Clerk read the resolution as follows:
>
> H. RES. 243
>
> *Resolved,* That the provisions of House Resolution 376, Ninetieth Congress, are hereby continued in effect during the Ninety-first Congress; and be it further
>
> *Resolved,* That the Clerk of the House of Representatives transmit a copy of this resolution to the Supreme Court of the United States and to any other court in which related legal proceedings may be pending or brought.

Receipt of Subpena

§ 23.7 When the Sergeant at Arms receives a subpena, he informs the Speaker who lays the matter before the House.

In his capacity as custodian of Members' bank accounts, payroll and other information pertaining to Members,[8] the Sergeant at Arms sometimes receives subpenas to appear before or present documents to grand juries and courts. Upon receipt of a subpena, he sends a copy of it with a covering letter to the Speaker who lays them before the House,[9] which then considers whether a response to the subpena should be authorized.[10]

8. See summary of § 19, supra, for discussion of duties of the Sergeant at Arms.

9. See for example, 99 CONG. REC. 5523, 5524, 83d Cong. 1st Sess., May 25, 1953 (notice of a subpena duces tecum to appear before a grand jury empaneled to investigate possible violations of 18 USC § 1001 by Ernest King Bramblett); 100 CONG REC. 1162, 83d Cong. 2d Sess., Feb. 2, 1954 (notice of a subpena ad testificandum to appear as a witness in *U.S.* v *Ernest King Bramblett* [No. 971–53, criminal docket]); 106 CONG. REC. 4393, 86th Cong. 2d Sess., Mar. 3, 1960 (notice of a subpena ad testificandum to appear as a witness in *U.S.* v *Adam Clayton Powell* [No. 35–208]); 111 CONG. REC. 5284, 5285, 89th Cong. 1st Sess., Mar. 18, 1965 (notice of a subpena duces tecum to appear before a grand jury in *People of the State of New York* v *Adam Clayton Powell);* 111 CONG. REC. 16529, 89th Cong. 1st Sess., July 13, 1965 (notice of a subpena ad testificandum to appear as a witness in *U.S.* v *Ernestine Washington, et al.* [crim. cases U.S. 5379–65 and U.S. 5380–65]); 113 CONG. REC. 17561, 17562, 90th Cong. 1st Sess., June 27, 1967 (notice of a subpena duces tecum to appear before a grand jury in *U.S.* v *In re Possible Violations of 18 USC Sections 201, 287, 371, 641, and 1001* [concerning Adam Clayton Powell]).

10. See Rule XXXVII, *House Rules and Manual* § 933 (1973), which provides

For example, on July 1.3, 1965,[11] the Speaker, John W. McCormack, of Massachusetts, laid before the House the following letter from the Sergeant at Arms, Zeake W. Johnson, Jr., who had received a subpena ad testificandum to appear as a witness in *United States* v *Ernestine Washington, et al.:*

JULY 13, 1965.

DEAR MR. SPEAKER: I have received a subpena from the District of Columbia court of general sessions, criminal division, directing me as Sergeant at Arms of the House of Representatives to appear as witness for the defendants.

The rules and practice of the House of Representatives indicate that the Sergeant at Arms may not, either voluntarily or in obedience to a subpena appear without the consent of the House being first obtained.

The subpena in question is herewith attached and the matter is presented for such action as the House in its wisdom may see fit to take.

Sincerely,

ZEAKE W. JOHNSON, JR.,
Sergeant at Arms.

Mr. Hale Boggs, of Louisiana, offered and the House passed House Resolution 456, authorizing the Sergeant at Arms to appear as a Witness[12]

Similarly, on June 27, 1967,[13], the Speaker, John W. McCormack, of Massachusetts, laid before the House the following letter from the Sergeant at Arms, Zeake W. Johnson, Jr., who had received a subpena duces tecum to appear and produce records before a grand jury empaneled to investigate alleged illegal activities by Adam Clayton Powell in *United States* v *In re Possible Violations of 18 USC Sections 201, 287, 371, 611, and 1001:*

DEAR MR. SPEAKER: From the United States District Court for the District of Columbia, I have received a subpena directing the Sergeant at Arms or authorized representative to appear before the said Court and to bring with him certain records under his jurisdiction.

The rules and practice of the House of Representatives indicate that the Sergeant at Arms may not, either voluntarily or in obedience to a subpena duces tecum, produce such papers without the consent of the House being first obtained. It is further indicated that he may not supply copies of certain of the documents and papers requested without such consent.

The subpena in question is therewith attached and the matter is presented for such action as the House in its wisdom sees fit to take.

Sincerely,

ZEAKE W. JOHNSON, JR.,
Sergearnt at Arms.

Following presentation of this letter, Mr. Carl Albert, of Okla-

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that no document presented to the House shall be withdrawn without its leave.

11. 111 CONG. REC. 16529, 89th Cong. 1st Sess.

12. *Id.*

13. 113 CONG. REC. 17561, 90th Cong. 1st Sess.

homa, offered and the House passed House Resolution 674, authorizing the Sergeant at Arms to appear before the grand jury, but not to take with him original documentary evidence, and to supply certified copies of evidence deemed material and relevant by the court.[14]

§ 23.8 When the Clerk receives a subpena, he informs the Speaker who lays the matter before the House.

As custodian of House files, the Clerk sometimes receives subpenas to appear or present documents before courts and grand juries. He sends a copy: of the subpena with a covering letter to the Speaker who lays the matter before the House,[15] which then con-

14. 113 CONG. REC. 17561, 90th Cong. 1st Sess., June 27, 1967.

15. See for example, 76 CONG. REC. 5581, 72d Cong. 2d Sess., Mar. 3, 1933 (notice of receipt of subpena duces tecum referred to Judiciary Committee); 94 CONG. REC. 2266, 80th Cong. 2d Sess., Mar. 5, 1948 (notice of receipt of subpena duces tecum in *U.S.* v *Marshall*); 94 CONG. REC. 5066, 5067, 80th Cong. 2d Sess., Apr. 29, 1948 (notice of receipt of subpena duces tecum in contempt cases; see also p. 5161, Apr. 30, 1948, for memorandum on Clerk's immunity in responding to a subpena duces tecum); 94 CONG. REC. 5432, 80th Cong. 2d Sess., May 6, 1948 (notice of receipt of a subpena duces tecum in *U.S.* v *Albert Maltz*); 96 CONG. REC. 565, 81st Cong. 2d Sess., Jan. 18, 1950 (notice of receipt of a subpena duces tecum in *U.S.* v *Christoffel*); 96 CONG. REC. 1695, 81st Cong. 2d Sess., Feb. 8, 1950 (notice of receipt of subpena duces tecum for minutes of an executive session of a committee in *U.S.* v *Christoffel;* see also p. 1765, Feb. 13, 1950, for resolution adopted by the Judiciary Committee in response to this subpena duces tecum); 97 CONG. REC. 3403, 3404, 82d Cong. 1st Sess., Apr. 6, 1951 (notices of receipt of subpenas duces tecum in *U.S.* v *Patterson* and *U.S.* v *Kamp*); 97 CONG. REC. 3800, Apr. 12, 1951 (notice of receipt of subpena duces tecum in *U.S.* v *Brehm*); 104 CONG. REC. 7262, 7263, 85th Cong. 2d Sess., Apr. 24, 1958 (notice of receipt of subpena duces tecum from a superior court in North Carolina); 104 CONG. REC. 7636, 85th Cong. 2d Sess., Apr. 29, 1958 (notice of receipt of subpena duces tecum to appear before a grand jury investigating alleged violations of 26 USC § 145(b) by Representative Adam C. Powell [N. Y.]); 113 CONG. REC. 29374, 90th Cong. 1st Sess., Oct. 19, 1967 (notice of receipt of a subpena ad testificandum to appear before a grand jury investigating alleged violations of 18 USC §§ 101, 201, 287, 371, 641, and 1505 by Representative-elect Adam Clayton Powell [N.Y.]); 115 CONG. REC. 80, 81, 91st Cong. 1st Sess., Oct. 29, 1969 (notice of receipt of a subpena duces tecum to produce records required by the Corrupt Practices Act before a grand jury investigating ac-

siders whether it should permit the Clerk to answer the subpena.[16]

For example, on Jan. 16, 1968,[17] the Clerk, W. Pat Jennings, who had received a subpena to appear and present original House records before a federal grand jury empaneled to investigate alleged violations of law by Member-elect Adam Clayton Powell, notified the Speaker, John W. McCormack, of Massachusetts, who laid before the House the following letter:

JANUARY 9, 1968.

The Honorable the SPEAKER,
House of Representatives.

DEAR SIR: On this date I, W. Pat Jennings, Clerk of the United States House of Representatives and the Honorable Zeake W. Johnson, Jr., Sergeant at Arms of the United States House of Representatives were served with subpenas issued under the authority of the United States District Court for the District of Columbia. These subpenas direct that Mr. Johnson and myself, as officers of the United States House of Representatives produce documents, papers and records belonging to the United States House of Representatives. The subpenas were issued in connection with a Grand Jury investigation of possible violations of Title 18 U.S. Code, Sections 201, 287, 371, 641, 1001 and 1505. It is noted that these subpenas command our appearance and production of the House records mentioned therein on Thursday the 18th of January 1968 at 10:00 a.m. The subpenas themselves outline the House records that we were requested to produce.

The rules and practices of the House of Representatives indicate that no official of the House may, either voluntarily or in obedience to a subpena duces tecum, produce such papers without the consent of the House being first obtained.

The subpenas in question are herewith attached, and this matter is presented for such action as the House may deem appropriate.

Sincerely yours,

W. PAT JENNINGS,
Clerk, U.S. House of Representatives.

Following presentation of this letter, Mr. Hale Boggs, of Louisiana, offered and the House passed House Resolution 1022, authorizing the Clerk and Sergeant at Arms to appear and deliver original House documents to the grand jury.[18]

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tivities of the Seafarer's Political Activities Donations Committee); 117 CONG. REC. 2744, 92d Cong. 1st Sess., Feb. 17, 1971 (notice of receipt of a subpena duces tecum to appear before a general court martial and produce certain executive session testimony taken by a subcommittee in *U.S.* v *Lt. William L. Calley, Jr.*).

16. See Rule XXXVII, *House Rules and Manual* § 933 (1973) which gives the House authority to grant leave to remove paper from House files. Jefferson's Manual, *House Rules and Manual* § 352 (1973) provides that the Clerk should allow no documents to be taken from his custody.

17. 114 CONG. REC. 80, 81, 90th Cong. 2d Sess.

18. 114 CONG. REC. 80, 81, 90th Cong. 2d Sess., Jan. 16, 1968.

§ 23.9 The Doorkeeper reports receipt of a subpena duces tecum to the Speaker, who lays the matter before the House.

On Apr. 13, 1961,[19] the Speaker, Sam Rayburn, of Texas, laid before the House the following communication, which was read by the Clerk:

> OFFICE OF THE DOORKEEPER,
> HOUSE OF REPRESENTATIVES,
> *Washington, D.C., April 13, 1961.*
>
> Hon. SAM RAYBURN,
> *U.S. House of Representatives,*
> Washington, D.C.
>
> DEAR SIR: As Doorkeeper of the House of Representatives, I have received a subpena from the U.S. District Court for the District of Columbia to appear regarding the case of Claude Anderson Taylor (criminal case No. 965–60).
>
> The subpena directed me to appear before said court as a witness in the case and to bring with me certain and sundry papers therein described in the House of Representatives.
>
> Since the development of this case has extended into the 87th Congress, and it is well recognized that each House controls its own papers, this matter is presented for such action as the House, in its wisdom, may see fit to take.
>
> Respectfully yours,
> WM. M. MILLER,
> *Doorkeeper, House of Representatives.*

Mr. John W. McCormack, of Massachusetts, offered and the House passed House Resolution 256 authorizing the Doorkeeper to appear before the court but not take with him any papers or documents on file in his office or under his control or in possession or control of the House of Representatives, except those documents which the court determines to be material and relevant.[20]

Immunities of Officers and Employees; Dombrowski v *Eastlard*

§ 23.10 The Speech or Debate Clause of the U.S. Constitution (art. I, § 6) does not immunize a committee counsel from civil liability for tortious conduct, and such an action will not be dismissed when there is substantial testimony regarding his alleged participation in unconstitutional activity.

In *Dombrowski* v *Eastland,* 387 U.S. 82 (1967), a suit alleging that the Chairman and Counsel of the Subcommittee on Internal Security of the Senate Judiciary Committee tortiously participated in a conspiracy to seize petitioners' property and records in violation of the fourth amendment, the Supreme Court dismissed the action as to the Chairman, but remanded

19. 107 CONG. REC. 5851, 87th Cong. 1st Sess.

20. 107 CONG. REC. 5852, 87th Cong. 1st Sess., Apr. 13, 1961.

it for a finding of facts of alleged illegal activity by the Counsel. A significant consideration was the Court's interpretation of the state of the law at that time, that immunity under the Speech or Debate Clause was "less absolute, although applicable, when applied to officers or employees, rather than to legislators themselves," and that, when applied to a legislator, the clause "deserves greater respect than where an official acting on behalf of the legislator is sued."

The Court also noted that the record showed no involvement by the Chairman "in any activity that could result in liability," whereas it revealed "controverted evidence . . . which afford[ed] more than merely colorable substance to petitioners assertions . . . sufficient to entitle petitioners to go to trial" as to the Counsel.[1]

Powell v *McCormack*

§ 23.11 An officer who executes an order pursuant to a House resolution held to be unconstitutional is not immune from suit.

In *Powell* v *McCormack*, 395 U.S. 486 (1969),[2] a civil action for declaratory and injunctive relief, the Clerk, Sergeant at Arms, and Doorkeeper of the House, along with several Members, were sued individually and in their Representative capacities for executing House Resolution 278, which denied administration of the oath to the plaintiff, Adam C. Powell, a Member-elect from New York, in the 90th Congress.[3]

The complaint in *Powell* alleged as actionable the Clerk's threat to refuse to perform for the plaintiff those services to which a duly elected Member was entitled, the Sergeant at Arms' refusal and threat to continue to refuse to pay salary and other moneys to which a duly elected Member was entitled, and the Doorkeeper's refusal and threat to continue to refuse to admit the plaintiff to the Hall of the House.[4] The complaint ex-

1. *Dombrowski* v *Eastland*, 387 U.S. 82, 84 (1967).
2. See 115 CONG. REC. 17326–42, 91st Cong. 1st Sess., June 25, 1969, for full text of the Court's opinion. See also 113 CONG. REC. 8729–62, 90th Cong. 1st Sess., Apr. 10, 1967, for memoranda of counsel.
3. See 113 CONG. REC. 4997 et seq., 90th Cong. 1st Sess., Mar. 1, 1967, for the text of H. Res. 278 providing for imposition of a fine, and for the text of amendment providing for exclusion of Mr. Powell.
4. *Powell* v *McCormack*, 395 U.S. 486, 493 (1969). The resolution of exclusion [H. Res. 278], appearing in 113 CONG. REC. 6036–39, 90th Cong. 1st Sess., Mar. 9, 1967, neither expressly ordered the officers to refuse

pressly stated that these refusals by the respective officers were made "under color of the authority and mandate of House Resolution 278." The Supreme Court dismissed the action against the Members without determining whether they would be immune,[5] and held that the naming of the House officers provided a sufficient basis for judicial review.[6]

In finding that Congress was not authorized to exclude a Member-elect who met the constitutional qualifications of age, inhabitancy, and citizenship, a finding which rendered unconstitutional House Resolution 278 of the 90th Congress, the Court held, "That House employees are acting pursuant to express orders of the House does not bar judicial review . . ."[7] and ". . . petitioners are entitled to maintain their action against House employees and to judicial review of the propriety of the decision to exclude petitioner Powell.[8] The Court also indicated that Powell could sue the Sergeant at Arms to determine entitlement to mandatory relief for salary withheld pursuant to an unconstitutional House resolution.[9]

In reaching these conclusions, the Court relied on *Kilburn* v *Thompson,* 103 U.S. 168 (1881),[10] which allowed a contumacious witness, Hallet Kilbourn, to bring an action for false imprisonment against John G. Thompson, the Sergeant at Arms of the House, who had executed the warrant for Kilbourn's arrest pursuant to a House resolution which the Court found to be an unconstitutional exercise of a judicial function by a legislative body. In *Kilboun,* the Court first articulated the doctrine that, although an action against a Congressman may be barred by the Speech or Debate Clause, legislative employees who participate in an unconstitutional activity are responsible for their

to pay or perform services for Powell nor provided that he should no longer be entitled to the salary and perquisites of office. Nonetheless, these refusals were implied because the resolution excluded him from membership in the 90th Congress.

5. See Chs. 7 and 12, infra, for discussion of this case as it relates to Members.

6. See *Powell* v *McCormack,* 395 U.S. 486, 506 (1969).

7. *Powell* v *McCormack,* 395 U.S. 486, 504 (1969).

8. *Powell* v *McCormack,* 395 U.S. 486, 506 (1969).

9. *Powell* v *McCormack,* 395 U.S. 486, 500, n. 16 (1969).

10. See 2 Hinds' Precedents § 1612, for a discussion of *Kilbourn.*

acts.[11] Kilbourn eventually recovered $20,000.[12]

The Court in *Powell* concluded that the factual situation did not fall within the scope of the Speech or Debate Clause, the purpose of which is ". . . to insure that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions.[13]

11. See *Powell* v *McCormack,* 395 U.S. 486, 504, 505 (1969), stating that, in *Kilbourn,*" the Sergeant at Arms was held liable for false imprisonment even though he did nothing more than execute the House Resolution that Kilbourn be arrested and imprisoned."

12. *Kilbourn* v *Thompson,* 11 McArth. & M. 401, 432 (Sup. Ct. D.C. 1883). The 48th Congress appropriated $20,000 to pay Kilbourn directly for the judgment against Thompson (see 23 Stat. 467, Mar. 3, 1885).

13. "A legislator is no more or no less hindered or distracted by litigation against a legislative employee calling into question the employee's affirmative action than he would be by the employee's failure to act. Nor is the distraction or hindrance increased because the litigation questions action taken by the employee within rather than without the House. Freedom of legislative activity and the purposes of the Speech or Debate Clause are fully protected if legislators are relieved of the burden of defending themselves." *Powell* v *McCormack,* 395 U.S. 486, 505 (1969).

Stamler v *Willis*

§ 23.12 Leave to join legislative employees as additional parties defendant may be granted following the dismissal, under the Speech or Debate Clause, of an action against various Members and officials to declare unconstitutional a House rule and to enjoin enforcement of a committee contempt citation.

In *Stamler* v *Willis,* 415 F2d 1365 (7th Cir. 1969); cert. den. 399 U.S. 929 (1970),[14] persons who were being prosecuted for contempt of Congress filed suit to declare Rule XI of the House rules violative of the first amendment and to enjoin enforcement of the contempt citation of the Committee on UnAmerican Activities. The named defendants were certain Members of the House, and two prosecuting officials, the Attorney General of the United States and the United States Attorney for the Northern District of Illinois. The district court dismissed the complaint under the Speech or Debate Clause as to the Members and, without considering

14. See also 287 F Supp 734 (N.D. Ill., 1968) for the district court opinion which dismissed the action under the Speech or Debate Clause as to Members of Congress.

whether this immunity applied to executive officials, held that the action against the Attorney General and United States Attorney, being "ancillary to the claims against the Congressional defendants," must also be dismissed.[15]

On appeal, the circuit court affirmed the dismissal of the complaint as to the Members of Congress, but reversed the dismissal as to the prosecuting officials, holding that they would have to defend their actions in court. In addition, the court on its own motion granted leave to amend the complaint to add additional parties defendant, such as committee officials, ". . . for the sole purpose of making effective relief possible in this declaratory and injunctive action." The court offered this opportunity to the plaintiffs, if they desired to use it, because:

> . . . [I]n view of our decision to dismiss the Congressional defendants from this action, it may develop that complete relief cannot be accorded plaintiffs in the event that they are successful on the merits unless the appropriate agents of the House committee are served and joined as defendants below.[16]

Gravel v *United States*

§ 23.13 The Supreme Court has extended the immunity arising under the Speech or Debate Clause to aides to legislators for actions committed in performance of duties that are within the sphere of legitimate legislative activity.

In *Gravel* v *United States,* 408 U.S. 606 (1972), which arose out of a grand jury investigation of possible criminal conduct in the release and publication of the so called Pentagon Papers, the Supreme Court held, ". . . the Speech or Debate Clause applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself."[17] The Court adopted the view argued by the Senate that the day-to-day work of aides and assistants in the modern legislative process is so critical that they must be treated as the legislator's alter ego; failure to recognize them as such would diminish and frustrate the purpose of the Speech or Debate Clause—to prevent intimidation of legislators by the other branches of government.[18] Rejecting the

15. *Stamler* v *Willis,* 287 F Supp 734, 739 (N.D. Ill., 1968).

16. *Stamler* v *Willis,* 415 F2d 1365, 1368 (7th Cir. 1969); cert. den. 399 U.S. 929 (1970).

17. *Gravel* v *United States,* 408 U.S. 606, 618 (1972). See Ch. 7, infra, for further discussion of *Gravel.*

18. *Id.* at pp. 616, 617. The position of the Senate was presented in its amicus curiae brief, which is reprinted in full in "Constitutional Immunity

government's contention that this holding was foreclosed by *Kilbourn* v *Thompson,* 103 U.S. 168 (1881), *Dombrowski* v *Eastland,* 387 U.S. 82 (1967), and *Powell* v *McCormack,* 395 U.S. 486 (1969), the Court observed, "Those cases do not hold that persons other than Members of Congress are beyond the protection of the [Speech or Debate] Clause when they perform or aid in the performance of legislative acts." (19)

The immunity of an aide is viewed in *Gravel* as a privilege which the legislator may repudiate or waive; it is invocable by the aide only on behalf of the legislator and is confined to those services that would be protected if performed by the legislator himself.(20) The Speech or Debate Clause does not protect criminal conduct which threatens the security of the person or property of others, nor immunize a legislator or aide from testifying at trials or grand jury proceedings involving third-party crimes where the questions do not require testimony about a legislative act.(1) Furthermore, not all activities performed by a legislator and his aides are entitled to protection. The immunity may be invoked only as to matters that are an integral part of the legislative process.(2)

of Members of Congress," Hearings Before the Joint Committee on Congressional Operations, 93d Cong. 1st Sess., pp. 94–117. Senators Sam J. Ervin, Jr. (N.C.) and William B. Saxbe, (Ohio) personally advocated the cause for the Senate by special leave of the Supreme Court.

19. *Gravel* v *United States,* 408 U.S. 618 (1972).

20. *Gravel* v *United States,* 408 U.S. 606, 621, 622 (1972).

1. *Id.* at pp. 622, 626, the Court saying: ". . . Article I, § 6, cl. 1 [the Speech or Debate Clause], as we have emphasized, does not purport to confer a general exemption upon Members of Congress from liability or process in criminal cases. While the Speech or Debate Clause recognizes speech, voting, and other legislative acts as exempt from liability that might otherwise attach, it does not privilege either Senator or aide to violate an otherwise valid criminal law in preparing for or implementing legislative acts.".

See also *Kilbourn* v *Thompson,* 103 U.S. 168 (1881), which held that an arrest by the Sergeant at Arms pursuant to a House order found to be unconstitutional was subject to judicial review.

2. "The heart of the clause," said the Court in *Gravel,* is "speech or debate in either House, and insofar as the clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the con-

Doe v *McMillan*

§ 23.14 Immunity arising under the Speech or Debate Clause has been extended to committee staff personnel for conduct held to be within the sphere of legitimate legislative activity.

In *Doe* v *McMillan*, 412 U.S. 306 (1973), the parents of District of Columbia school children, under pseudonyms, sought damages and declaratory and injunctive relief for invasion of privacy which allegedly resulted from dissemination of a report of the Special Subcommittee of the Committee on the District of Columbia on the D.C. school system,[3] which identified students by name in derogatory contexts. Named as defendants were, among others, the Chairman of the House District Committee,[4] plus its members, clerk, staff director, and counsel, as well as a consultant to that committee; the Superintendent of Documents and the Public Printer (officials of the Government Printing Office); officials and employees of the D.C. school system; and the United States.

The U.S. Supreme Court held that the congressional committee members, staff officials, and the investigator and consultant were absolutely immune under the

sideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House." In their dissents, Mr. Justice Brennan stated and Mr. Justice Douglas implied that the majority also excluded from the protected sphere of legislative activities the "informing function" defined in *Watkins* v *United States*, 354 U.S. 178, 200 (1957) as "the power of Congress to inquire into and publicize corruption, maladministration or inefficiency in agencies of the Government." The basis of their belief was the majority's holding that Gravel's alleged arrangement for a private publication of the Pentagon Papers was not shielded from inquiry. *Gravel* v *United States*, 408 U.S. 606, 649 (1972).

3. This report, H. Rept. No. 91–1681 (1971), which was submitted to the Speaker of the House on Dec. 8, 1970, was authorized by H. Res. 76 (see 115 CONG. REC. 2784, 91st Cong. 1st Sess., Feb. 5, 1969), and was referred to the Committee of the Whole House on the state of the Union and ordered printed (see 116 CONG. REC. 40311, 91st Cong. 1st Sess., Dec. 8, 1970). It was subsequently published and distributed by the Government Printing Office pursuant to 44 USC §§501 and 701. *Doe* v *McMillan*, 412 U.S. 306, 307–30X (1973).

4. Named in the caption of the case is John L. McMillan (S.C.), who was Chairman of the House District Committee at the time this suit was filed and decided.

Speech or Debate Clause.[5] The Court ruled that authorizing an investigation and holding hearings to gather information, preparing a report which contains the information, and authorizing the report's publication and distribution, because they are integral parts of the deliberative and communicative processes by which Members participate in the consideration of proposed legislation, are protected by the Speech or Debate Clause, even though potentially libelous information may be involved. In reaching this decision, the Court followed *Gravel* v *United States*, 408 U.S. 606, 618 (1972), which held that "the Speech or Debate Clause applies not only to a Member but also to his aides insofar as the conduct of the latter would be a protected legislative act if performed by the Member himself.[6]

Focusing on the applicability of Speech or Debate Clause immunity to the officials who disseminated the report—the Superintendent of Documents and the Public Printer—the Court in *Doe*

5. See *Doe* v *McMillan*, 412 U.S. 306, 312 (1973): ". . . [I]t is plain to us that the complaint in this case was barred by the Speech or Debate Clause insofar as it sought relief from the Congressmen-Committee Members, from the committee staff, from the consultant, or from the investigator, for introducing material to the Speaker of the House, and for voting for publication of the report. Doubtless, also, a published report may, without losing Speech or Debate Clause protection, be distributed to and used for legislative purposes by Members of Congress, congressional committees and institutional or individual legislative functionaries. At least in these respects, the actions upon which petitioners sought to predicate liability were legislative acts, *Gravel* v *United States*, supra, [408 U.S. 606], at p. 618 [1972], and, as such, were immune from suit."

6. The Court in *Doe* v *McMillan* applied Speech or Debate Clause immunity to committee officials and employees, citing *Gravel* as precedent. *Gravel*, however, dealt only with the immunity of an aide to an individual legislator. The applicability of a Member's immunity to persons other than personal aides was not even discussed in *Gravel* by way of dicta; in fact, the Court expressly disclaimed the need to discuss "issues which may arise when Congress or either House, as distinguished from a single Member, orders the publication and/or public distribution of committee hearings, reports or other materials." (*Gravel*, supra, at 626, n. 16). The extension of the *Gravel* holding to committee staff members supports the inference that the Court in a future case which raises the issue would apply Speech or Debate Clause immunity to officers of the House insofar as they act within the sphere of legitimate legislative activity.

v *McMillan* framed the issue as whether informing the public "simply because authorized by Congress, must always be considered 'an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings' [citing *Gravel*] with respect to legislative and other matters before the House." This question was answered in the negative. Observing that republication of a libel, even where the initial publication is privileged, is generally not protected, the Court in *Doe* v *McMillan* held that "the Superintendent of Documents or the Public Printer or legislative personnel, who participate in distribution of actionable material beyond the reasonable bounds of the legislative task, enjoy no Speech or Debate Clause immunity."

The Court in *Doe* v *McMillan* limited the scope of its holding by saying that the Speech or Debate Clause immunity does not protect those who, at the direction of Congress or otherwise, distribute actionable material to the public at large beyond the Halls of Congress and its functionaries, and beyond the apparent needs of the due functioning of the legislative process.[7] With respect to the dismissal of the suit as to committee members and personnel, the Court pointed out they had not acted outside the sphere of legitimate legislative activity.

> It does not expressly appear from the complaint, nor is it contended in this Court, that either the Members of Congress or the Committee personnel did anything more than conduct the hearings, prepare the report, and authorize its publication.[8]

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7. The Court noted that it did not decide whether or under what circumstances the clause would immunize distributors of allegedly actionable materials from grand jury questioning, criminal charges, or a suit by the executive to restrain distribution, where Congress has authorized the particular public distribution.

8. *Doe* v *McMillan* at p. 317. Presumably, an allegation that the Members or committee personnel had participated in the public dissemination of actionable material would have caused a different result.

EMPLOYMENT

§ 24. In General

Various House rules and statutes govern the activities and status of persons employed by the House.[9] Jurisdiction over the employment of persons by the House is by rule granted to the Committee on House Administration.[10]

Those rules setting forth standards of official conduct for the Members[11] are also applicable to House employees. Additionally, those who are "principle assistants" to Members and officers are subject to the financial disclosure requirements which the House by rule has established.[12]

Certain categories of employment in the House are established by statute.[13] The qualifications of employment applicants are determined by the House officer under whose supervision they will serve, and each officer is authorized to remove or otherwise discipline such employees.[14]

Once hired, House employees must be assigned to the positions for which they were appointed.[15] Moreover, the practice of dividing House employees' salaries[16] or subletting their duties[17] have been prohibited by statute.[18]

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9. For example, pursuant to Rule XLI, *House Rules and Manual* § 937 (1973) no person who is an agent for the prosecution of any claim against the government, or who is interested in such claim other than as an original claimant, may continue as an employee of the House.

The U.S. Code sets forth rules concerning the service of its employees as jurors or witnesses during certain judicial proceedings. 2 USC § 130b.

10. Rule XI clause 9(c), *House Rules and Manual* § 693 (1973).

11. Rule XLIII clauses 1–5, *House Rules and Manual* § 939 (1973).

12. Rule XLIV, *House Rules and Manual* § 940 (1973). See 115 CONG. REC. 10040, 91st Cong. 1st Sess., Apr. 23, 1969, for the announcement made to the House by the Chairman of the Committee on Standards of Official Conduct concerning the closing date for filing financial disclosure reports with the committee as required by Rule XLIV.

13. For examples of House employee positions created by statute see: 2 USCA § 74–2(a)(b), messengers in office of the Speaker; 2 USCA § 74a, administrative assistants for the Speaker and Majority and Minority Leaders; 2 USCA § 76a, special assistant in the office of the Doorkeeper; and 2 USCA § 123b(f), Director and employees for the House Recording Studio.

14. 2 USCA § 60–1 (a).

15. 2 USC § 85.

16. 2 USC § 86.

17. 2 USC §§ 87, 101.

18. 2 USCA § 130d.

Other statutory provisions sanction the withholding from House employees of amounts due them if an indebtedness of an employee to the House remains unsatisfied.[19]

§ 25. Creating Positions

Temporary Employees

§ 25.1 The frequent employment of personnel for brief periods places an undue strain on the accounting procedures of the House; and it is the announced policy of the Committee on House Administration to discourage the temporary employment of personnel for periods of less than a month.

On Oct. 19, 1966,[20] Wayne L. Hays, of Ohio, Chairman of the Committee on House Administration, delivered the following remarks to the House:

> Mr. Speaker, I have an announcement which I think will be of general interest to all Members and of special interest to some:
>
> Today the House Committee on Administration passed unanimously a motion ordering and directing the chairman to notify all Members that, as of the 15th of November, any employee put on a Member's payroll, or a committee payroll, shall not be put on for a period of less than 1 month, except that, if the person put on does not work out and they desire to terminate his employment in less than a month, he may not reappear on the Member's payroll for a period of 6 months.
>
> Mr. Speaker, this is done to prevent what has happened to excess in some committees, and I must say in some Members' offices of having people on the payroll for a day or two at a time.
>
> This has caused an impossible situation in the Clerk's office with regard to writing payroll checks. . . .

Assistants to House Officials

§ 25.2 Positions for assistants to House officials are created by resolution.

On Jan. 26, 1960,[1] Mr. John W. McCormack, of Massachusetts, presented before the House the following privileged resolution:

> HOUSE RESOLUTION 429
>
> *Resolved by the House of Representatives,* That, effective February 1, 1960, there shall be paid out of the contingent fund of the House, until otherwise provided by law, compensation for the employment of an Assistant Superintendent in the House Periodical

19. 2 USCA § 89a.

20. 112 CONG. REC. 27653, 89th Cong. 2d Sess.

1. 106 CONG. REC. 1323, 86th Cong. 2d Sess. For further examples of resolutions creating positions for assistants to House officials, see 106 CONG. REC. 408, 86th Cong. 2d Sess., Jan. 13, 1960, and 104 CONG. REC. 9758, 85th Cong. 2d Sess., May 28, 1958.

Press Gallery, at the basic salary of $2,580 per annum.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Clerks to House Officers and Officials

§ 25.3 Positions for clerks to House officers and officials are created by resolution.

On Jan. 26, 1966,[2] Mr. John W. McCormack, of Massachusetts, obtained unanimous consent for the consideration of the following resolution:

H. RES. 690

Resolved, That effective February 1, 1966, there shall be paid out of the contingent fund of the House of Representatives, until otherwise provided by law, such sums as may be necessary for:

1. Additional clerical help in the Office of the Majority Leader, not to exceed $3,000 (basic) per annum.

2. (a) An additional position in the Office of the Minority Leader, the basic compensation of which shall be at a rate not to exceed $2,500 per annum.

(b) An additional position in the Office of the Majority Whip, the basic compensation of which shall be at a rate not to exceed $2,500 per annum.

(c) An additional position in the Office of the Minority Whip, the basic compensation of which shall be at a rate not to exceed $2,500 per annum.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Messengers to House Officers and Officials

§ 25.4 Positions for messengers to House officers and officials are created by resolution.

On Apr. 16, 1962,[3] subsequent to the Chair's recognition of Mr. Carl Albert, of Oklahoma, the following proceedings occurred:

Mr. Speaker, I offer a resolution (H. Res. 603) to provide for certain new positions and to increase the compensation of certain employees of the House of Representatives, and ask unanimous consent for its immediate consideration.

THE SPEAKER:[4] Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

The Clerk read the resolution as follows:

Resolved, That (a) there is hereby created in the Office of the Speaker the new position of Messenger the basic compensation of which shall be at the rate of $2,100 per annum, and

(b) There is hereby created in the Office of the Parliamentarian the

2. 112 CONG. REC. 1125, 89th Cong. 2d Sess. For a further example of a House resolution providing for additional clerk-hire see 105 CONG. REC. 559, 86th Cong. 1st Sess., Jan. 12, 1959.

3. 108 CONG. REC. 6707, 87th Cong. 2d Sess.

4. John W. McCormack (Mass.).

new position of Clerk-Messenger the basic compensation of which shall be at the rate of $3,300 per annum.

Sec. 2. The basic compensation of each of the two positions of Telephone Clerk (one minority) in the Office of the Doorkeeper of the House of Representatives shall be at the rate of $3,000 per annum.

Sec. 3. The additional amounts necessary to carry out the provisions of this resolution shall be paid out of the contingent fund of the House of Representatives until otherwise provided by law.

Sec. 4. This resolution shall take effect May 1, 1962.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 26. Minority Positions

Designation of Minority Employees

§ 26.1 The minority employees of the House are designated by and have their compensations established by House resolution.

On Jan. 3, 1973,[5] Mr. John B. Anderson, of Illinois, offered and asked for the immediate consideration of the following resolution:

H. RES. 7

Resolved, That pursuant to the Legislative Pay Act of 1929, as amended, six minority employees authorized therein shall be the following-named persons, effective January 3, 1973, until otherwise ordered by the House, to-wit: Joe Bartlett and Robert T. Hartmann, to receive gross compensation of $36,000.00 per annum, respectively; William R. Bonsell, to receive gross compensation of $35,886.89 per annum; Tommy Lee Winebrenner, to receive gross compensation of $31,013.37 per annum; Walter P. Kennedy (minority pair clerk), to receive gross compensation of $30,820.35 per annum; and John J. Williams (Staff Director to the Minority), to receive gross compensation of $36,000.00 per annum.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Establishing Position Titles

§ 26.2 Position titles for the minority employees of the House and adjustments in their gross compensation are provided for by resolution.

On June 17, 1969,[6] Mr. Gerald R. Ford, of Michigan, offered and

5. 119 CONG. REC. 27, 93d Cong. 1st Sess. For further illustrations of House resolutions designating minority employees see 115 CONG. REC. 4070, 91st Cong. 1st Sess., Feb. 20, 1969; 115 CONG. REC. 35, 91st Cong. 1st Sess., Jan. 3, 1969; 112 CONG. REC. 28514, 89th Cong. 2d Sess., Oct. 21, 1966; 109 CONG. REC. 11457, 88th Cong. 1st Sess., June 25, 1963; and 108 CONG. REC. 7073, 87th Cong. 2d. Sess., Apr. 19, 1962.

6. 115 CONG. REC. 16196, 91st Cong. 1st Sess.

asked for the immediate consideration of a resolution, as follows:

H. RES. 441

Resolution relating to the positions of certain minority employees in the House of Representatives

Resolved, That, until otherwise provided by law—(1) The six positions of minority employees listed in House Resolution 8, Ninety-first Congress, as supplemented by House Resolution 238, Ninety-first Congress, and House Resolution 265, Ninety-first Congress, are hereby given position titles in the descending order in which those six positions are listed in House Resolution 8 as follows:

(A) the position title of the position listed first is "Floor Assistant to the Minority";

(B) the position title of the position listed second is "Floor Assistant to the Minority";

(C) the position title of the position listed third is "Floor Assistant to the Minority";

(D) the position title of the position listed fourth is "Floor Assistant to the Minority";

(E) the position title of the position listed fifth is "Pair Clerk to the Minority"; and

(F) the position title of the position listed sixth is "Staff Director to the Minority".

(2) Appointments to each position for which a position title is provided by subparagraph (1) of this section shall be made by action of the House of Representatives.

(3) The rate of pay of each position for which a position title is provided by subparagraph (1) of this section shall be a per annum gross rate equal to the annual rate of basic pay of Level V of the Executive Schedule in section 5316 of title 5, United States Code, unless a different rate is provided for such position by action of the House of Representatives.

Sec. 2. (a) The first section of this resolution shall not affect or change the appointments or continuity of employment of those employees who hold such positions on the date of adoption of this resolution.

(b) In accordance with the authority of the House of Representatives under subparagraph (3) of the first section of this resolution, the respective per annum gross rates of pay of those positions for which position titles are provided by clauses (C), (D), (E), and (F) of subparagraph (1) of the first section of this resolution are as follows:

(1) for the position subject to clause (C)—$29,160;

(2) for the position subject to clause (D)—$25,200;

(3) for the position subject to clause (E)—$28,440; and

(4) for the position subject to subparagraph (F)—$28,080.

Sec. 3. This resolution shall become effective as of the beginning of the calendar month in which this resolution is adopted.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 27. Compensation

The compensation of House employees is regulated both by stat-

ute[7] and by resolution. The House by resolution has fixed,[8] increased,[9] or adjusted[10] the compensation of various employees. It has by resolution established salary limits[11] and authorized the transfer of funds to meet employee payrolls.[12] Employee overtime compensation has been provided for by resolution[13] and on occasion the House has adopted resolutions increasing the personnel salary allowances granted to House officers.[14]

Fixing Compensation

§ 27.1 A resolution from the Committee on House Administration fixing the compensation of certain House employees and providing for their payment from the contingent fund is reported and called up as privileged.

On Dec. 1 1970[15] Mr. Joe D. Waggonner, Jr., of Louisiana, at the direction of the Committee on House Administration submitted a privileged report[16] on and asked for the immediate consideration of the following resolution:

H. RES. 1241

Resolved, That (a) until otherwise provided by law and effective the first day of the month which begins on or after the date of adoption of this resolution, the rate of basic compensation of—

7. For examples of statutory provisions related to the compensation of various House employees see: 2 USCA § 72a–2, basic compensation of employees of House and Senate press, periodical, and radio galleries; 2 USCA § 74a, basic compensation for administrative assistants to the Speaker and Majority and Minority Leaders; 2 USCA § 75c, basic compensation for Assistant Tally Clerks, Office of the Clerk of the House; 2 USCA § 7ad, basic compensation for stationery clerks; 2 USCA § 75e, basic compensation for employees of the offices of Clerk, Doorkeeper, and Postmaster; 2 USCA § 76a, basic compensation for Special Assistant, Office of the Doorkeeper; 2 USCA § 76b, basic compensation for Telephone Clerks in the Office of the Doorkeeper; and 2 USCA § 84–3, basic compensation for the Deputy Sergeant at Arms.
8. See § 27.1, infra.
9. See § 27.2, infra.
10. See § 27.3, infra.
11. See § 27.4, infra.
12. See § 27.5, infra.
13. See § 27.6, infra.
14. See § 27.7, infra.
15. 116 CONG. REC. 39341, 91st Cong. 2d Sess. For additional examples of House resolutions fixing the compensation of House employees see 115 CONG. REC. 22545, 22546, 91st Cong. 1st Sess., Aug. 6, 1969; and 112 CONG. REC. 27647, 89th Cong. 2d Sess., Oct. 19, 1966, where the rate of compensation for several House employees was established.
16. H. REPT. NO. 91–1639.

(1) the clerk to the Official Reporters of Debates shall be $6,160 per annum;

(2) the number one assistant clerk to the Official Reporters of Debates shall be $4,505 per annum; and

(3) the number two assistant clerk to the Official Reporters of Debates shall be $4,005 per annum.

(b) Until otherwise provided by law, such amounts as may be necessary to carry out subsection (a) of this resolution shall be paid out of the contingent fund of the House of Representatives.

The resolution was agreed to after brief debate thereon, and a motion to reconsider was laid on the table.

Increasing Compensation

§ 27.2 The House by resolution increased the compensation of the Legislative Counsel of the House to equal that of the Legislative Counsel of the Senate.

On Mar. 31, 1965,[17] Mr. Carl Albert, of Oklahoma, obtained unanimous consent for the consideration of the following resolution:

H. RES. 312

Resolved, That, effective April 1, 1965, the compensation of the Legislative Counsel of the House of Representatives shall be at a gross per annum rate which is equal to the gross per annum rate of compensation of the Legislative Counsel of the Senate. The additional sums necessary to carry out this resolution shall be paid out of the contingent fund of the House until otherwise provided by law.

The resolution was agreed to.

A motion to reconsider was laid on the table

Compensation Adjustments

§ 27.3 A resolution providing for payment from the contingent fund of salary adjustments for certain House employees was reported and called up as privileged by the Committee on House Administration.

On Jan. 27, 1972,[18] Mr. Frank Thompson, Jr., of New Jersey, was recognized to seek consideration of the resolution shown below:

MR. THOMPSON of New Jersey: Mr. Speaker, by direction of the Committee on House Administration, I call up a privileged resolution (H. Res. 741) and ask for its immediate consideration.

17. 111 CONG. REC. 6412, 89th Cong. 1st Sess. For additional examples of House resolutions increasing House employee compensation see 102 CONG. REC. 7362, 84th Cong. 2d Sess., May 2, 1956, where the salary of the official reporters of debates was increased, and 102 CONG. REC. 6966, 84th Cong. 2d Sess., Apr. 25, 1956, where the salary of certain minority employees was increased.

18. 118 CONG. REC. 1531, 92d Cong. 2d Sess.

The Clerk read the resolution as follows:

H. RES. 741

Resolved, That until otherwise provided by law, effective as of January 1, 1972, the per annum gross rate of pay of each employee (except an employee who is an elected officer of the House) whose pay is disbursed by the Clerk of the House and is fixed at a specific rate by House resolution is increased by an amount equal to 5.5 per centum of his per annum gross rate of pay. No rate of pay shall be increased by reason of the adoption of this resolution to an amount in excess of the rate of basic pay of level V of the Executive Schedule contained in section 5316 of title 5, United States Code. The contingent fund of the House is made available to carry out the purposes of this resolution.

THE SPEAKER:[19] The Clerk will report the committee amendment.

The Clerk read as follows:

Committee amendment: On page 1, line 4, immediately following the word "the" strike out the word "House" and insert "House or who is an Official Reporter of Debates or an Official Reporter to Committees.)"

THE SPEAKER: Without objection, the committee amendment is agreed

A reservation of the right to object being heard from Mr. Durward G. Hall, of Missouri, a discussion of the resolution ensued at the conclusion of which Mr. Thompson moved the previous question on the resolution. The previous question was ordered. The resolution was agreed to. A motion to reconsider was laid on the table.

19. John W. McCormack (Mass.).

Fixing Compensation Limits

§ 27.4 The House by resolution permitted the salaries of administrative assistants to House leaders to be increased to the maximum amount authorized under executive level five of the Federal Civil Service.

On Jan. 15, 1968,[20] Mr. Carl Albert, of Oklahoma, obtained unanimous consent for the consideration of a resolution as follows:

H. RES. 1015

Resolved, effective January 1, 1968, there will be payable from the contingent fund of the House of Representatives, until otherwise provided by law, an amount which will permit payment of basic compensation per annum, at a rate not in excess of the highest amount, which, together with additional compensation authorized by law, will not exceed the maximum rate authorized by Level 5 of the Executive schedule by Public Law 90–206, to the administrative assistant of each of the following:

20. 114 CONG. REC. 24, 90th Cong. 2d Sess. See also 111 CONG. REC. 4405, 89th Cong. 1st Sess., Mar. 9, 1965, where the House by resolution raised the gross salary limits for several House employees to the maximum amount permissible under the salary schedule in effect for the legislative branch.

(1) Speaker of the House.
(2) Majority leader of the House.
(3) Minority leader of the House.
(4) Majority whip of the House.
(5) Minority whip of the House.
(6) Each Member of the House who has served as Speaker of the House.
(7) Each Member of the House who has served as majority leader and minority leader of the House.

The resolution was agreed to, and a motion to reconsider was laid on the table.

Transferring Payroll Funds

§ 27.5 By resolution the House has authorized the Clerk and Sergeant at Arms of the House to transfer funds from the balances available to them in several accounts under their administrative control to meet Members' and employee payrolls pending enactment of an appropriation bill carrying funds for that purpose.

On May 28, 1969,[1] Mr. Samuel X. Friedel, of Maryland, submitted a privileged report[2] relating to a resolution providing for the transfer of certain funds in order to meet a payroll. The resolution is set out below:

H. RES. 425

Resolved, That the Clerk of the House and Sergeant at Arms be and is hereby directed to pay such sum as may be necessary, from the balance available of the 1968 appropriation and the various funds of the 1969 appropriation, where balances may be available, for the House of Representatives to meet the May and June payroll of Members, officers of the House, and employees of the House. Moneys expended from these funds and/or appropriations by the Sergeant at Arms and the Clerk will be repaid to the funds and/or appropriations from the Sergeant at Arms and Clerk's supplemental appropriation upon its approval.

Following some debate on the resolution and the subsequent call of the House, the resolution was agreed to. A motion to reconsider was laid on the table.

Overtime Compensation

§ 27.6 A resolution providing for payment from the contingent fund of overtime compensation for employees of the publications distribution service (folding room) is reported and called up as privileged by the Committee on House Administration.

On Mar. 2, 1972,[3] Mr. Wayne L. Hays, of Ohio, at the direction of the Committee on House Ad-

1. 115 CONG. REC. 14165–67, 91st Cong. 1st Sess.
2. H. REPT. NO. 91–278.
3. 118 CONG. REC. 6627, 92d Cong. 2d Sess. For another example see 112 CONG. REC. 5993, 89th Cong. 2d Sess., Mar. 16, 1966.

ministration, called up and asked for immediate consideration of the following House resolution:

H. RES. 835

Resolved, That, notwithstanding any other provisions of law, there is authorized to he paid out of the contingent fund of the House of Representatives such sums as may be necessary to pay compensation to each employee of the Publications Distribution Service of the House of Representatives for all services performed by such employee in excess of the normal workday where such services are authorized by the Committee on House Administration. Such compensation shall he paid on an hourly basis at a rate equal to the rate of compensation otherwise paid to such employees.

This resolution shall take effect on its adoption and payments made under this resolution shall be terminated as the Committee on House Administration determines necessary.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Increasing Personnel Salary Allowances

§ 27.7 A resolution from the Committee on House Administration providing for payment from the contingent fund of compensation to employees in the Speaker's office was reported and called up as privileged.

On July 22, 1971,[4] Mr. Wayne L. Hays, of Ohio, at the direction of the Committee on House Administration, submitted a privileged report[5] relating to the use of the contingent fund of the House to pay certain salaries, and sought immediate consideration of the resolution shown below:

HOUSE RESOLUTION 533

Resolved, That, until otherwise provided by law, effective as of July 1, 1971, in addition to all other amounts provided by other provisions of law, there shall he paid out of the contingent fund of the House for compensation of the officers and employees of the Office of the Speaker of the House the sum of $50,000.

Debate on the resolution ensued, at the conclusion of which the previous question on the resolution was moved and ordered. The question was taken and the resolution agreed to. A motion to reconsider was laid on the table.

Presentation of Salary Comparability

§ 27.8 The Speaker laid before the House a directive implementing the salary comparability policy established

4. 117 CONG. REC. 26652, 92d Cong. 1st Sess. For a further example see 108 CONG. REC. 8, 87th Cong. 2d Sess., Jan. 10, 1962.

5. H. REPT. NO. 92–373.

by the Federal Salary Act of 1967 for House officers and employees.

On June 17, 1969,[6] the Speaker[7] laid before 'the House a message from the President, transmitting the President's annual report on salary comparability and his directive implementing certain salary adjustments in the executive branch of government. Upon the receipt of the President's report, the Speaker laid before the House his directive, including a schedule of per annum compensation rates for House employees, which implemented the salary comparability policy established by the Federal Salary Act of 1967.[8]

6. 115 CONG. REC. 16195, 16196, 91st Cong. 1st Sess. See also 114 CONG. REC. 16717, 90th Cong. 2d Sess., June 11, 1968, for the presentation of a similar directive.
7. John W. McCormack (Mass.).
8. Pub. L. No. 90–206.

Announcing Statutory Salary Adjustments

§ 27.9 Adjustments in the House employees' wage schedule are sometimes announced by the Chairman of the Committee on House Administration.

On Jan. 27, 1966,[9] Mr. Omar T. Burleson, of Texas (at the request of Mr. Lynn E. Stalbaum, of Wisconsin), pursuant to a grant of permission to extend his remarks in the Record, announced and submitted tables reflecting adjustments provided for by public law[10] in the schedule of per annum compensation rates applicable to House employees.

9. 112 CONG. REC. 1399, 89th Cong. 2d Sess.
10. Pub. L. No. 89–301.