

## CLOSED DOORS

All sessions of the Senate, until the end of the second session of the third Congress, with the exception of the contested election case of Albert Gallatin, were held behind closed doors. At the beginning of the first session of the third Congress, on February 20, 1794, the Senate adopted a resolution as amended which provided "That, after the end of the present session of Congress, and so soon as suitable galleries shall be provided for the Senate chamber, the said galleries shall be permitted to be opened every morning, so long as the Senate shall be engaged in their legislative capacity, unless in such cases as may, in the opinion of the Senate, require secrecy, after which the said galleries shall be closed." The Senate then adopted its first rule whereby the doors could be closed. That resolution provided "That, on a motion made and seconded to shut the doors of the Senate, on the discussion of any business which may, in the opinion of a member, require secrecy, the President shall direct the gallery to be cleared; and that, during the discussion of such motion, the doors shall remain shut."

At the beginning of the first session of the fourth Congress, on December 9, 1795, the Senate agreed to a resolution, as amended, which provided "That, in conformity to a resolution of the Senate of the United States, passed on the 20th day of February, 1794, the gallery of the Senate chamber be permitted to be open every morning, subject to the restrictions in said resolution mentioned." Thus open legislative sessions became the general practice of the Senate.

Executive sessions for the confirmation of nominations and for advising and consenting to the ratification of treaties continued to be held behind closed doors, unless the Senate had specifically voted to open them, until June 17, 1929, when Rule XXXVIII (now XXXI) of the Senate was amended to provide that "Hereafter all business in the Senate shall be transacted in open session, unless the Senate in closed session by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session." This language was slightly modified as part of a general revision and recodification of the rules in 1979.

The present rule on closed doors (Rule XXI), was adopted in January 1877, except paragraph 2, which was added in 1979.

On a motion of any Senator, seconded by another, to close the doors of the Senate for the discussion of any business which he deems to require secrecy, the Chair "shall direct the Galleries to be closed; and during the discussion of such motion, the doors shall remain closed."

Whether or not the Senate then shall remain in closed session will be determined behind closed doors.

The precedents and rules of the Senate, as stated by the Presiding Officer on different occasions, provide that any action taken in a closed session is confidential, and that means that it is secret. It can be divulged only by special affirmative action by the Senate membership, or by a majority vote of the Senate.

Under paragraph 2 of Rule XXIX, when acting on confidential or executive business, unless the same shall be considered in open executive session, the Senate Chamber shall be cleared of all persons except the Secretary, the Assistant Secretary, the Principal Legislative Clerk, the Parliamentarian, the Executive Clerk, the Minute and Journal Clerk, the Sergeant at Arms, the Secretaries to the Majority and the Minority, and such other officers as the Presiding Officer shall think necessary; and all such officers shall be sworn to secrecy.

Rule XXIX, Paragraph 5, provides that "Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt."

Under the precedents of the Senate, as ruled by the Chair, "closed sessions are called for under Rule XXI and proceedings of closed sessions are controlled in part by Rules XXIX and XXXI."

The Presiding Officer has reminded the Senate that under the rules and precedents in a closed session the entire proceedings are secret; a Senator, at any later date, may comment on the general nature of the subjects discussed in closed session but these comments may in no way refer specifically to what was transacted therein, unless or until the Senate, by a majority vote, releases the injunction of secrecy on those proceedings. Continuing, he stated that it is not in order for any Senator to divulge any specifics discussed therein, "or which Senator said what, or what proceedings took place, or how any Senator voted, unless there is specific affirmative action by the Senate to remove that injunction."

## **Rule XXI**

### **[Closed Sessions of Senate]**

1. On a motion made and seconded to close the doors of the Senate, on the discussion of any business which may, in the opinion of a Senator, require secrecy, the Presiding Officer shall direct the galleries to be cleared; and during the discussion of such motion the doors shall remain closed.
2. When the Senate meets in closed session, any applicable provisions of rules XXIX and XXXI, including the confidentiality of information shall apply to any information and to the conduct of any debate transacted.

## **Rule XXIX, Paragraphs 2-5**

### **[Persons Entitled to Floor in Closed Session and Confidentiality of Information]**

2. When acting upon confidential or Executive business, unless the same shall be considered in open Executive session, the Senate Chamber shall be cleared of all persons except the Secretary, the Assistant Secretary, the Principal Legislative Clerk, the Parliamentarian, the Executive Clerk, the Minute and Journal Clerk, the Sergeant at

Arms, the Secretaries to the Majority and the Minority, and such other officers as the Presiding Officer shall think necessary; and all such officers shall be sworn to secrecy.

3. All confidential communications made by the President of the United States to the Senate shall be by the Senators and the officers of the Senate kept secret; and all treaties which may be laid before the Senate, and all remarks, votes, and proceedings thereon shall also be kept secret, until the Senate shall, by their resolution, take off the injunction of secrecy.

4. Whenever the injunction of secrecy shall be removed from any part of the proceedings of the Senate in closed Executive or legislative session, the order of the Senate removing the same shall be entered in the *Legislative Journal* as well as in the *Executive Journal*, and shall be published in the *Congressional Record* under the direction of the Secretary of the Senate.

5. Any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body; and if an officer, to dismissal from the service of the Senate, and to punishment for contempt.

## Rule XXXI, Paragraph 2

### [Closed Sessions on Nominations]

All business in the Senate shall be transacted in open session, unless the Senate as provided in rule XXI by a majority vote shall determine that a particular nomination, treaty, or other matter shall be considered in closed executive session, in which case all subsequent proceedings with respect to said nomination, treaty, or other matter shall be kept secret: *Provided*, That the injunction of secrecy as to the whole or any part of proceedings in closed executive session may be removed on motion adopted by a majority vote of the Senate in closed executive session: *Provided further*, That any Senator may make public his vote in closed executive session.

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### Closed Session—Privileged Motion:

A motion to close the doors under Rule XXI is privileged and not debatable;<sup>1</sup> and when a motion is made by one Senator and seconded by another Senator that the Senate go into closed session, that motion under Rule XXI is immediately effective without debate.<sup>2</sup>

A motion to close the doors under Rule XXI, when made and seconded during the discussion of business which in the opinion of a Senator requires secrecy, may be made

<sup>1</sup> June 10, 1884, 48-1, *Record*, p. 4959; June 11, 1884, 48-1, *Record*, pp. 5000-01. The Chair in the closed session of May 4, 1972, referred to the number of closed sessions in recent years. See May 4, 1972, 92-2, *Record*, p. 15965-66.

<sup>2</sup> Apr. 26, 1983, 98-1, *Record*, pp. 9692-93.

over the objection of the Senator in possession of the floor,<sup>3</sup> even to the extent of taking the Senator from the floor against his consent.<sup>4</sup>

A closed session, under Rule XXI, can be invoked simply by a motion and a second, and the question is not debatable. Once the Senate goes into closed session, it may then determine whether it stays in closed session.<sup>5</sup>

Under Rule XXI, any Senator may move to go into closed session, and if seconded by another Senator, the rule is automatic.<sup>6</sup>

When a motion is made to close the doors under Rule XXI, and seconded, a parliamentary inquiry is not in order nor is an appeal from the decision of the Chair; the application and enforcement of the rule are automatic and the galleries must be cleared.<sup>7</sup>

A motion to close the doors for secret legislative business precludes an explanation therefor. Any explanation should be made before the motion is made,<sup>8</sup> but on May 2, 1972, the Presiding Officer entertained a point of order only long enough to answer and then ordered the galleries closed.<sup>9</sup>

A Senator has a right to have read, or he may read, a resolution submitted by him, but any Senator, if he deems the matter one requiring secrecy, may, under the rule, interrupt such a reading to move that the doors be closed.<sup>10</sup>

### Closed Session—Procedure by Chair:

Form of statement by Chair after motion had been made and seconded to go into closed session under Rule XXI on July 14, 1966 is as follows:

The motion having been made and seconded that the Senate go into closed session, the Chair, pursuant to Rule XXI, now directs the Ser-

<sup>3</sup> Feb. 6, 1903, 57-2, *Record*, p. 1780; Jan. 15, 1912, 62-2, *Record*, pp. 942-43; Feb. 6, 1917, 64-2, *Record*, p. 2667; see Apr. 25, 1972, 92-2, *Record*, p. 14094.

<sup>4</sup> Jan. 15, 1912, 62-2, *Journal*, p. 79. *Record*, pp. 942-43.

<sup>5</sup> See May 2, 1972, 92-2, *Record*, pp. 15287, 15308; May 4, 1972, 92-2, *Record*, p. 15971-72; Sept. 21, 1979, 96-1, *Record*, p. 25667.

<sup>6</sup> See July 9, 1969, 91-1, *Record*, pp. 18856-57.

<sup>7</sup> See Aug. 14, 1958, 85-2, *Record*, pp. 17601-03; Aug. 16, 1958, 85-2, *Record*, pp. 18026-28; for details on closed session of July 14, 1966—the edited version—see *Record* of July 27, 1966, pp. 16581-602; number of closed sessions see *Record* for Oct. 2, 1968, 90-2, p. 29180.

<sup>8</sup> June 26, 1942, 77-2, *Record*, p. 5614.

<sup>9</sup> See May 2, 1972, 92-2, *Record*, pp. 15287, 15308; May 4, 1972, 92-2, *Record*, pp. 15971-72.

<sup>10</sup> Mar. 17, 1905, 59—Special Session, *Record*, p. 19.

geant at Arms to clear the galleries and to close the doors and that all officials of the Senate not cleared for secrecy be excluded.<sup>11</sup>

### **Closed Session—Proceedings Under:**

*See also* "Definition of Secrecy in Closed Sessions," p. 279.

Closed sessions are called for under Rule XXI and proceedings in closed sessions are controlled in part by Rules XXIX and XXXI.<sup>12</sup>

### **Closed Session—When Adjourn in:**

If the Senate adjourns in closed session, it will return the next day in closed session.<sup>13</sup>

### **Definition of Secrecy in Closed Sessions:**

In a closed session the entire proceedings are secret; a Senator, at a later date, may comment on the nature of the subjects discussed in closed session but these comments may in no way refer to what was transacted in the closed session unless the Senate, by a majority vote, releases the injunction of secrecy on these proceedings.<sup>14</sup>

It is not in order, under the closed session rule, for any Senator to divulge the details of the subject matter discussed therein, or which Senator said what, or what proceedings took place, or how any Senator voted, unless there is specific affirmative action by the Senate to remove that injunction.<sup>15</sup>

### **Executive Business:**

A motion to print in the *Congressional Record* a yea and nay vote on a nomination in closed session can only be made in executive session.<sup>16</sup>

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<sup>11</sup> *See also* proceedings for July 17, 1969, 91-1, *Record*, p. 19848-49.

<sup>12</sup> July 14, 1966, 89-2, *Record*, pp. 15676-98.

<sup>13</sup> May 2, 1972, 92-2, *Record*, p. 15302; May 31, 1972, 92-2, *Record*, pp. 19408-09.

<sup>14</sup> July 14, 1966, 89-2, *Record*, pp. 15667-98; *see* Nov. 20, 1975, 94-1, *Record*, pp. 37555-56.

<sup>15</sup> *Ibid.*

<sup>16</sup> May 21, 1929, 71-1, *Record*, p. 1598.

### **New Closed Session May Act on Business in a Prior One:**

In a subsequent closed session the Senate “can take up matters that were discussed in a previous secret session.”<sup>17</sup>

### **Open Session—Return to:**

When in closed session, a motion to return to open session is in order and not debatable.<sup>18</sup>

### **Persons Entitled to Floor Privilege:**

Rule XXIX, paragraph 2, sets forth persons entitled to the privilege of the floor of the Senate during a closed session,<sup>19</sup> which also authorizes admission of “other officers as the Presiding Officer shall think necessary.”<sup>20</sup> All persons are sworn to secrecy.<sup>21</sup> Additional personnel may attend by unanimous consent.<sup>22</sup>

### **Secrecy Injunction Lifted:**

If a motion is made to make public the proceedings of two closed sessions, that question is divisible, but a motion to make public the proceedings in a closed session would be in order based on earlier practices of the Senate.<sup>23</sup>

On March 3, 1978, three Unanimous Consent Agreements were adopted in closed session for expurgating and releasing the proceedings taken in closed sessions on March 3 and 4.<sup>24</sup>

All persons attending a closed session are sworn to secrecy until the injunction of secrecy is removed, subject to penalty as provided in Rule XXIX, paragraph 3.<sup>25</sup>

<sup>17</sup> May 2 and 4, 1972, 92-2, *Record*, pp. 15301-02, 15968-69.

<sup>18</sup> See May 2, 1972, 92-2, *Record*, pp. 15298-99.

<sup>19</sup> July 9, 1969, 91-1, *Record*, p. 18857; July 14, 1966, 89-2, *Record*, pp. 15677-98; July 1, 1977, 95-1, *Record*, pp. 22006-07.

<sup>20</sup> July 9, 1969, 91-1, *Record*, p. 18857.

<sup>21</sup> May 2, 1972, 92-2, *Record*, p. 15297; July 1, 1977, 95-1, *Record*, pp. 22006-07.

<sup>22</sup> July 9, 1969, 91-1, *Record*, p. 18857; June 4, 1975, 94-1, *Record*, pp. 17066-67.

<sup>23</sup> See May 2, 1972, 92-2, *Record*, pp. 15297-302; May 4, 1972, 92-2, *Record*, pp. 15968-69.

<sup>24</sup> See proceedings for Mar. 3, 1978, 95-2, *Record*, pp. 3970-71, 4007.

<sup>25</sup> May 2, 1972, 92-2, *Record*, p. 15297.

Form of a unanimous consent order to authorize official reporters to take shorthand in the closed session on July 14, 1966:

*Ordered,* That the official reporters be authorized to take proceedings of the closed session in shorthand but that they not be transcribed; and, when the session is concluded, they be placed in the custody of the Secretary of the Senate and kept secret by him along with other minutes and matters of such nature already in his custody.