

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

On June 4, 1936,<sup>(9)</sup> 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.<sup>(10)</sup>

**§ 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,<sup>(11)</sup> 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

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.

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.<sup>(12)</sup> 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,<sup>(13)</sup> the election of officers,<sup>(14)</sup> and the adoption of the rules of the House.<sup>(15)</sup> 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.<sup>(16)</sup> There are various

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,<sup>(17)</sup> provision for a joint session to hear the President,<sup>(18)</sup> and adoption of standing orders.<sup>(19)</sup>

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*.

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;<sup>(20)</sup> a majority vote is required for the election of officers,<sup>(1)</sup> who are usually chosen by resolution and not by the *viva voce* vote suggested by Rule II of the *House Rules and Manual*;<sup>(2)</sup> 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.<sup>(3)</sup> There is, in addition, a traditional sequence of organizational busi-

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.<sup>(4)</sup>

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).

Besides initiating organizational steps enumerated above, the Speaker has other related duties to perform.<sup>(5)</sup> 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.<sup>(6)</sup> In addition, recesses have been declared by the Speaker during organization, without a motion being put.<sup>(7)</sup>

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.<sup>(8)</sup> As Members have already been sworn, rules have already been adopted, and officers have been elected, the Speaker merely lays before the

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.<sup>(9)</sup> 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.<sup>(10)</sup>

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.<sup>(11)</sup>

### ***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,<sup>(12)</sup> 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,<sup>(13)</sup> 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**

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

**the House in recess, on his own initiative and without objection.**

On Jan. 7, 1964,<sup>(14)</sup> 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,<sup>(15)</sup> 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:

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 Con- secutive 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,<sup>(16)</sup> 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

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

**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,<sup>(17)</sup> 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

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,<sup>(18)</sup> 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. At-**

**torney 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,<sup>(19)</sup> 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,<sup>(20)</sup> 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 ex-

tending 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,<sup>(1)</sup> 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

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

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

technically binding upon the House,<sup>(2)</sup> except those required by the Constitution.<sup>(3)</sup> Where organi-

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