

## 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.<sup>(1)</sup> In the

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

House of Representatives, however, the general parliamentary law applicable is that body of parliamentary law generally based upon precedents and rules of past Houses.<sup>(2)</sup> Obsolete provisions of Jefferson's Manual, inconsistent with the prevailing practice of the House, do not apply.<sup>(3)</sup>

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

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.<sup>(6)</sup> A rule of a past Congress assuming to control a future House as to rules at organization is not binding,<sup>(7)</sup> 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.<sup>(8)</sup>

## § 2. Types of Meeting; Sessions

Congress assembles in various ways, as determined by the status of Congress at its last meeting

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*).

and by the provisions of the twentieth amendment, requiring assembly at least once a year.<sup>(9)</sup> 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.<sup>(10)</sup> 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.<sup>(11)</sup> When the President ex-

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.<sup>(12)</sup> 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.<sup>(13)</sup>

These distinctions are important in determining the procedure

**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.

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.<sup>(14)</sup> That re-

**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.<sup>(15)</sup> 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.<sup>(16)</sup>

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.<sup>(17)</sup> 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.<sup>(18)</sup> 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.<sup>(19)</sup> 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.<sup>(20)</sup>

**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,<sup>(21)</sup> Congress was convened for its second session on Nov. 15, 1937, before the constitutional day of meeting, by Presidential proclamation.<sup>(22)</sup> The third session of the 75th Congress met on the constitutional day, Jan. 3, 1938,<sup>(23)</sup> 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,<sup>(24)</sup> before the con-

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.

stitutional 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.<sup>(25)</sup>

**§ 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,<sup>(26)</sup> 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:

- 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,<sup>(27)</sup> 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**

<sup>27.</sup> 85 CONG. REC. 16, 76th Cong. 2d Sess.

**session until the date and hour when one Congress expired and the next one began pursuant to the twentieth amendment.<sup>(28)</sup>**

On Jan. 3, 1941,<sup>(1)</sup> 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.<sup>(2)</sup> Since

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

<sup>1.</sup> 86 CONG. REC. 14059, 76th Cong. 3d Sess. The House had adjourned pursuant to a simple motion to adjourn on Jan. 2, 1941.

<sup>2.</sup> 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,<sup>(3)</sup> up to and including May 20, 1820, 18 acts were passed altering the constitutional day;<sup>(4)</sup> between 1820 and 1934 Congress met regularly for a new session on the first Monday in December.<sup>(5)</sup> 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

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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.

Congress, but also the President has constitutional authority to convene the Congress earlier than on the constitutional day;<sup>(6)</sup> 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,<sup>(7)</sup> 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.<sup>(8)</sup>

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

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

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.<sup>(11)</sup> In the event that Congress adjourns *sine die* and the President convenes an extraordinary session,

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*.

an entirely new session is begun, and is terminated by the arrival of the constitutional day.<sup>(12)</sup> 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.<sup>(13)</sup>

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.<sup>(14)</sup> 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.<sup>(15)</sup>

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

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;<sup>(16)</sup> 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.<sup>(17)</sup>

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

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.<sup>(20)</sup>

Any proposition relating to the days on which the House shall sit is within the jurisdiction of the Committee on Rules;<sup>(1)</sup> 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.<sup>(2)</sup>

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

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.

1816, has come to have the force of common law.<sup>(3)</sup>

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;<sup>(4)</sup> 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.<sup>(5)</sup> 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.<sup>(6)</sup> In early Congresses, a motion to change the

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;<sup>(7)</sup> later rulings characterized the resolution fixing the hour as a standing order rather than as a rule.<sup>(8)</sup> 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.<sup>(9)</sup> 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<sup>(10)</sup> (the committee may also provide for the convening of daily sessions at a specific hour while a certain bill is under consideration).<sup>(11)</sup>

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.

The exercise by the House of its formal rule-making power over the time of meeting is strictly construed.<sup>(12)</sup> 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

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,<sup>(13)</sup> 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.)<sup>(14)</sup> 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.<sup>(15)</sup> 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

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.

date earlier than that adjourned to, when in their opinion legislative expediency warrants such action.<sup>(16)</sup>

### ***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,<sup>(17)</sup> Mr. Wilbur C. Daniel, of Virginia, moved that the House adjourn. The House agreed to the motion at 1 o'clock

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,<sup>(18)</sup> 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:<sup>(1)</sup> 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.**

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

1. Sam Rayburn (Tex.).

On Sept. 11, 1968,<sup>(2)</sup> Speaker John W. McCormack, of Massachusetts, took the floor to state a unanimous-consent request:

MR. MCCORMACK: Mr. Speaker,<sup>(3)</sup> 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,<sup>(4)</sup> 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.

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,<sup>(5)</sup> 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,<sup>(6)</sup> 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,<sup>(7)</sup> in response to a parliamentary inquiry by Mr. Charles A. Halleck, of Indiana, Speaker John W. McCormack, of

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.

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.<sup>(8)</sup>**

On July 27, 1949,<sup>(9)</sup> 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

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,<sup>(10)</sup> Mr. John W. McCormack, of Massachusetts, addressed the Speaker<sup>(11)</sup> 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**

<sup>10.</sup> 88 CONG. REC. 9518, 77th Cong. 2d Sess.

<sup>11.</sup> Sam Rayburn (Tex.).

**House resolution providing for pro forma meetings on only specified days of the week, for a certain period of time.**

On Aug. 25, 1949,<sup>(12)</sup> 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.**

<sup>12.</sup> 95 CONG. REC. 12287, 81st Cong. 1st Sess.

On Jan. 15, 1968,<sup>(13)</sup> 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,<sup>(14)</sup> after an announcement by the Speaker<sup>(15)</sup> 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"?

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

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

15. John W. McCormack (Mass.).

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,<sup>(16)</sup> 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,**

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,<sup>(17)</sup> 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.<sup>(18)</sup>

**§ 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,<sup>(19)</sup> 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<sup>(20)</sup> 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

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.).

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,<sup>(1)</sup> 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<sup>(2)</sup> 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**

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,<sup>(3)</sup> 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,<sup>(4)</sup> 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,<sup>(5)</sup> 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

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

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,<sup>(6)</sup> 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.

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

The House then granted unanimous consent for the Speaker pro tempore<sup>(7)</sup> 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,<sup>(8)</sup> Mr. Brooks Hays, of Arkansas, arose to state a unanimous-consent request:

Mr. Speaker,<sup>(9)</sup> 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.<sup>(10)</sup>

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,<sup>(11)</sup>

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,<sup>(12)</sup> and to permit the President to remove public offices or Congress itself under specified conditions.<sup>(13)</sup>

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.<sup>(14)</sup> By the Act of Mar. 3, 1790, the First Congress provided for the permanent seat of govern-

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.<sup>(19)</sup> 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.<sup>(20)</sup> For another five years both Houses sat at a temporary Capitol built on Capitol Hill by private citizens for the express use of Congress,<sup>(1)</sup> and leased by the federal government.<sup>(2)</sup> On three occasions during the 20th

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).

century, the House and the Senate have vacated their respective Chambers in the Capitol building pending repairs or remodeling.<sup>(3)</sup> Although the Senate remained during those periods within the Capitol, occupying the former Supreme Court Chamber,<sup>(4)</sup> the House moved across the street to the caucus room of the New House Office Building.<sup>(5)</sup> Neither the House nor the Senate construed those temporary shifts in the place of meeting, which altered the structural location but

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.<sup>(6)</sup> Therefore, a simple House resolution suffices to adjourn the House to meet in another structure at the seat of government.<sup>(7)</sup>

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,<sup>(8)</sup>

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 “overwhelming 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.

and informal meetings may be held in other facilities, such as the Library of Congress.<sup>(9)</sup> Those types of assemblies, as well as ceremonies and processions held outside the House Chamber,<sup>(10)</sup> do not usually constitute official sessions of the House,<sup>(11)</sup> which stands in recess in order to attend.<sup>(12)</sup> 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.<sup>(13)</sup>

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,<sup>(14)</sup> 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:<sup>(15)</sup> 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.<sup>(16)</sup> The Chair does not de-

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,

sire 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.<sup>(17)</sup>

**§ 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,<sup>(18)</sup> 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.

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:<sup>(19)</sup> Is there objection to the request of the gentleman from Texas?

MR. ARENDS:<sup>(20)</sup> 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.<sup>(1)</sup>**

On Oct. 18, 1943,<sup>(2)</sup> Majority Leader John W. McCormack, of Massachusetts, announced that

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.

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:<sup>(3)</sup> 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.

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,<sup>(4)</sup> 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 be 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,<sup>(5)</sup> 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,<sup>(6)</sup> 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,<sup>(7)</sup> 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,<sup>(8)</sup> 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,

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

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

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.<sup>(9)</sup> 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.<sup>(10)</sup> 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.<sup>(11)</sup>

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.<sup>(12)</sup> 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.<sup>(13)</sup> In early Congresses, the House provided by a special rule that the Clerk should continue in office until another should be chosen,<sup>(14)</sup> but later constructions determined that one House could not by rule bind its successor.<sup>(15)</sup> 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.<sup>(16)</sup> The Code

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*.

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.<sup>(17)</sup>

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.<sup>(18)</sup> Beginning in 1860, however, Rule III of the House rules<sup>(19)</sup> 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.<sup>(20)</sup> As pre-

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;<sup>(1)</sup> he has refused, for example, to entertain protests,<sup>(2)</sup> and has declined to hear motions referring a subject to committee<sup>(3)</sup> or relating to contested election cases.<sup>(4)</sup>

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 overturned (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 re-elected 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 Pro-*

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.<sup>(5)</sup> 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.<sup>(6)</sup>

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,<sup>(7)</sup> since the authority of the Speaker *pro tempore*

*cedure 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.<sup>(8)</sup> 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.<sup>(9)</sup>

***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,<sup>(10)</sup> 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.

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.

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-**

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

On Jan. 3, 1947,<sup>(11)</sup> 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.<sup>(12)</sup>

**§ 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.<sup>(13)</sup> Although a mo-

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*.

tion, of privileged character, was formerly made to proceed to the election of the Speaker,<sup>(14)</sup> in contemporary practice the Clerk simply declares to the House that the election of the Speaker is the next order of business.<sup>(15)</sup> In early Congresses, the motion was used to determine the method by which the Speaker would be elected;<sup>(16)</sup> 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.<sup>(17)</sup> Although the Clerk appoints tellers for the election,<sup>(18)</sup> the House and

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.<sup>(1)</sup> A majority vote of those Members or Members-elect present, if a quorum, suffices to elect a Speaker.<sup>(2)</sup>

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.<sup>(3)</sup> The Clerk announces the result of the vote, and declares the chosen Member to be the duly elected Speaker of the House.<sup>(4)</sup> A committee, appointed by the Clerk, then escorts the Speaker-elect to the Chair. The

Minority Leader presents the Speaker-elect to the membership,<sup>(5)</sup> and he addresses the House and requests a Member-elect, usually the oldest Member in continuous service, to administer the oath to him.<sup>(6)</sup> The codified oath administered to the Speaker is the same as that used by him to swear in the Members-elect.<sup>(7)</sup>

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.<sup>(8)</sup> 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.<sup>(9)</sup> 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,<sup>(10)</sup> contrary to the usual practice of postponing consideration or adoption of rules until after the election of the Speaker.<sup>(11)</sup>

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;<sup>(12)</sup> the Clerk, by tradi-

tion 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.<sup>(13)</sup> 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,<sup>(14)</sup> although in former times the call was by state in both instances.<sup>(15)</sup> One further distinction is that a Speaker elected during a Congress must resign from the committees on which he has served while a Member,<sup>(16)</sup>

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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.

**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*.

**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**

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

**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,<sup>(17)</sup> 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:<sup>(1)</sup> 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:<sup>(2)</sup> 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.

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,<sup>(3)</sup> Minority Leader Charles Halleck, of Indi-

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

ana, 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,<sup>(4)</sup> 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,<sup>(5)</sup> 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

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,<sup>(6)</sup> 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,<sup>(7)</sup> the first day of the second session, newly-elected Speaker John W. McCormack, of Massachusetts, resigned,

<sup>6.</sup> 108 CONG. REC. 6, 87th Cong. 2d Sess.

<sup>7.</sup> 108 CONG. REC. 8, 87th Cong. 2d Sess.

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,<sup>(8)</sup> 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**

<sup>8.</sup> 108 CONG. REC. 5, 87th Cong. 2d Sess.

**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**

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.

**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-

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-**

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

**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,

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

zation proceeds smoothly, the lack of rules does not hamper the House in its completion of opening business.<sup>(4)</sup> 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.<sup>(5)</sup> The House may either draft a specific rule authorizing the officers of the preceding Congress to preserve order and decorum,<sup>(6)</sup> or temporarily adopt from the rules of the preceding House only that portion relating to order and decorum<sup>(7)</sup> Similarly, the House may provide by specific rule, before the election of the Speaker, for limitation on debate,<sup>(8)</sup> and for opening sessions with prayer.<sup>(9)</sup>

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.

While the Clerk is presiding he does recognize Members,<sup>(10)</sup> but only those whose names are on the roll,<sup>(10)</sup> and will entertain the motion to adjourn,<sup>(12)</sup> the demand for a yeas and nays vote,<sup>(13)</sup> the motion to correct the roll,<sup>(14)</sup> the motion to proceed to the election of a Speaker,<sup>(15)</sup> and the motion to elect a chairman in place of the Clerk.<sup>(16)</sup>

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

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.<sup>(17)</sup> 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.<sup>(18)</sup> 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.<sup>(19)</sup>

Debates over the Clerk's authority as presiding officer<sup>(20)</sup> 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,<sup>(1)</sup> nor is there doubt that he lacks authority to resolve election contests before the election of a Speaker.<sup>(2)</sup>

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

In recent years, Members-elect have refrained from challenging the Clerk's roll or impeding the swift election of a Speaker,<sup>(3)</sup> 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.<sup>(4)</sup> 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.<sup>(5)</sup> (The House often adjourns out of

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.)<sup>(6)</sup> 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.<sup>(7)</sup>

***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,<sup>(8)</sup> Speaker Carl Albert, of Oklahoma, made the following announcement:

The Chair would like to make an announcement at this time. The Chair is

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.

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.<sup>(9)</sup>

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,<sup>(10)</sup> Mr. Hale Boggs, of Louisiana, made the following request:

Mr. Speaker,<sup>(11)</sup> 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.

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,<sup>(12)</sup> 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.<sup>(13)</sup> The swearing in of Mem-

bers, 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.<sup>(14)</sup> 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.<sup>(15)</sup> 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.<sup>(1)</sup>

(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*).

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

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:<sup>(2)</sup> the demand for the yeas and nays<sup>(3)</sup> 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 parliamen-

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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*.

tary law<sup>(4)</sup> and is authorized by the Constitution as well.<sup>(5)</sup> The House may adjourn for more than one day before the election of the Speaker,<sup>(6)</sup> but since a concurrent resolution is necessary to adjourn for more than three days,<sup>(7)</sup> 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.<sup>(8)</sup> The motion to adjourn is accorded preferential treatment before the adoption of the rules as well as after.<sup>(9)</sup>

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.<sup>(10)</sup> (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.)<sup>(11)</sup> The Speaker must recognize Members proposing motions which are privileged at the stage of organization.<sup>(12)</sup>

When a Member offers a resolution prior to the adoption of standing rules, he is entitled to one

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).

hour of debate on the resolution;<sup>(13)</sup> 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.<sup>(14)</sup> The previous question is a standard motion under parliamentary law,<sup>(15)</sup> and may be moved before the adoption of the rules.<sup>(16)</sup> 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.<sup>(17)</sup> The House may recommit, refer, lay on the table, or refuse to pass on the pending resolution in any shape, under general parliamentary prin-

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.<sup>(18)</sup> 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;<sup>(19)</sup> 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.<sup>(20)</sup> If a resolution is recommitted before the adoption of rules, it will be recommitted to a select or special committee appointed by the Speaker.<sup>(1)</sup>

The House may utilize the motion to postpone consideration of a resolution before adoption of rules,<sup>(2)</sup> and it may amend by germane amendment a resolution on which the previous question is rejected.<sup>(3)</sup>

On an occasion where the House was voting on the previous

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*.

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.<sup>(4)</sup>

### *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,<sup>(5)</sup> 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:<sup>(6)</sup> Mr. Speaker, on that I demand the yeas and nays.

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,<sup>(7)</sup> 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,<sup>(8)</sup> prior to rules adoption, Speaker John W. McCormack, of Massachusetts, stated in response to a parliamentary inquiry that if the previous

7. 111 CONG. REC. 19, 89th Cong. 1st Sess.

8. 111 CONG. REC. 19, 89th Cong. 1st Sess.

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,<sup>(9)</sup> 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:<sup>(10)</sup> 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.**

9. 105 CONG. REC. 14, 86th Cong. 1st Sess.

10. Sam Rayburn (Tex.).

On Dec. 7, 1931,<sup>(11)</sup> 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:<sup>(12)</sup> 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.<sup>(13)</sup>

### *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**

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.

#### **question thereon, prior to the adoption of rules.**

On Jan. 3, 1969,<sup>(14)</sup> 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,<sup>(15)</sup> 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**

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,<sup>(16)</sup> 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 . . . ." <sup>(17)</sup> 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*,<sup>(18)</sup> 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 limita-

tions 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,<sup>(19)</sup> 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,<sup>(20)</sup> and the House proceeds under general parliamentary law until the rules are adopted.<sup>(1)</sup> Similarly, Congress may not, by rule or statute, provide that the House is to be governed by certain procedural rules during a future Congress.<sup>(2)</sup> 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.<sup>(3)</sup>

The House traditionally exercises its constitutional power to adopt the rules at the opening session of each Congress.<sup>(4)</sup> The resolution adopting the rules, which is usually offered by the former Chairman of the Committee on Rules,<sup>(5)</sup> 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.<sup>(6)</sup> 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

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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.

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.<sup>(7)</sup>

Thus the Speaker follows as closely as practicable the customs and practices of the House under former rules,<sup>(8)</sup> and gives weight to the precedents of the House in interpreting general parliamentary law.<sup>(9)</sup> 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.<sup>(10)</sup>

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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.<sup>(11)</sup> 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,<sup>(12)</sup> and that clerical errors may be corrected in the engrossment of the resolution after adoption.<sup>(13)</sup>

***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,<sup>(14)</sup> during the debate on the resolution adopting the rules, the following point of order was raised:

MR. HALL:<sup>(15)</sup> Mr. Speaker, I do desire to make a point of order against consideration of Resolution 5 [the reso-

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.).

lution adopting the rules], inasmuch as it is against the law of the land.

THE SPEAKER:<sup>(16)</sup> 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. . . .

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:<sup>(17)</sup> Mr. Speaker, are we proceeding now under the rules we are going to adopt later, and which have not yet been adopted? Under

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

what rules is the House proceeding, or is it proceeding under any rules?

THE SPEAKER:<sup>(18)</sup> 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.<sup>(19)</sup>

### ***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.**

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,<sup>(1)</sup> 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.<sup>(2)</sup>

On occasion, the resolution adopting the rules has been immediately preceded by a unanimous-consent request,<sup>(3)</sup> or by an

other resolution.<sup>(4)</sup> And in the 73d Congress,<sup>(5)</sup> 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,<sup>(6)</sup> 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.<sup>(7)</sup>

*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,<sup>(8)</sup> 89th,<sup>(9)</sup> and 90th Congresses,<sup>(10)</sup> the resolution was introduced by Majority Leader Carl Albert, of Oklahoma, at the direction of the Democratic Caucus.<sup>(11)</sup> 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.<sup>(12)</sup> 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

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.

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.<sup>(13)</sup>

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.<sup>(14)</sup>

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<sup>(15)</sup> 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,<sup>(16)</sup> the resolution adopting the rules of the previous Congress frequently has provided for amendments to those rules. Such a resolution<sup>(17)</sup> rou-

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.

tinely 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<sup>(18)</sup> 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<sup>(19)</sup> the reading of the resolution adopting the rules by the Clerk was interrupted by the following proceedings:

THE SPEAKER:<sup>(20)</sup> The Clerk will suspend the reading of the resolution.

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:<sup>(1)</sup> 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,<sup>(2)</sup> after the resolution adopting the rules was read and a point of order was reserved against it, the following motion was offered:

MR. COLMER:<sup>(3)</sup> Mr. Speaker, I move that further consideration of the resolution be put over until tomorrow, and

1. Mr. Harold R. Gross (Iowa).
2. 117 CONG. REC. 15, 92d Cong. 1st Sess., Jan. 21, 1971.
3. Mr. William M. Colmer (Miss.).

that the resolution be printed in the Record.

THE SPEAKER:<sup>(4)</sup> 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<sup>(5)</sup> in the form of a parliamentary inquiry:

MR. SMITH:<sup>(6)</sup> . . .

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-

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:<sup>(7)</sup> 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,<sup>(8)</sup> 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:<sup>(9)</sup> 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:<sup>(10)</sup> The gentleman states the situation accurately.

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.).

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,<sup>(11)</sup> 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.<sup>(12)</sup>

#### **§ 10.10 Although generally, an amendment may be offered only after the previous question is voted down on the resolution to adopt rules,<sup>(13)</sup> there are exceptions to this rule.**

In the 79th Congress,<sup>(14)</sup> an amendment to the resolution adopting the rules was introduced without objection even though the Member in charge of the resolu-

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,<sup>(15)</sup> 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**

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.

**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,<sup>(16)</sup> contained several errors. On Jan. 12, 1967,<sup>(17)</sup> 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.<sup>(18)</sup>

**§ 11. Resumption of Legislative Business**

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

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.<sup>(19)</sup> 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.<sup>(20)</sup> In the

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

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.<sup>(1)</sup> 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,<sup>(2)</sup> and even on occasion before a quorum has appeared in the Senate.<sup>(3)</sup>

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,<sup>(4)</sup> which specifically continues all business before committees as if no adjournment had taken place; actual practice under

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.<sup>(5)</sup>

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,<sup>(6)</sup> and a Presidential veto message to the House was on one occasion read and received at the beginning of the next Congress.<sup>(7)</sup>

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.

The committees of a new Congress do not routinely resume the business that was pending at the end of the prior Congress.<sup>(8)</sup> 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.<sup>(9)</sup> 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.<sup>(10)</sup>

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.<sup>(11)</sup>

### ***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.**

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

12. 79 CONG. REC. 24, 74th Cong. 1st Sess.

13. 116 CONG. REC. 150, 91st Cong. 2d Sess.

#### **opening day of the second session.**

On Jan. 10, 1966, the opening day of the second session of the 89th Congress,<sup>(14)</sup> 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,<sup>(15)</sup> 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-

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,<sup>(16)</sup> 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

<sup>16</sup> 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,<sup>(17)</sup> although a bill will not be considered in the House before the administration of the oath to Members-elect.<sup>(18)</sup> 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.<sup>(19)</sup> 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.<sup>(20)</sup> However, in the Senate the introduction of bills at the opening of a new Congress, or even at the

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*.

opening of a new session, is not generally permitted until after the Presidential message.<sup>(1)</sup>

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.<sup>(2)</sup> 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.<sup>(3)</sup> Under general parliamentary law, one hour of debate is in order on a resolution, the time to be con-

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;<sup>(4)</sup> 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.<sup>(5)</sup> A pending resolution is not subject to amendment unless the Member in control yields for that purpose,<sup>(6)</sup> or unless the previous question is moved and rejected.<sup>(7)</sup> Any amendment offered to a resolution during organization is subject to the requirement that it must be germane.<sup>(8)</sup> 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.<sup>(9)</sup>

When bills and resolutions are offered on the floor before the House is organized, they cannot

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*.

be offered by committee, as committees have not yet been formally constituted. Most of the organizational resolutions are offered by ranking party leaders.<sup>(10)</sup> 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.<sup>(11)</sup> (A bill or resolution on the floor during organization may be recommitted to a special committee to be appointed by the Speaker.)<sup>(12)</sup>

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.<sup>(13)</sup> 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.<sup>(14)</sup>

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

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.<sup>(15)</sup> 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.<sup>(16)</sup>

### *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.**

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,<sup>(17)</sup> 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,<sup>(18)</sup> 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

17. 103 CONG. REC. 50, 85th Cong. 1st Sess.

18. 117 CONG. REC. 16, 93d Cong. 1st Sess.

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,<sup>(19)</sup> 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**

19. 115 CONG. REC. 15, 91st Cong. 1st Sess.

**be withdrawn at any time before action is taken thereon.**

On Jan. 21, 1971,<sup>(20)</sup> 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,<sup>(1)</sup> 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:<sup>(2)</sup> If the resolution is agreed to, it will not be in order for the gentleman to offer a substitute resolu-

tion 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.<sup>(3)</sup>

***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,<sup>(4)</sup> 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,<sup>(5)</sup> following a point of order, Speaker John W.

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<sup>(6)</sup> 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**

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

**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,<sup>(7)</sup> 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:<sup>(8)</sup> 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,

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:<sup>(9)</sup> The gentleman is correct. . . .

MR. O'CONNOR:<sup>(10)</sup> 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<sup>(11)</sup> is not in effect.**

9. Henry T. Rainey (Ill.).

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

On Jan. 22, 1971,<sup>(12)</sup> 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.

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 intro-**

**duction of bills until after the President has delivered his message on the state of the Union.**

On Jan. 5, 1955,<sup>(13)</sup> 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.<sup>(14)</sup>

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

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