

On Jan. 10, 1962,⁽²⁾ the opening day of the second session, following the death of Speaker Sam Rayburn, of Texas, during the *sine die* adjournment, Clerk of the House Ralph R. Roberts called the roll to establish a quorum and proceeded immediately to the election of a Speaker. The names of Mr. Frank Ikard, of Texas, and Mr. Lester Holtzman, of New York, who had submitted their resignations during the *sine die* adjournment, were not included on the roll to establish the quorum or to elect a Speaker. Their resignations were not announced until after the election.

§ 4.11 Where the Speaker had died between sessions of the 87th Congress and a new Speaker was elected immediately after the second session had convened, Members-elect to fill vacancies with credentials on file were not called to establish the quorum or to elect a Speaker.⁽³⁾

2. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.

3. The procedure followed in this instance differs from the practice at the opening of a new Congress, where all Members-elect with regular credentials are called to establish a quorum and to vote for a Speaker (see detailed discussion at §4, supra).

On Jan. 10, 1962,⁽⁴⁾ the opening day of the second session, Mr. Henry B. Gonzalez, of Texas, Mr. Joe Waggoner, Jr., of Louisiana, and Mr. Lucien N. Nedzi, of Michigan, all Representatives-elect to fill vacancies, were not sworn in until after the election of Speaker John W. McCormack, of Massachusetts. Their names were not placed on the roll to establish a quorum or to elect a Speaker.

§ 5. Administering the Oath

The Constitution requires, at article 6, clause 3, that every Senator and every Representative swear or affirm to uphold the Constitution of the United States. Since neither the form, nor the procedure of administration, nor the time of administration of the oath of office are specified by constitutional provisions, they are all regulated by statute. The form of the oath taken by Members-elect (the same oath taken by the Speaker and officers of the House)⁽⁵⁾ has undergone revision

4. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.

5. 2 USC §26 requires the oath of the Speaker and Clerk as well as of Members. The form of the oath prescribed for an individual elected or appointed to an office in the civil

since the first Congress,⁽⁶⁾ and now reads as followings:

service or uniformed service appears at 5 USC §3331. If a new Speaker is elected after the organization of the House, and after he has taken the oath of office as a Member, he nevertheless must be administered the oath again as Speaker. See 1 Hinds' Precedents §225.

6. The first oath of office was worded, by the Act of June 1, 1789, Ch. 1, 1 Stat. 23, as follows: "I, A. B., do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States." National sentiment in the wake of the Civil War lead to a new oath, under the Act of July 2, 1862, Ch. 128, 12 Stat. 502, which disqualified for a congressional seat any person with a past record of disloyalty to the United States (disloyalty was exhaustively defined within the wording of that oath). Pursuant to the ratification of the Fourteenth Amendment (whose clause 3 disqualified, among others, past supporters of the Confederate cause, with a provision for removal of such disqualification), Congress provided in the Act of July 11, 1868, Ch. 129, 15 Stat. 85, for a specific oath to be taken by those who "participated in the late rebellion" but whose disability for membership in Congress had been removed by an act of Congress. The 1868 act contained the form of the oath that is used today. Finally, the Act of May 13, 1884, Ch. 46, 23 Stat. 22, repealed all of the lengthy and disqualifying 1862 oath and provided for the 1868 oath to be thenceforth applicable to all officers

I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

Since appearing to be sworn is a mandatory step to bestow full membership on persons elected to Congress, there has been some debate on whether the requirement can be construed as a "qualification" for membership, with Congress determining whether that qualification has been met.⁽⁷⁾ But

of the United States government save the President. Further minor revisions, now incorporated in 5 USC §3331, were added by the Act of Sept. 6, 1966, Pub. L. 89-554, 80 Stat. 424.

7. See Ch. 7, *infra*, wherein is discussed the limits on the power of the House to exclude a Member-elect for disloyalty.

For a recent general statement on the oath as bestowing membership, see §2.1, *supra*. As to the responsibility of governmental officials who have omitted to take the required oath, one federal court stated that where such an official has been elected or appointed and has discharged his duties, he would be estopped to deny his right to the office if prosecuted for an offense committed in the discharge of duties. "[I]t is not

no precedents grant to the taking of the oath the status of a constitutional qualification whereby the House becomes the judge of the willingness and sincerity of the Member taking it. The United States Code (2 USC) § 25) provides that the oath be administered to the Speaker, and by him to the Members and Delegates present and to the Clerk, "previous to entering on any other business. . . ." Although that statute has been considered directory and not mandatory as to the general sequence of events at organization,⁽⁸⁾ the oath is always administered first to the Speaker (immediately after his election) and then to the Members-elect.⁽⁹⁾

probable that a failure to take the oath would affect the acts of one who is by the [United States] Senate actually admitted to a seat therein, and who actually exercises the functions of that office, or that it would constitute any defense to a prosecution for a criminal offense . . . committed during his incumbency of the office." *U.S. v Dietrich*, 126 F 676, 681, 682 (C.C. Neb. 1904) (dicta). In some Congresses, Members have taken seats and discharged their functions without taking the oath for months afterwards; see, for example, 1 Hinds' Precedents § 185. In current practice, Members-elect take the oath as soon as they appear. See §§ 5.13–5.16, *infra*.

8. See Ch. 1, § 7, *supra*, for the traditional sequence of events based on the statutory language.
9. See Ch. 1, § 7.1, *supra*.

In contemporary practice, the Members are sworn in all at one time, after the Speaker directs them to rise for that purpose.⁽¹⁰⁾ If a challenge is to be made to the right of a Member-elect to be sworn, it is made after the Speaker directs the Members (and the Delegates and the Resident Commissioner)⁽¹¹⁾ to rise to take the oath.⁽¹²⁾ Where Members-elect are absent on opening day, the House may authorize the Speaker himself or a deputy to be appointed by him to administer the oath to such absentees away from the House.⁽¹³⁾ After the Speaker, or the deputy appointed by him,⁽¹⁴⁾

10. See § 5.1, *infra*, for the modern practice and for a discussion of the former method of administering the oath by states.
11. Since the Resident Commissioner is elected for a four-year term, as opposed to Members and Delegates, he rises to take the oath only at the beginning of that term, and not at the convening of the second Congress for which elected. See § 5.4, *infra*.
12. See § 6.1, *infra*.
13. See §§ 5.8, 5.9, 5.11, *infra*. Although the statute directing the administration of the oath to Members-elect only designates the Speaker as the proper official, the House has decided that it has constitutional power to authorize a "Deputy" to administer the oath as well as to perform other functions of the Speaker. See 1 Hinds' Precedents § 170.
14. While the Speaker has discretion to select a deputy, by custom a Member

informs the House that the oath has been administered in absentia,⁽¹⁵⁾ the House adopts a resolution accepting the administration of the oath to the missing Member-elect.⁽¹⁶⁾ On occasion, the Speaker pro tempore may be authorized by the House to administer the oath when the Speaker is absent,⁽¹⁷⁾ but this procedure is rarely followed because of the explicit statutory directive to the Speaker.⁽¹⁸⁾ Where the Speaker's office becomes vacant during a Congress, the oath cannot be administered to Members-elect until after a new Speaker is elected.⁽¹⁹⁾

On occasion, it is necessary to administer the oath individually to Members who are not present for the en masse swearing in ceremony; by statute, such Members-elect may not take their seats until they are sworn.⁽²⁰⁾ The ad-

of the House is appointed, unless inexpedient, in which case an official authorized to administer oaths is appointed. 1 Hinds' Precedents §§ 14-16. See § 5.11, *infra* (state supreme court justice appointed).

15. See §§ 5.8, 5.10, 5.12, *infra*.

16. See §§ 5.8, 5.10, 5.12, *infra*.

17. See § 5.2, *infra*.

18. Only on rare occasions has the oath been administered to Members-elect, in the Speaker's absence, by a Speaker pro tempore (see § 5.2, *infra* and 6 Cannon's Precedents § 20).

19. See § 5.3, *infra*.

20. 2 USC § 25. For the procedure of administering the oath to detained

administration of the oath to individual Members is a privileged matter, and takes precedence over other business.⁽¹⁾ Administering the oath is in order after the previous question is ordered on a pending question,⁽²⁾ during debate on a resolution,⁽³⁾ and on a day when no other business is permitted.⁽⁴⁾

In some instances, the House authorizes the administration of the oath by resolution, as where the right to be sworn has been challenged or where no credentials have been received for the Member-elect. Some such resolutions have included provisions collateral to the actual administration of the oath, such as condi-

Members-elect, see §§ 5.13, 5.14, *infra*.

1. See *House Rules and Manual* § 233 (comment) (1973). The right of Members-elect to seats and questions incidental thereto, including oath administration, are raised under the privilege of the House itself and not as a matter of personal privilege. See *Cannon's Procedure in the House of Representatives*, H. DOC. NO. 122, p. 284, 86th Cong. 1st Sess. (1959).

The administration of the oath takes precedence over even the privileged motion to adjourn (see 1 Hinds' Precedents § 622).

2. See § 5.17, *infra*.

3. See § 5.18, *infra*.

4. See § 5.19, *infra* (adjournment out of respect to deceased Member).

tions of punishment⁽⁵⁾ or conditions that the final right to the seat be referred to committee.⁽⁶⁾

In former times, there existed no documentary evidence of the fact that the oath had been administered to an individual Member-elect. A Member-elect might state that he had taken the oath, and his declaration would be the sole evidence thereof.⁽⁷⁾ To remedy that situation, Congress has by law provided for official copies of the oath of office taken by a Member-elect, to be accorded conclusive evidentiary weight, and required that a record of all those subscribing to the oath be printed in both the Journal and in the *Congressional Record*.⁽⁸⁾ The sin-

gle aim of the enactment was to “provide a way by which any Member of the House could establish by record evidence the fact that he took the oath of office and so became a Member.”⁽⁹⁾

The only persons entitled to be administered the oath on opening day are those whose names appear on the Clerk’s roll, with the exclusion of those whose right to take the oath is challenged;⁽¹⁰⁾ as stated above, the House may add the names of those Members whose credentials have not appeared but about whose election there is no contest or question.⁽¹¹⁾ Members-elect entitled to take the oath may, however, decline or refuse to do so, by resigning before taking a seat in the House,⁽¹²⁾ since membership in (Congress

5. See §5.7, *infra*.

6. For resolutions relating to challenges and the right to seats, see §6, *infra*.

7. See, for example, the confusing situation created at the beginning of the 79th Congress, when several Members who were absent for the calling of the Clerk’s roll were present for the swearing in ceremonies (§5.20, *infra*). An early oath provision, the Act of July 2, 1862, Ch. 128, 12 Stat. 502, required a signed oath to be preserved in the House files, but the practice was seldom followed (see 1 Hinds’ Precedents §128). Currently, 5 USC §2906, enacted in 1966, specifically requires such preservation by the House.

8. For the form in which the oath administration is recorded in the Jour-

nal and in the Record, see §5.21, *infra*. The authorizing provision which Congress enacted in 1948 (Act of Feb. 18, 1948, Ch. 53, 62 Stat. 20) appears as the second paragraph of 2 USC §25.

9. 2 U.S. Code Cong. Serv. p. 1048 (1948).

10. The oath is administered to “Members and Delegates present” previous to their taking their seats. 2 USC §25. U.S. Const. art. VI, clause 3 requires the taking of the oath by “Representatives before mentioned.”

11. See §3.5, *infra*.

12. See 1 Hinds’ Precedents §§1230–35 for past instances of declination to take the oath by resignation.

cannot be imposed on one without his consent.⁽¹³⁾ A Member-elect may be permitted to defer his taking of the oath, without declining his seat, until such time that he meets qualifications not theretofore met.⁽¹⁴⁾ However, the House may determine a Member's seat vacant if he is not qualified at the time of convening.⁽¹⁵⁾

A few notable distinctions may be drawn between the administration of the oath of office in the House and in the Senate. Under Senate practice, Senators-elect are sworn in four at a time, in alphabetical order and not by state.⁽¹⁶⁾ And the Senate rarely authorizes the administration of the oath to an absent Senator-elect away from the Chamber.⁽¹⁷⁾ In addition, there is no provision according evidentiary weight to certified copies of the oath of office taken by Senators-elect, nor is there any

statutory provision directing the sequence of the administration of the oath in relation to other business. The United States Code merely provides that the oath of office shall be administered by the President of the Senate to each Senator-elect, previous to his taking his seat.⁽¹⁸⁾

Administering Officer; Time of Administration

§ 5.1 In contemporary practice, immediately following the election of the Speaker of a new Congress, he swears in Members-elect all at one time.

On Jan. 5, 1937, the opening day of the 75th Congress,⁽¹⁾ after the election of Speaker William B. Bankhead, of Alabama, he made the following announcement:

Some years ago a precedent which had theretofore existed of having the oath administered to Members by States was discontinued and a precedent set whereby all Members took the oath of office at one and the same time. In order to avoid confusion the Chair thinks it best to follow the latter precedent, and the Chair asks each Member of the House and each Delegate to rise in his place while the Chair administers the oath of office.

13. See *U.S. v Dietrich*, 126 F 676, 681 (C. C. Neb. 1904), holding, inter alia, that a person elected a U.S. Senator is not a "Member of Congress" until he has been accepted by the Senate as a Member and until he has voluntarily assumed the duties of his office, including the taking of the oath.

14. See § 2.5, supra.

15. See 1 Hinds' Precedents § 500.

16. See § 5.23, infra.

17. See § 5.24, infra, for instances wherein the Secretary of the Senate was authorized to administer the oath to a Senator-elect in his home state.

18. 2 USC § 21.

1. 81 CONG. REC. 12, 75th Cong. 1st Sess.

The practice preferred by Speaker Bankhead has been followed from the 71st Congress to the present.⁽²⁾

§ 5.2 The House has authorized, by unanimous consent, the Speaker pro tempore to administer the oath of office to a Member-elect in the absence of the Speaker.

On Mar. 12, 1940,⁽³⁾ the House authorized Speaker pro tempore Sam Rayburn, of Texas, who had been appointed for three legislative days by Speaker Bankhead on Mar. 11, to administer the oath of office to Mr. Robert K. Goodwin, of Iowa, in the absence of the Speaker, after the receipt of a certificate of election of Mr. Goodwin.⁽⁴⁾

2. *House Rules and Manual* § 230 (comment to U.S. Const. art. VI, clause 3) (1973) The "latter precedent" referred to, beginning the prevailing practice of swearing in Members and Delegates all at one time, occurred on Apr. 15, 1929, as an innovation by Speaker Nicholas Longworth (Ohio). 71 CONG. REC. 25, 71st Cong. 1st Sess. (paraphrased at 6 Cannon's Precedents § 8).
3. 86 CONG. REC. 2724, 76th Cong. 3d Sess.
4. Apparently on only one other occasion has the oath been administered to an individual Member-elect in the absence of the Speaker by consent of the House (see 6 Cannon's Precedents § 20).

§ 5.3 Where the Speaker dies during the term of a Congress, the oath cannot be administered to Members-elect to fill vacancies until after a new Speaker is elected.

On Jan. 10, 1962,⁽⁵⁾ the House convened for the second session after the Speaker, Sam Rayburn, of Texas, had died during the adjournment *sine die*. The House immediately proceeded to the election of Speaker John W. McCormack, of Massachusetts, who then administered the oath of office to several Representatives-elect to fill vacancies. The Members-elect had not been included on the roll to establish a quorum or to elect a Speaker.⁽⁶⁾

Administration to Resident Commissioner

§ 5.4 A Resident Commissioner elected to the House for a four year term takes the oath of office only once, at the beginning of his term of office.

On Jan. 21, 1971,⁽⁷⁾ the opening day of the 92d Congress, the Resi-

5. 108 CONG. REC. 5-7, 87th Cong. 2d Sess.
6. Where there exists a vacancy in the Speaker's office, there is no official authorized to administer the oath to Members-elect. See 2 USC § 25 and 1 Hinds' Precedents § 170.
7. 117 CONG. REC. 13, 92d Cong. 1st Sess.

dent Commissioner from Puerto Rico, Mr. Jorge L. Cordova, did not arise to take the oath of office en masse with the Members-elect, as he had taken the oath at the beginning of his four-year term, with the commencement of the 91st Congress.⁽⁸⁾

Resolutions Authorizing Oath Administration

§ 5.5 When a Member offers a resolution authorizing the Speaker to administer the oath to a challenged Member before the adoption of the rules, no amendments are in order unless the Member in control yields for that purpose or the previous question is rejected.

On Jan. 4, 1965,⁽⁹⁾ Mr. Carl Albert, of Oklahoma, offered the following resolution:

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentleman from New York, Mr. Richard L. Ottinger.

In response to two parliamentary inquiries by Mr. James C. Cleveland, of New Hampshire, Speaker John W. McCormack, of

8. 115 CONG. REC. 15, 91st Cong. 1st Sess.

9. 111 CONG. REC. 20, 89th Cong. 1st Sess.

Massachusetts, ruled: the pending resolution was not subject to amendment unless Mr. Albert yielded for that purpose; and unless Mr. Albert yielded there would be no opportunity to discuss the merits of the case prior to the vote on the resolution.

The previous question was ordered and the resolution was agreed to. Immediately after adoption of the resolution, the challenged Member appeared at the bar of the House and took the oath of office.⁽¹⁰⁾

§ 5.6 An amendment providing for conditions of punishment is not germane to a resolution authorizing the administration of the oath of office to a Member-elect.

On Jan. 3, 1969,⁽¹¹⁾ Speaker John W. McCormack, of Massachusetts, ruled not germane, to a resolution providing that the Speaker administer the oath of of-

10. Under general parliamentary law, employed by the House before the adoption of rules (applicable in this instance), the 40 minutes debate permitted under Rule XXVII clause 3 [*House Rules and Manual* §907 (1971)] after the ordering of the previous question on a debatable proposition is not in order. See Ch.1 §9, supra.

11. 115 CONG. REC. 23-25, 91st Cong. 1st Sess.

office to Mr. Adam Clayton Powell, Jr., of New York, an amendment adding several conditions of punishment predicated on acts committed in a prior Congress.

§ 5.7 On one occasion, a Representative-elect was administered the oath of office pursuant to a resolution authorizing the administration of the oath, but providing for a fine to be deducted on a monthly basis, reducing seniority to that of a new Member, and specifying that the Representative-elect must take the oath by a certain date or his seat would be declared vacant.

On Jan. 3, 1969, Representative-elect Adam Clayton Powell, Jr., of New York, appeared in the well and was administered the oath of office as a Member of the 91st Congress,⁽²⁾ subsequent to the adoption by the House of a resolution authorizing such administration of the oath, but including other provisions as follows:

H. RES. 2

Resolved—

(1) That the Speaker administer the oath of office to the said Adam Clayton Powell, Member-elect from the Eight-

12. 115 CONG. REC. 33, 34, 91st Cong. 1st Sess.

eenth District of the State of New York.

(2) That as punishment Adam Clayton Powell be and he hereby is fined the sum of \$25,000, said sum to be paid to the Clerk to be disposed of by him according to law. The Sergeant-at-Arms of the House is directed to deduct \$1,150 per month from the salary otherwise due the said Adam Clayton Powell, and pay the same to said clerk until said \$25,000 fine is fully paid.

(3) That as further punishment the seniority of the said Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 91st Congress.

(4) That if the said Adam Clayton Powell does not present himself to take the oath of office on or before January 15, 1969, the seat of the Eighteenth District of the State of New York shall be deemed vacant and the Speaker shall notify the Governor of the State of New York of the existing vacancy.

Administration to Absentees

§ 5.8 The Speaker informs the House of the fact that he has administered the oath of office to an absent Member-elect pursuant to an order of the House, whereupon a resolution is offered accepting such oath.

On Mar. 13, 1933,⁽¹³⁾ Speaker Henry T. Rainey, of Illinois, informed the House that he had ad-

13. 77 CONG. REC. 283, 73d Cong. 1st Sess.

ministered the oath of office to absent Member-elect Wilburn Cartwright, of Oklahoma, as authorized by House Resolution 36. The House then adopted the following resolution:

Whereas Wilburn Cartwright, a Representative from the State of Oklahoma, has been unable from sickness to appear in person to be sworn as a Member of this House, but has sworn to and subscribed the oath of office before the Speaker, authorized by resolution of this House to administer the oath, and the said oath of office has been presented in his behalf to the House, and there being no contest or question as to his election: Therefore

Resolved, That the said oath be accepted and received by the House as the oath of office of the said Wilburn Cartwright as a Member of this House.

Administration by Deputies

§ 5.9 When authorized by resolution to designate deputies to administer the oath of office to absent Members-elect, the Speaker usually appoints as deputies Members of the House from the home states of the absentees.

On Jan. 8, 1937,⁽¹⁴⁾ Speaker William B. Bankhead, of Ala-

14. 81 CONG. REC. 133, 75th Cong. 1st Sess.

bama, announced that pursuant to authorizing resolutions, he had appointed Mr. Schuyler O. Bland, of Virginia, to administer the oath of office to Mr. Andrew J. Montague, of Virginia, Mr. William J. Driver, of Arkansas, to administer the oath of office to Mr. William B. Cravens, of Arkansas, and Mr. Clarence F. Lea, of California, to administer the oath of office to Mr. Henry E. Stubbs, of California.

§ 5.10 A Member designated by the Speaker to administer the oath of office to an absent Member-elect informs the House when he has performed that duty and offers a resolution accepting the oath.

On Jan. 20, 1943,⁽¹⁵⁾ Mr. Edward J. Hart, of New Jersey, made the following report to the House:

Mr. Speaker,⁽¹⁶⁾ in accordance with your designation of me, pursuant to House Resolution 45, Seventy-eighth Congress, adopted by the House of Representatives, to administer the oath of office to Representative-elect Mary T. Norton, of the Thirteenth District of New Jersey, I have the honor to report that on the 16th day of January 1943, at Jersey City, N.J., I adminis-

15. 89 CONG. REC. 245, 246, 78th Cong. 1st Sess.

16. Speaker Sam Rayburn (Tex.).

tered the oath of office to Mrs. Norton, form prescribed by section 1757 of the Revised Statutes of the United States, being the form of oath administered to Members of the House of Representatives, to which Mrs. Norton subscribed.

Mr. Hart then offered a resolution providing that the House accept the oath so administered to the absent Member-elect.

§ 5.11 The Speaker may designate officers of the state judiciary to administer the oath to absent Members-elect.

On Jan. 7, 1959,⁽¹⁷⁾ the Clerk read the following statement of Speaker Sam Rayburn, of Texas:

Pursuant to the authority of House Resolution 11, 86th Congress, the Chair appoints the Honorable Donald Stephen Taylor, Justice of the Supreme Court of New York, Troy, N.Y., to administer the oath of office to the Honorable Dean P. Taylor.

§ 5.12 A non-Member named by the Speaker to administer the oath of office to an absent Member-elect informs the House when he has performed that duty, whereupon the House adopts a resolution receiving and accepting such oath.

On Mar. 21, 1933,⁽¹⁸⁾ there was laid before the House a commu-

17. 105 CONG. REC. 16, 86th Cong. 1st Sess.

18. 77 CONG. REC. 660, 73d Cong. 1st Sess.

nication from Judge Blanton Fortson, of the Western Judicial Circuit, Athens, Georgia, informing the House that he had administered the oath of office to Mr. Charles H. Brand, of Georgia, in Athens, Georgia, pursuant to House Resolution 37 and pursuant to the designation by Speaker Henry T. Rainey, of Illinois, of Judge Fortson to administer the oath to the absent Member-elect. The House then adopted the following resolution:

Whereas Charles H. Brand, a Representative from the State of Georgia, from the tenth district thereof, has been unable from sickness to appear in person to be sworn as a Member of this House, but has sworn to and subscribed the oath of office before Judge Blanton Fortson, authorized by resolution of this House to administer the oath, and the said oath of office has been presented in his behalf to the House, and there being no contest or question as to his election: Therefore

Resolved, That the said oath be accepted and received by the House as the oath of office of the said Charles H. Brand as a Member of this House.

Administration to Delayed Members

§ 5.13 Members arriving too late on opening day to take the oath en masse are administered the oath as they appear at the bar of the House for that purpose.

On Jan. 3, 1945,⁽¹⁹⁾ Speaker Sam Rayburn, of Texas, made the following statement, on opening day, in relation to detained Members:

The Members who have not taken the oath of office will present themselves in the well of the House and all others will clear the well of the House.

§ 5.14 Members-elect who appear subsequent to the day other Members-elect are sworn in present themselves in the well of the House and the Speaker administers the oath to them.

On Jan. 13, 1953,⁽²⁰⁾ ten days after the opening of the 83d Congress, two House Members-elect who had not yet taken the oath of office presented themselves in the well of the House and were administered the oath.

§ 5.15 When a term of a Member began on Jan. 3, 1943, he did not receive the oath of office until Sept. 14, 1943, due to illness.

On Sept. 14, 1943,⁽¹⁾ Speaker Sam Rayburn, of Texas, administered the oath of office to Rep-

19. 91 CONG. REC. 14, 79th Cong. 1st Sess.

20. 99 CONG. REC. 368, 83d Cong. 1st Sess.

1. 89 CONG. REC. 7549, 78th Cong. 1st Sess.

representative-elect Lawrence Lewis, of Colorado, whose term of office commenced with the beginning of the 78th Congress on Jan. 3, 1943. Mr. Lewis was absent due to illness.

§ 5.16 A Member announced, for the information of constituents, that an absent Member-elect would be delayed in taking the oath because of his duties as a naval officer overseas.

On Jan. 4, 1945,⁽²⁾ Mr. John Taber, of New York, made the following announcement:

Mr. Speaker,⁽³⁾ Henry J. Latham was elected to Congress from the Third District of New York last November. He is a lieutenant in the Navy, and was at that time, and is now, on duty in the far Pacific. He will not be able to return to this country to be sworn in until the month of February. I feel, in justice to his constituents, that I should make this announcement at this time.

Privilege of Oath Administration

§ 5.17 Administration of the oath of office to a Member-elect is a matter of high privilege and is in order after the previous question is

2. 91 CONG. REC. 34, 79th Cong. 1st Sess.

3. Speaker Sam Rayburn (Tex.).

ordered on a pending question.

On Oct. 3, 1969,⁽⁴⁾ after the previous question had been ordered on a bill reported from the Committee of the Whole, Mr. Carl Albert, of Oklahoma, asked that a Member-elect be permitted to take the oath of office at that time. The request was granted, and Speaker John W. McCormack, of Massachusetts, administered the oath to Mr. Michael J. Harrington, Representative-elect from Massachusetts to fill a vacancy. Since Mr. Harrington's certificate of election had not yet arrived, the administration of the oath was authorized by unanimous consent.

§ 5.18 On one occasion, debate on a resolution reported from the Committee on Rules was interrupted to allow a new Member to take the oath of office.

On Dec. 24, 1963,⁽⁵⁾ debate on a privileged resolution reported from the Committee on Rules and making in order a conference report was interrupted to allow Mr. James J. Pickle, of Texas, to take the oath of office.

§ 5.19 Administration of the oath of office to a Member-

4. 115 CONG. REC. 28487, 91st Cong. 1st Sess.

5. 109 CONG. REC. 25526, 88th Cong. 1st Sess.

elect was the only business permitted on the day of the death of the Chairman of the Committee on Appropriations.

On May 12, 1964,⁽⁶⁾ the day on which Mr. Clarence A. Cannon, of Missouri, passed away in the early morning hours, the only item of business permitted was the administration of the oath to Mr. William J. Green III, of Pennsylvania.

Form; Record Evidence of Administration

§ 5.20 Where various Members, detained on opening day, were absent for the roll call but were present for the swearing in of Members en masse, the Speaker stated that he would accept the statement of any Member declaring that he was present for the swearing-in ceremony; this was permitted prior to the 1948 amendments to 2 USC §25, establishing record evidence of swearing-in ceremonies.

On Jan. 3, 1945, after Speaker Sam Rayburn, of Texas, had accepted the statements of several Members that they were present

6. 110 CONG. REC. 10695, 88th Cong. 2d Sess.

for the swearing-in ceremony, but were absent for the roll call due to late trains,⁽⁷⁾ the Speaker made a statement on the subject pursuant to a parliamentary inquiry by Mr. Harold Knutson, of Minnesota:⁽⁸⁾

MR. KNUTSON: Mr. Speaker, a number of Members were not in the city at the time the roll call was had but were here in time to be sworn in. What is their status?

THE SPEAKER: The Chair has sworn in quite a number of Members since the roll was called.

MR. KNUTSON: They were sworn in but the Record does not show that they were here.

THE SPEAKER: If any Member says he was here at the time of the swearing in, the Chair will take his statement for it.

§ 5.21 The form of the oath and the record of subscription to the oath of office, as specified by law, appear in the Congressional Record and in the Journal of the House.

In the 91st Congress, the record of the subscription to the oath by Members was printed in the Record of Feb. 18, 1969, as follows:

The oath of office required by the sixth article of the Constitution of the United States, and as provided by sec-

- 7. 91 CONG. REC. 14, 79th Cong. 1st Sess.
- 8. 91 CONG. REC. 16, 79th Cong. 1st Sess.

tion 2 of the act of May 13, 1884 (23 Stat. 22), to be administered to Members and Delegates of the House of Representatives, the text of which is carried in section 1757 of title XIX of the Revised Statutes of the United States and being as follows:

I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

has been subscribed to in person and filed in duplicate with the Clerk of the House of Representatives by each of the following Members and Resident Commissioner of the 91st Congress, pursuant to Public Law 412 of the 80th Congress entitled "An act to amend section 30 of the Revised Statutes of the United States" (U.S.C., title 2, sec. 25), approved February 18, 1948. . . .⁽⁹⁾

§ 5.22 Copies of the signed oath of office executed by House Members cannot be mandated by the process of ordinary courts without the permission of the House of Representatives.

- 9. 115 CONG. REC. 3788, 91st Cong. 1st Sess., Feb. 18, 1969; H. Jour. 269, 91st Cong. 1st Sess. (1969).

On Jan. 9, 1959,⁽¹⁰⁾ the House was informed by the Clerk of a subpoena from the United States District Court for the Middle District of Pennsylvania, in the case of *United States v John P. Gilroy, Jr., et al.*, No. 12880, criminal, commanding the Clerk of the House to appear before the court with certified copies of the signed oaths of offices executed by a certain Congressman. In response, the House adopted a resolution stating that under the privilege of the House no evidence of a documentary character under the control and in the possession of the House of Representatives could be mandated by process of the ordinary courts without the permission of the House. The resolution further stated that the House would permit the production of certified copies of the oath of office, along with other papers, pursuant to a determination by the court upon the materiality and the relevancy of the papers and documents called for in the subpoena *duces tecum*.

Senate Procedure

§ 5.23 In Senate practice, the oath of office is administered to four Senators at a time in

10. 105 CONG. REC. 363, 86th Cong. 1st Sess.

alphabetical order; each four Senators are accompanied to the desk by four other Senators.

On Jan. 3, 1953,⁽¹¹⁾ Vice President Alben W. Barkley, of Kentucky, announced as follows:

The Secretary will now call, alphabetically, and in groups of four, the names of the Senators-elect who as their names are called will advance to the desk and the oath of office will be administered to them.

The legislative clerk called the names of the first four Senators, who were escorted to the desk by four other Senators.

§ 5.24 Although the House regularly authorizes the administration of the oath to absent Members-elect, the Senate has done so only on rare occasions, one occurring since 1936.

On many occasions, the House authorizes the administration of the oath at the beginning of a new Congress to absentees, either by the Speaker himself or through deputies.⁽¹²⁾ The Senate, however, has provided such authorization on only two recorded occasions, the first on May 3, 1929,⁽¹³⁾ and

11. 99 CONG. REC. 7, 83d Cong. 1st Sess.

12. See §§ 5.8, 5.9, and 5.11, *supra*. See also 6 Cannon's Precedents §§ 14-16.

13. 71 CONG. REC. 833, 71st Cong. 1st Sess.

the second on Jan. 3, 1973, when the Secretary of the Senate was authorized by resolution to administer the oath of office to Senator-elect Joseph R. Biden, of Delaware, absent because of a death in his family.⁽¹⁴⁾

§ 6. Challenging the Right to be Sworn

When the Speaker directs the membership-elect of the House to arise to take the oath of office, any Member-elect may challenge the right of any other Member-elect to be sworn at that time.⁽¹⁵⁾

14. 119 CONG. REC. 9, 93d Cong. 1st Sess.

15. For the procedure of challenging, see §6.1, *infra*. The authority to challenge the right of a Member-elect to be sworn is based on U.S. Const. art. I, §5, clause 1, which constitutes the House as the sole judge of the elections, returns, and qualifications of Members. Challenges are made before the oath is administered because the oath is given under art. VI, clause 3, to "Representatives before mentioned", meaning those who meet the qualifications and election requirements stated in the Constitution. The right of one Member-elect not yet sworn to challenge the right of another not yet sworn is unquestioned (see 1 Hinds' Precedents §141).

House as judge of qualifications, see *The Power of a House of Con-*

gress to Judge the Qualifications of Its Members, 81 Harv. L. Rev. 673-84 (Jan. 1968).

In stating his objection to the right of another to be sworn, the Member-elect must base his challenge either on his own responsibility as a Member-elect, or on specific grounds.⁽¹⁶⁾ If neither basis is stated to support the challenge, the House may decline to entertain it.⁽¹⁷⁾ A Member-elect may also challenge the right of an entire state delegation to be administered the oath.⁽¹⁸⁾ Usually, such a challenge relates not to the qualifications or elections of the individual members of the state delegation, but to the status of the constituency.⁽¹⁹⁾

When a challenge is proposed, the Speaker asks the challenged Member(s) not to rise to take the oath with the rest of the membership, as the House and not the Speaker determines both the preliminary and the final action to be taken on any challenges.⁽²⁰⁾

gress to Judge the Qualifications of Its Members, 81 Harv. L. Rev. 673-84 (Jan. 1968).

16. See §6.2, *infra*.

17. 1 Hinds' Precedents §455.

18. See, for example, 1 Hinds' Precedents §§457, 460-462.

19. See *Parliamentarian's Note*, §6.4, *infra* (systematic state denial of voting rights). For occasions following the Civil War when entire state delegations were challenged on the ground of collective disloyalty, see 1 Hinds' Precedents §§457, 460-462.

20. See §6.1, *infra*. The statement has been made that the Speaker may,