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Un-American Activities, upon the request of the Department of Justice, to transfer to the latter's custody certain strips of film and metal containers to be presented as evidence in a criminal proceeding. The material had been obtained by the committee in the course of an investigation.

On May 10, 1949,[4] Mr. John S. Wood, of Georgia, called up and asked unanimous consent for the immediate consideration of the following resolution (H. Res. 209):

> *Resolved,* That the Committee on Un-American Activities is authorized and directed, upon requisition of the Department of Justice, to transfer to its custody for presentation as evidence in the Government case, *United States* v. *Alger Hiss,* five strips of 35-millimeter film and three metal containers uncovered by said committee during the Eightieth Congress, such film commonly known as the "pumpkin film."

Shortly thereafter, the resolution was agreed to.

4. 95 CONG. REC. 5978, 81st Cong. 1st Sess.

§ 20. Disclosure of Unreported Committee Proceedings

Disclosure in Debate

§ 20.1 It has been held not in order in debate to refer to the proceedings of a committee [or of its subcommittee(s)] unless the committee has formally reported its proceedings to the House.

On June 24, 1958,[5] under previous order of the House, Speaker Sam Rayburn, of Texas, recognized Mr. Thomas B. Curtis, of Missouri, for 60 minutes. Mr. Curtis discussed his reservations about certain hearings of the Subcommittee on Legislative Oversight of the Committee on Interstate and Foreign Commerce. The gravamen of his complaint was that the Subcommittee on Legislative Oversight, in public session, had raised the issues of (1) alleged preferential treatment to a named individual by two government agencies, and (2) alleged improper intervention by a named assistant to the President only to then take public testimony about the hospitality that was extended and accepted between the two individ-

5. 104 CONG. REC. 12119–21, 85th Cong. 2d Sess.

uals without first establishing any evidence to prove the truthfulness of the allegations. Mr. Curtis believed that the action of the subcommittee was in violation of House rules.[6]

As the following exchange[7] indicates, Mr. Oren Harris, of Arkansas, Chairman of the parent committee, was of a contrary opinion and successfully challenged Mr. Curtis' right to discuss the as yet unreported subcommittee proceedings:

> MR. CURTIS of Missouri: . . . In these times of scandalmongering . . . I believe it is very important that persons in public life have a regard not only for the substance of things, but for appearances. . . .
>
> However, the issue I took the floor to discuss was the actions of this House subcommittee, which seems to me to be inexcusable. . . .
>
> . . . Not only is this subcommittee . . . not doing the job that needs to be done, it has brought the institution again . . . into disrepute by disregarding the rules of the House and permitting a committee of the House to be used as a forum in this fashion.
>
> MR. HARRIS: Mr. Speaker, I must object again and ask that those words be deleted.
>
> MR. CURTIS of Missouri: I would like to ask the gentleman before he does, just what language is he objecting to?
>
> MR. HARRIS: To the charge that this committee is violating the rules of the House.
>
> MR. CURTIS of Missouri: Well, I certainly do charge that and I think it is proper to charge such a thing if I have presented the evidence. How else are we going to present the case to the House?
>
> THE SPEAKER: There is a long line of decisions holding that attention cannot be called on the floor of the House to proceedings in committees without action by the committee. The Chair has just been reading a decision by Mr. Speaker Gillett and the decision is very positive on that point.[8]
>
> MR. CURTIS of Missouri: Mr. Speaker, in addressing myself to that, may I say I am unaware of such a rule and I would argue, if I may, in all propriety, that that rule, if it does exist, should be changed because how else will the House ever go into the functioning and actions of its committees?
>
> THE SPEAKER: That is not a question for the Chair to determine. That is a

6. Mr. Curtis was concerned with what were then clauses 25(m) and (o) of Rule XI which he had earlier quoted, in part [104 CONG. REC. 12120, 85th Cong. 2d Sess.], as follows: "If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

"(m)(1) Receive such evidence or testimony in executive session; . . .

"(o) No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee."

7. 104 CONG. REC. 12121, 12122, 85th Cong. 2d Sess.

8. See 8 Cannon's Precedents § 2491.

question for the House to change the rule.

MR. CURTIS of Missouri: Mr. Speaker, is it a rule or is it a ruling? If it is a ruling of the Chair, then it is appropriate for the Chair to consider it.

THE SPEAKER: The precedents of the House are what the Chair goes by in most instances. There are many precedents and this Chair finds that the precedents of the House usually make mighty good sense.

MR. CURTIS of Missouri: But the Chair can change a precedent. That is why I am trying to present this matter.

THE SPEAKER: If the Chair did not believe in the precedents of the House, then the Chair might be ready to do that, but this Chair is not disposed to overturn the precedents of the House which the Chair thinks are very clear.

MR. CURTIS of Missouri: Mr. Speaker, if the Speaker will allow me just one brief moment to point out the reason why I think this is a precedent which should be overruled in the light of a specific case that is before us, which I think very appropriately should be discussed on the floor of the House, and it is certainly better to discuss it on the floor of the House than in the newspapers.

THE SPEAKER: The Chair will ask the Clerk to read a part of the ruling by Mr. Speaker Gillett.[9]

The Clerk read as follows:

> The Speaker ruled: "The Chair has always supported that the main purpose of the rule forbidding the disclosure of what transpired in committees was to protect the membership of the committee so that discussions in the committee, where members were forming their opinions upon legislation, might be absolutely free and unembarrassed. Whereas, in this House men are making records, in a committee men ought to act with a consciousness that their attitude would not be published, so that they could consult and discuss with perfect freedom and the committee would have the first as well as the final judgment of all the members of the committee without fear of seeming inconsistent. The Chair has always supposed that was the real purpose, and it is extremely important that the members of the committee should in its proceedings be mutually confidential. But the Chair in inspecting the decision finds that they go much further than that, and they hold not that simply what was said in the committee was confidential but that the records of the committee could not be quoted without the previous authorization of the committee."

MR. CURTIS of Missouri: Mr. Speaker, I have been directing my attention only to what has transpired in public hearings of this committee. As a matter of fact, the gravamen of the charge that I am making lies in the other House rule, the one that I cited on this particular subject, and not what should have been considered in executive session. This was disclosed and it is common knowledge that this has been published throughout the country in the newspapers.

THE SPEAKER: Those hearings have not been published by the House.

MR. CURTIS of Missouri: They are public hearings.

THE SPEAKER: They have not been reported to the House.

MR. CURTIS of Missouri: They have been made available to the public, Mr.

9. Cannon's Precedents § 2491.

Speaker, and the press has quoted them. Surely a Member of the House should have an equal privilege of discussing these matters which are so important to the House.

THE SPEAKER: Anywhere except on the floor of the House.

MR. CURTIS of Missouri: I would think, with all due respect to the Speaker, that the floor of the House is the fairest place to discuss them, because then those who take exception have an opportunity of answering, whereas if it is through a press release they have no opportunity of answering. I will abide by the ruling, of course.

THE SPEAKER: The Chair has made his ruling, and the Chair thinks it is correct.

Parliamentarian's Note: While it has consistently been held that it is not in order in debate to refer to the proceedings of a committee except as have been formally reported to the House (5 Hinds' Precedents §§ 5080–83, 8 Cannon's Precedents §§ 2269, 2485–93), those precedents do not all distinguish between committee meetings or hearings that were open to the public and those that were executive sessions. Clearly, transactions in executive sessions of committees cannot be revealed to the House in debate (8 Cannon's Precedents § 2493; Feb. 1, 1940, 86 CONG. REC. 954, 76th Cong. 3d Sess.); and there are some decisions (as indicated by § 20.1, infra) which purport to extend this principle to open meetings and hearings, although the Speaker has declined to enforce this principle on his own initiative absent a point of order on the floor (see § 20.2, infra). On Apr. 18, 1924 (8 Cannon's precedents § 2491) where the chairman of a committee attempted to quote from a committee's executive session minutes merely to show that the heavy legislative agenda of his committee should convince Members to vote against a pending motion to discharge his committee from further consideration of a bill, Speaker Gillette sustained a point of order against such a reference but indicated misgivings about the trend of the decisions. He indicated that it is "important for the House to know what transpired in the committee in order that the House could Judge better whether or not action should be taken. . . . If it was a new question the Chair would be strongly inclined to hold that it is in order. But the decisions are very conclusive, from 1884, to the reflect that the records of the committee are not available to comment in the House, and therefore the Chair under the precedents feels constrained to sustain the point of order."

The rationale for these earlier decisions was to protect the integrity and independence of com-

mittee proceedings to permit flexibility and the opportunity to compromise in committee deliberations. However, current rules governing committee procedure have a different emphasis. Clause 2(e)(1) of Rule XI as added by the Legislative Reorganization Act of 1970 (84 Stat. 1140) now requires each committee to make available for public inspection all rollcall votes taken in any committee session and a description of the amendment, motion, order, or other proposition and Members' votes thereon. That rule, coupled with the presumption in the 1970 Act that all committee meetings and hearings are to be open to the public and press unless they are closed by rollcall vote and the fact that open committee meeting and hearing transcripts are made, as a matter of course, available to Members, the press, and the public, even prior to the reporting of that matter to the House, mitigates against a strict adherence to some of the earlier decisions insofar as they apply to open meetings and hearings. See also Chapter 29, "Consideration and Debate" section 55, infra, for further precedents on this subject.

Another consistent line of precedent prevents reference in debate to committee actions which impugn the motives of committee members, whether or not by name (Feb. 11, 1941, 87 CONG. REC. 894, 77th Cong. 1st Sess.).

§ 20.2 Prior to the adoption of the Legislative Reorganization Act of 1970, it has been held that a Member may not use transcripts of open committee meetings in debate where the matter has not been reported to the House.

On July 28, 1939,[10] shortly after the House met, Speaker William B. Bankhead, of Alabama, recognized Mr. Chester H. Gross, of Pennsylvania, who proceeded to obtain unanimous consent to address the House for one minute. Mr. Gross then made the following statement:

> Mr. Speaker, as a member of the Committee on Labor of this House, I want the House to know that when the chairman of the committee, the gentlewoman from New Jersey [Mrs. Norton], yesterday thanked John L. Lewis for his fine contribution to the committee after he had made his vicious and uncalled for assault on that courageous American, Jack Garner, she was not speaking the sentiment of the committee. And I as one of the committee resent the statement of Mr. Lewis.

Immediately thereafter, Mr. Matthew A. Dunn, of Pennsylvania, similarly obtained unani-

10. 84 CONG. REC. 10352, 76th Cong. 1st Sess.

mous consent to address the House whereupon the following sequence of events took place:

MR. DUNN: Mr. Speaker, before the Labor Committee went into session yesterday a motion was made and carried that none of the Members should have the right or the privilege to interrogate any person who appeared before the committee. Three of the members of the committee voted against that motion, and I was one of the three. The gentleman from Pennsylvania [Mr. Gross] was one of those who voted for that motion.

MR. [JOSEPH W. MARTIN [Jr.] of Massachusetts: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARTIN of Massachusetts: The gentleman from Pennsylvania cannot divulge what happened in the committee.

THE SPEAKER: The gentleman from Pennsylvania will suspend. The gentleman from Massachusetts [Mr. Martin] makes the point of order that the gentleman from Pennsylvania is undertaking to disclose the proceedings before a committee of the House on a matter which has not been reported by the committee to the House. The rules and precedents sustain the point of order made by the gentleman from Massachusetts, and the gentleman from Pennsylvania, under the rules, is not privileged to discuss matters which occurred before the committee.

MR. DUNN: Very well, Mr. Speaker. May I proceed?

THE SPEAKER: The gentleman may proceed in order, but he cannot disclose or interpret matters that occurred before the committee on measures that have not been reported to the House.

MR. DUNN: Did not the gentleman from Pennsylvania [Mr. Gross] do the same thing?

THE SPEAKER: The gentleman from Pennsylvania [Mr. Gross] did divulge matters which occurred before the committee, but no point of order was made, and, therefore, the Chair could not act on his own motion.

Disclosure of Proceedings to Support Point of Order

§ 20.3 A Member may refer to the printed proceedings of a public subcommittee meeting to justify his point of order that a resolution providing for a select committee to inquire into subcommittee actions was not privileged.

On June 30, 1958,[11] Speaker Sam Rayburn, of Texas, recognized Mr. Thomas B. Curtis, of Missouri, who stated that he rose to a question of the privilege of the House and immediately offered a resolution (H. Res. 610), which provided for the appointment of a special committee to investigate the possible violation of House rules[12] by the Sub-

11. 104 CONG. REC. 12690, 85th Cong. 2d Sess.

12. The gravamen of the complaint was that the subcommittee had failed to

committee on Legislative Oversight of the Committee on Interstate and Foreign Commerce. The Clerk read the resolution as follows:

Whereas on February 5, 1957, the House passed House Resolution 99 empowering its Committee on Interstate and Foreign Commerce to make investigations and studies into matters within its jurisdiction; and

Whereas the Committee on Interstate and Foreign Commerce created a subcommittee entitled Subcommittee on Legislative Oversight to carry out this mandate; and

Whereas House Rule XI 25(m) adopted March 23, 1955, reads as follows:

"If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

"(1) receive such evidence or testimony in executive session;

"(2) afford such person an opportunity voluntarily to appear as a witness; and

"(3) receive and dispose of requests from such person to subpoena additional witnesses"; and

Whereas on June 10, 25, 26, and 27, 1958, the aforesaid subcommittee having been created and embarked upon its work, held public hearings wherein it received testimony which may have tended to defame, degrade, and incriminate a person and which tendency to defame, degrade, and incriminate might have been obvious to the subcommittee.

Whereas it is common knowledge that the newspapers, radio, television, and other media of public communication would, and did, widely disseminate the testimony adduced at these public hearings; and

Whereas many responsible citizens publicly have directed criticism against the actions of the subcommittee alleging that these actions violated the letter and the spirit of the rules of the House XI 25(m). That some of these criticisms state that on the face of the published record of the hearings of the subcommittee the alleged violations are willful and intentional; and

Whereas these alleged actions of the subcommittee and the public criticism of it affects the rights of the House collectively, its safety, dignity, and integrity of its proceedings: Now, be it

Resolved, That a special committee of three members be appointed by the Speaker of the House to inquire into this matter and determine, if indeed the premises of this resolution and the public criticisms as set out herein are true in fact, particularly whether this subcommittee did violate the rules of the House and whether in any instance the violation if so found was willful, and whether any other actions of the subcommittee which pertain to the carrying out of the words and intent of

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comport with the dictates of what was then Rule XI clause 25(m) [see Rule XI clause 27(m), *House Rules and Manual* § 735(m) (1973)]. This rule provided, in part, that if a committee determined that evidence or testimony at an investigative hearing would tend to defame, degrade, or incriminate any person, it should receive such evidence or testimony in executive session.

House Rule XI 25(m) and the purposes of House Resolution 99 were in violation of the rules and purposes of the House. That the special committee report back these findings to the House within 10 days along with any recommendations it may make for correction and other actions, which might include recommendations of approval or censure of the subcommittee, its members or employees, recommendations for changing the rules of the House of Representatives, recommendations for instructions to the Committee on Interstate and Foreign Commerce as to future procedure, recommendations for enlarging the life and scope of investigation and subject matter of this special committee.

Immediately after the Clerk read the resolution, Mr. Oren Harris, of Arkansas, raised a point of order against the resolution on the ground that it was not a privileged resolution. In the course of so doing, he began to discuss the record of the subcommittee:

A member of the committee, the gentleman from California [Mr. Moss] made a motion in executive session at that time to the effect that it did not come within the rule [requiring an executive session] and that the testimony of the witness, as he had presented it to us in a written statement, be taken in public session as paragraph (g) of the rule provides. That motion was voted on. Nine of the 11 members of the subcommittee were present, and there was not a dissenting vote. The motion was agreed to, and thereupon the subcommittee ended its executive session and proceeded to hear the witness in public.

At this juncture, the following[13] exchange and resultant ruling occurred:

MR. [TIMOTHY P.] SHEEHAN [of Illinois]: A point of order, Mr. Speaker.

THE SPEAKER: Well, there is one point of order pending.

MR. SHEEHAN: I am making a point of order on what he is talking about now. According to the ruling the Speaker gave to the gentleman from Missouri [Mr. Curtis] last week a Member could not speak in the House about anything that happened during a committee session until such time as the committee report was tendered to the House. And, as a result, he is out of order.

THE SPEAKER: Well, here is a question of privilege of the House being raised by the gentleman from Missouri [Mr. Curtis], and in order for the gentleman from Arkansas [Mr. Harris] to justify his point of order, he has got to discuss these matters. And, they are in the printed record.[14]

§ 21. Executive Sessions

Generally; Voting to Close a Meeting or Hearing

§ 21.1 The House adopted a resolution reported from the

13. 104 CONG. REC. 12690, 12691, 85th Cong. 2d Sess.

14. For a comparable situation involving the same issue but with respect to subcommittee reports that had not yet been printed see § 20.1, supra.