AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

MR. [FRANK B.] KEEFE [of Wisconsin]: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count. [After counting.] Eighty-seven Members are present, not a quorum.

The Clerk called the roll, and the following Members failed to answer to their names: . . .

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. Cooper, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill H.R. 6335, and finding itself without a quorum, he had directed the roll to be called, when 313 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

THE SPEAKER:[23] The Committee will resume its sitting.

THE CHAIRMAN: The gentleman from Oklahoma [Mr. Johnson] demands tellers on the amendment offered by the gentleman from Idaho [Mr. Dworshak] to the amendment offered by the gentleman from Utah [Mr. Robertson].

MR. [WALTER K.] GRANGER [of Utah]: Mr. Chairman, a point of order.

THE CHAIRMAN: The gentleman will state it.

MR. GRANGER: As I understood the situation when the quorum was called, the Chair had already announced that the amendment offered by the gentleman from Idaho to the amendment had been agreed to; and the request comes too late.

THE CHAIRMAN: The Chair had announced that on a division the amendment to the amendment had been agreed to. Thereupon, the gentleman from Oklahoma [Mr. Johnson] demanded tellers. At that point a point of order was made that a quorum was not present.

The gentleman's demand for tellers is now pending.

§ 17. Absence of Quorum in Standing Committee as Bar to Floor Consideration or Other Subsequent Proceedings

According to Jefferson's Manual,[24] a majority of a committee acting when together constitutes a quorum for business. A rule[25] further provides that no measure or recommendation shall be reported from any committee unless a majority of the committee was actually present. Because of this provision, a point of order that a quorum was not present when a committee reported a measure, if

23. Sam Rayburn (Tex.).

24. *House Rules and Manual* §§ 407, 409 (1979). See supplements to this edition for discussion of Rule XI clause 2(h)(2) adopted in the 95th Congress for recent rule permitting committees to adopt a rule designating one-third of the members as a quorum for certain preliminary business.

25. Rule XI clause 2(1)(2)(A), *House Rules and Manual* § 713(c) (1979).

made in a timely fashion and sustained, bars consideration on the floor.

A decision by the Chair to recommit a measure because a quorum was not present when it was reported from committee is made after a series of steps. After the chairman of the committee or other designated person requests floor consideration, a point of order that a quorum was not present in the committee when the measure was reported may be made.[26] If the point of order has been raised at the appropriate time, the Chair may examine the committee report or inquire of the committee chairman or floor manager whether the allegation is true.[27] Based on the answer of the committee chairman, who is obligated to be certain in his response, the Chair sustains or overrules the point of order. When the point is sustained, the measure is recommitted to the committee.[28]

Whether a quorum is actually present also affects issues which do not arise on the floor, such as criminal culpability for perjury in testimony given to a House committee. In *Christoffel* v *United States,*[29] the United States Supreme Court with four members dissenting reversed a conviction under a District of Columbia statute[30] which defines perjury as falsifying testimony "before a competent tribunal," because a quorum of the Committee on Education and Labor was not present when the allegedly perjurious statements were made. The Court observed that the Constitution[1] authorizes each House to determine the rules of its proceedings, and that the rules of the House apply to committees[2] and authorize calls of the House when a quorum is not present;[3] furthermore, a statute[4] (which is also a

26. See §§ 17.7–17.10, for precedents relating to the appropriate time to raise this point of order.

27. See §§ 17.17–17.19, for precedents relating to questioning committee chairmen.

28. § 17.19, infra.

29. 338 U.S. 84 (1949). The Court in a footnote alluded to *Meyers* v *United States,* 171 F2d 800, 11 A.L.R. 2d 1 (1948) in which the Court of Appeals for the District of Columbia Circuit reversed a perjury conviction because a Senate subcommittee lacked a quorum when allegedly perjurious testimony was given.

30. D.C. Code Anno. § 22–2501.

1. U.S. Const. art. I, § 5, clause 2.

2. Rule XI clause 1(a)(1), *House Rules and Manual* § 703(a) (1979).

3. Rule XV clauses 2(a), 4, *House Rules and Manual* §§ 768, 773, respectively (1979).

4. Legislative Reorganization Act of 1946, Pub. L. No. 601, Ch. 753, § 133(d), 60 Stat. 812.

rule) provides that no measure or recommendation shall be reported from any committee unless a majority was actually present. Basing its ruling on the aforementioned provisions, the Court held that a quorum of the committee must be present to satisfy the "competent tribunal" element of the crime of perjury. By admitting Christoffel's evidence that a quorum was not present when the allegedly perjurious testimony was given[5] notwithstanding the fact that committee records showed that a quorum was present when the meeting was convened and no Member during the session objected to absence of a quorum, the Court accepted Christoffel's contention that a criminal trial is an appropriate occasion for a defendant to raise the quorum issue.

Convicting Christoffel in the face of evidence that a quorum was not present when allegedly perjurious statements were made was found to be not only contrary to the rules and practices of the House, but a denial of his fundamental right to be convicted only on proof beyond a reasonable doubt of all elements of the crime. "A tribunal that is not competent is no tribunal, and it is unthinkable that such a body can be the instrument of a criminal conviction."[6]

The dissenting opinions argued that the majority denied records of Congress the credit and effect to which they are entitled. Instead, it was felt, the Court should defer to the "universal practice" of assumption of a quorum unless and until a point of no quorum is made in the committee meeting.[7]

The Supreme Court in *United States* v *Bryan*[8] upheld a trial court conviction (which had been reversed by the Court of Appeals for the District of Columbia Circuit) for willful failure to comply with a committee subpena under a federal statute.[9] In reaching this holding the Court rejected

5. The Court alluded to evidence tending to show that as few as six of the 25 committee members were in attendance during parts of Christoffel's testimony. 338 U.S. 80, 86 (1949). Clause 2(h)(1) of Rule XI was added on Mar. 23, 1955, to require that a quorum in committee for taking testimony and receiving evidence shall not be less than two.

6. 338 U.S. 80, 90 (1949).

7. *Id.* at pp. 90, 91.

8. 339 U.S. 323 (1950); reh. den. 339 U.S. 991 (1950).

9. 2 USC § 192, which provides in relevant part that every person who, having been summoned to produce papers before a committee, willfully defaults shall be deemed guilty of a misdemeanor.

Bryan's contention that the Committee on Un-American Activities, by lacking a quorum when she appeared and refused to produce the organizational records under her control, was without power to receive such subpenaed documents and that the committee could not be obstructed because it was "organizationally defective."[10] Such defense, based on *Christoffel* v *United States*,[11] was held to be inapposite because the District of Columbia perjury statute[12] in *Christoffel* required an affirmative act, falsification of testimony "before a competent tribunal," while the statute in *Bryan*[13] required intentional failure to produce papers without mentioning anything about competency of the tribunal.[14]

There were other reasons to reject Bryan's defense. Her refusal to produce papers obstructed the legislative inquiry, a situation the statute was designed to punish. Furthermore, her failure to raise an objection to lack of a quorum during the hearing when that defect could have been remedied, rather than at the trial two years later, violated the minimum duties and obligations imposed on a witness by a subpena.[15]

In General

§ 17.1 No measure or recommendation shall be reported from any committee unless a majority of the committee was actually present when such measure was ordered to be reported.[16]

On May 11, 1950,[17] upon consideration of a privileged resolution, House Resolution 495, reported from the Committee on House Administration, John W. McCormack, of Massachusetts, Speaker pro tempore, made a rul-

10. 339 U.S. 323, 328 (1950).

11. 338 U.S. 80 (1949).

12. D.C. Code Anno. § 22–2501.

13. 2 USC § 192.

14. 339 U.S. 323, 329, 330 (1950).

15. See the portion of the opinion designated "Second," 339 U.S. 323, 331–335 (1950), for these reasons. The Court's conclusion on the issue of timeliness of raising the point of no quorum contrasts markedly with its conclusion, on the same facts (but in relation to a different criminal offense), in *Christoffel* v *United States*, 338 U.S. 84, 88 (1949), which held that a criminal trial is a proper time first to raise an objection to lack of a quorum. Justice Jackson, in his concurring opinion in *United States* v *Bryan*, 339 U.S. 323, 343–346 (1950) comments on this disparity.

16. See Rule XI clause 2(1)(2)(A), *House Rules and Manual* § 713(c) (1979).

17. 96 CONG. REC. 6920, 81st Cong. 2d Sess.

ing based on the requirement of a quorum in committees.

MR. [WAYNE L.] HAYS of Ohio: Mr. Speaker, I make a point of order against the consideration of the resolution on the ground that a quorum was not present when it was reported out of committee.

MRS. [MARY T.] NORTON [of New Jersey]: Mr. Speaker, we did have a quorum present, but some Members may have slipped out of committee during the consideration of the resolution. I assumed that a quorum was present.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. RANKIN: Mr. Speaker, it is too late to raise the point of order that a quorum was not present in the committee after it has reached the floor of the House. If no point of order is made in the committee, the presumption is that a quorum was present. To take any other attitude would virtually paralyze legislation. If no point of order was made at the time, the presumption then is that a quorum was present.

THE SPEAKER PRO TEMPORE: The Chair will state in response to the parliamentary inquiry that the point of order is properly addressed at this point because the resolution has just been reported to the House. . . .

MR. RANKIN: Mr. Speaker, a further point of order. This is a very serious proposition that really affects the orderly procedure of the House. I make the point of order that it is too late to raise a point of order that there was no quorum present in the committee unless that point of order was made in the committee.

THE SPEAKER PRO TEMPORE: The Chair will state that the point of order can be made in the House when the report is made. A point of order that a quorum was not present when the resolution was reported out can be made when the resolution is reported to the House. For that reason the Chair rules that the gentleman from Ohio [Mr. Hays] is within his rights at this particular time in making the point of order that he has.

MRS. NORTON: Mr. Speaker, if the gentleman insists on his point of order, I will withdraw the resolution.

THE SPEAKER PRO TEMPORE: The resolution is withdrawn. . . .

MR. RANKIN: Mr. Speaker, under the rules of the House and the rules of every committee, legislation is passed every day without a quorum being present, and unless that question is raised they cannot go into the courts and contest the legislation. The same thing applies to the committee. A ruling to the contrary would simply demoralize legislative procedure as far as the committees of this House are concerned.

THE SPEAKER PRO TEMPORE: The Chair calls the attention of the gentleman from Mississippi to paragraph (d) of section 133 of the Legislative Reorganization Act, which reads as follows:

> No measure or recommendation shall be reported from any such committee unless a majority of the committee was actually present.[18]

18. See Rule XI clause 2(1)(2)(A), *House Rules and Manual* § 713(c) (1979),

§ 17.2 A standing committee cannot validly report a measure unless the report was authorized at a formal meeting of the committee with a quorum present and the mere fact that a majority of the committee members have "approved" the report (but not in a formal meeting of the committee) will not suffice.

On Sept. 30, 1966,[19] Speaker John W. McCormack, of Massachusetts, ruled on an objection to a motion to consider a committee report.

MR. [OMAR T.] BURLESON [of Texas]: Mr. Speaker, by direction of the Committee on House Administration, I submit the following privileged report, Report No. 2158, to accompany House Resolution 1028, providing funds for the Committee on House Administration, and ask for its immediate consideration.

MR. [JONATHAN B.] BINGHAM [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The Chair would like to ask the gentleman from Texas if he is undertaking to bring this resolution up by unanimous consent, or is he reporting it and calling it up as privileged business?

MR. BURLESON: Mr. Speaker, I submit the report as a privileged matter. Should a point of order be raised and should the point of order be sustained, then I would ask unanimous consent for the consideration of House Resolution 1028.

THE SPEAKER: For what purpose does the gentleman from New York rise?

MR. BINGHAM: I make a point of order against the resolution, Mr. Speaker.

THE SPEAKER: On what grounds?

MR. BINGHAM: On the grounds that a quorum of the committee was not present when the resolution was reported. There are a number of members of the committee who have not had an opportunity to have this resolution discussed in a meeting of the committee.

THE SPEAKER: Does the gentleman from Texas desire to be heard?

MR. BURLESON: Mr. Speaker, I desire to be heard.

Mr. Speaker, I do not see that this is a matter involving rules but rather a matter of custom and practice. We were simply following what has been a practice for a great many years relating to noncontroversial matters. This method of obtaining committee approval has been for the convenience of committee members. I shall be glad to relate to the House in just a few words what transpired in this instance.

Recently it has been difficult to get a quorum, and, for obvious reasons, it has been just about impossible for the last 10 days. Never before has the gentleman from New York objected to a

---

which adopts this language. This provision, however, did not become part of the rules until Jan. 3, 1953, after the above proceedings took place.

19. 112 CONG. REC. 24548, 89th Cong. 2d Sess.

telephone poll of members. In this instance, each of the 25 members of the committee, except those who were on the subcommittee examining contracts, the subcommittee headed by the gentleman from Ohio [Mr. Hays]—who had already agreed to the resolution, were called, and a majority of the members approved the resolution.

This practice has been prevalent and has been permitted over the years, although it has been held to a minimum.

Now Mr. Speaker, I shall be glad to yield to the gentleman from New York if he wants to tell us the real reason he is objecting to the consideration of this resolution: The gentleman never before has objected to this procedure and I ask why he objects now?

MR. BINGHAM: Mr. Speaker, will the gentleman yield?

MR. BURLESON: I yield to the gentleman from New York.

MR. BINGHAM: Mr. Speaker, I shall be glad to explain. There has been apparently the establishment of a subcommittee of the Committee on House Administration.

THE SPEAKER: The Chair does not want to go into all that. The Chair wants to ask the gentleman from Texas, the chairman of the committee, was a committee meeting called for the purpose of acting on this resolution? And if so, was a quorum present?

MR. BURLESON: Mr. Speaker, I have explained in some detail the procedure used in this instance. There was an agreement by a majority of the committee that the resolution may be presented.

THE SPEAKER: Was there a meeting? Did the committee meet? Was there a quorum present and voting and acting on it?

MR. BURLESON: Mr. Speaker, on infrequent occasions when we have resorted to this procedure as a matter of convenience and of expediting legislation, it has always been accepted as establishing a quorum. As far as I know this procedure has not been challenged. In this case a majority of the committee agreed to the resolution and I insist that a quorum was established and that the report is proper and that the resolution is privileged.

THE SPEAKER: The Chair is prepared to rule.

The Chair does not inquire into the procedure of a committee, in reporting a bill, unless a point of order as to the matter is raised and thus called to the attention of the Chair. Unless a Member makes a point of order, the Chair does not go into the question of committee procedure.

However, since the point of order has been raised, the Chair will point out that the provisions of clause 26(e), rule XI,[20] make it clear that no measure can be reported from a committee unless a majority of the committee were actually present.

The chairman of the Committee on House Administration has stated that the resolution he now seeks to call up was not ordered reported at a formal meeting of the committee where a quorum was present.

Therefore, the Chair sustains the point of order made by the gentleman from New York [Mr. Bingham].

The report and resolution are recommitted to the Committee on House Administration.

20. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

§ 17.3 Although a quorum of the committee must be present when a measure is ordered reported, the Speaker has approved a practice whereby less than a quorum having tentatively voted to report a measure, a majority, in a formal meeting, has subsequently ratified such action before the report was filed.

On July 9, 1956,[1] Speaker Sam Rayburn, of Texas, ruled on a question of quorum requirements in committees.

MR. [JOHN L.] MCMILLAN [of South Carolina]: Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H. R. 4697) to amend the Alcoholic Beverage Control Act of the District of Columbia, 1954, as amended, and I ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

THE SPEAKER: Is there objection to the request of the gentleman from South Carolina?

MR. [ALBERT P.] MORANO [of Connecticut]: Mr. Speaker, I make the point of order against the consideration of this bill on the ground that when the committee considered this bill there was not a quorum present to report it to the House. . . .

MR. [HOWARD W.] SMITH of Virginia: Mr. Speaker, there is great difficulty, it is true, in getting a quorum of the District Committee, but I was personally present when this bill was voted out, and there was a quorum of the committee present. And, in order to be sure that there was no such question as this raised on the floor of the House, I myself made a motion, when a quorum was present, to reconsider all of the bills that had been considered and voted them out again, which was done. . . .

THE SPEAKER: The Chair must know whether the gentleman says that there was a quorum present or not, to his knowledge.

MR. MCMILLAN: Mr. Speaker, there was a quorum present part of the time and part of the time there was not. . . .

MR. MORANO: Mr. Speaker, I press my point of order. I would like to know whether or not there was a quorum present when this bill was reported, not when the gentleman from Virginia made his motion.

THE SPEAKER: The chairman of the legislative committee has just stated to the Chair that there was a quorum present when this bill was reported. The Chair is going to take the word of the chairman of the committee, because that is according to the rules and practices of the House.

MR. MORANO: Mr. Speaker, I understood the chairman to say that when the gentleman from Virginia [Mr. Smith] made his motion there was a quorum present. But I did not understand the chairman of the committee to say that when this bill was reported there was a quorum present.

THE SPEAKER: The Chair is going to ask the gentleman from South Carolina [Mr. McMillan] that question now.

1. 102 CONG. REC. 12199, 12200, 84th Cong. 2d Sess.

MR. MCMILLAN: Mr. Speaker, when the gentleman from Virginia made his motion he stated that he wanted all bills that were considered that day passed with a quorum present.

THE SPEAKER: The Chair is going to ask the gentleman again if a quorum was present, to his certain knowledge, when this bill was reported.

MR. MCMILLAN: There was not when this bill was passed.

MR. MORANO: Mr. Speaker, I insist on my point of order.

MR. SMITH of Virginia: Mr. Speaker, I should like to be heard further, because I think it is important to straighten this question out.

THE SPEAKER: It is.

MR. SMITH of Virginia: Not from the standpoint of this bill, but as a parliamentary question. Frequently bills are discussed and voted upon when a quorum is not present. It is the custom, at the conclusion of the discussion, when a quorum is present, to move a reconsideration of all the bills that have been passed, and to move to report them out. That is what was done in this matter. I think it is important for the House to know just how strict this rule is and how it is to be applied, because I think every bill that was passed upon this morning came here under the same conditions as this bill.

MR. [SIDNEY E.] SIMPSON of Illinois: Mr. Speaker, will the gentleman yield?

MR. SMITH of Virginia: I yield.

MR. SIMPSON of Illinois: Mr. Speaker, I wish to verify what Judge Smith is saying. That was exactly the procedure in this matter in the House Committee on the District of Columbia.

MR. SMITH of Virginia: On this proceeding of the committee, I think we ought to be straightened out on it for the future.

THE SPEAKER: This has come up many times and it has always been decided by the Chair on the statement of the chairman of the legislative committee concerned. The gentleman from South Carolina said that when this bill was reported there was not a quorum present. Is the Chair quoting the gentleman from South Carolina correctly?

MR. MCMILLAN: That is correct, Mr. Speaker.

MR. SMITH of Virginia: That really is not the question I am trying to get determined for the benefit of the House and other committees. It is true, I believe, there was not a quorum present when any one of these bills was considered, but before the session adjourned a quorum did appear, and then a blanket motion was made to reconsider all of the bills that had previously been passed upon and to vote them out, which motion was carried. May I ask the chairman of the committee if that is a correct statement of what occurred?

MR. MCMILLAN: That is correct.

THE SPEAKER: A quorum was present at that time?

MR. SMITH of Virginia: At that time a quorum was present. That was the reason the motion was made. That is the only way we can operate in that committee, I might add.

MR. [HENRY O.] TALLE [of Iowa]: Mr. Speaker, may I say as a member of the District Committee that I was present at the meeting. The gentleman from Virginia [Mr. Smith] has recorded the proceedings accurately.

MR. MORANO: There is obviously a contradiction here, Mr. Speaker. The

chairman of the committee said there was not a quorum present when this bill was considered. The issue before the Speaker, as I understand it, is a ruling on this bill, not on other bills that were considered en bloc.

THE SPEAKER: That is correct, but the gentleman from South Carolina said that on the last action on the bill in the committee a quorum was present.

The Chair under the circumstances must overrule the point of order made by the gentleman from Connecticut.[2]

§ 17.4 Even though a report is filed as privileged, to retain the status of privileged business when considered, such business must be ordered reported from standing committees when a quorum is present in such committees.

On May 11, 1950,[3] during consideration of House Resolution 495, which had been offered as a privileged matter by the Committee on House Administration and was withdrawn because a point of no quorum during consideration in committee had been made and sustained on the floor, Speaker pro tempore John W. McCormack, of Massachusetts, made a ruling regarding the prerequisite for privileged status.

MR. [THOMAS B.] STANLEY [of Virginia]: A further parliamentary inquiry, Mr. Speaker. Is this a privileged matter?

THE SPEAKER PRO TEMPORE: If it is reported out of committee with a quorum present, it is a privileged matter.

Presumption of Presence of a Quorum

§ 17.5 Unless a point of order is raised, the House assumes that reports from committees were authorized when a quorum of the committee was present.

On Sept. 30, 1966,[4] Speaker John W. McCormack, of Massachusetts, ruled on an objection to a motion to consider a committee report.

Timeliness of Point of Order

§ 17.6 While any Member may challenge the presumption that a committee's action was taken when a quorum of the committee was present, he must do so when the measure is called up; a point

2. See § 17.2, supra, in which the Speaker rejected another method of expediting determination of committee sentiment, a telephone poll, since the committee was not acting when together as required by § 407 of Jefferson's Manual.

3. 96 CONG. REC. 6920, 81st Cong. 2d Sess.

4. For the proceedings of this date, see § 17.2, supra.

of order comes too late when the House has already agreed to the measure.

On Feb. 28, 1968,[5] Speaker John W. McCormack, of Massachusetts, made a ruling as to the proper time to raise a point of no quorum.

MR. [SAMUEL N.] FRIEDEL [of Maryland]: Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 1127) on the resolution (H. Res. 1042) authorizing the expenditure of certain funds for the expenses of the Committee on Un-American Activities, and ask for immediate consideration of the resolution.

MR. [WILLIAM F.] RYAN [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. RYAN: Mr. Speaker, I make a point of order against the consideration of the privileged report on House Resolution 1042 on the ground that a quorum was not present in the Committee on House Administration when this matter was considered.

THE SPEAKER: Does the gentleman from Maryland desire to be heard on the point of order?

MR. FRIEDEL: Mr. Speaker, it is true that we did not have a quorum present for the consideration of House Resolution 1042, but we had unanimous consent by the members that they would not raise a point of order.

However, Mr. Speaker, under the circumstances, in view of the point of order being raised, I withdraw the resolution.

THE SPEAKER: The gentleman from Maryland withdraws the resolution. . . .

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WILLIS: Mr. Speaker, the last resolution sought to be called up was a resolution relative to the House Committee on Un-American Activities, and it was withdrawn.

Now, however, the gentleman from Maryland states, no, it is not so, that there was no more a quorum present for all the other resolutions than there was a quorum present to consider our resolution.

I, therefore, ask unanimous consent that all the other resolutions be withdrawn also.

THE SPEAKER: The Chair will state that if a quorum was not present—and the Chair is not saying that there was not a quorum present—but if a quorum was not present then the point of order should have been made by any Member at the time a particular resolution was called up.

§ 17.7 A point of order that a quorum of a committee was not present when a privileged bill or resolution was ordered reported may be made when the Member presents the report to the House in the appropriate manner.

On May 11, 1950,[6] upon consideration of a privileged resolu-

5. 114 CONG. REC. 4449, 90th Cong. 2d Sess.

6. 96 CONG. REC. 6920, 81st Cong. 2d Sess.

tion, Speaker pro tempore John W. McCormack, of Massachusetts, made a ruling regarding the timeliness of a point of no quorum in the committee reporting the measure.[7]

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. RANKIN: Mr. Speaker, it is too late to raise the point of order that a quorum was not present in the committee after it has reached the floor of the House. If no point of order is made in the committee, the presumption is that a quorum was present. To take any other attitude would virtually paralyze legislation. If no point of order was made at the time, the presumption then is that a quorum was present.

THE SPEAKER PRO TEMPORE: The Chair will state in response to the parliamentary inquiry that the point of order is properly addressed at this point because the resolution has just been reported to the House. . . .

MR. RANKIN: Mr. Speaker, a further point of order. This is a very serious proposition that really affects the orderly procedure of the House. I make the point of order that it is too late to raise a point of order that there was no quorum present in the committee unless that point of order was made in the committee.

THE SPEAKER PRO TEMPORE: The Chair will state that the point of order can be made in the House when the report is made. A point of order that a quorum was not present when the resolution was reported out can be made when the resolution is reported to the House. For that reason the Chair rules that the gentleman from Ohio [Mr. Hays] is within his rights at this particular time in making the point of order that he has.

MRS. NORTON: Mr. Speaker, if the gentleman insists on his point of order, I will withdraw the resolution.

THE SPEAKER PRO TEMPORE: The resolution is withdrawn.

§ 17.8 A point of order that a bill was ordered reported from a standing committee in the absence of a quorum of that committee is properly raised in the House when the bill is called up for consideration. (However, where a bill is being considered under suspension of the rules, a point of order will not lie against the bill on the ground that a quorum was not present when the bill was reported from committee.)

On Oct. 7, 1968,[8] Speaker John W. McCormack, of Massachusetts,

7. Note: This inquiry was made after Mr. Wayne L. Hays (Ohio), made a point of no quorum in committee against consideration of the resolution that had just been offered as a privileged matter (by direction of the Committee on House Administration) by Mrs. Mary T. Norton (N.J.).

8. 114 CONG. REC. 29764, 90th Cong. 2d Sess.

ruled on the timeliness of a point of no quorum of the committee reporting out a bill.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, relating to our program for today, a number of bills are slated to be considered under suspension of rules in the House. There are four bills from the Committee on Post Office and Civil Service which, from evidence I have, were reported in violation of rule XI, clause 26(e) which states:

> (e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.[9]

The evidence I have is that H.R. 17954 and H.R. 7406 were ordered reported from the Committee on Post Office and Civil Service in executive session on August 2, 1968, without a quorum present.

Additional evidence reveals that S. 1507 and S. 1190 were ordered reported from the Committee on Post Office and Civil Service in executive session on September 3, 1968, without a quorum present. I further cite from Jefferson's Manual, section 408:

> A bill improperly reported is not entitled to its place on the calendar; but the validity of a report may not be questioned after the House has voted to consider it, or after actual consideration has begun.

Mr. Speaker, I submit that the bills S. 1507, S. 1190, H.R. 17954, and H.R. 7406 all were improperly reported. Mr. Speaker, my parliamentary inquiry is this: At what point in the proceedings would it be in order to raise the question against these bills as being in violation of rule XI, clause 26(e) inasmuch as they are scheduled to be considered under suspension of the rules, which would obviously suspend the rule I have cited.

Mr. Speaker, I ask the guidance of the Chair in lodging my point of order against these listed bills so that my objection may be fairly considered, and so that my right to object will be protected. Mr. Speaker, I intend to do so only because orderly procedure must be based on compliance with the rules of the House which we have adopted.

THE SPEAKER: The Chair will state that any point of order would have to be made when the bill is called up.

The Chair might also advise or convey the suggestion to the gentleman from Missouri that the bills will be considered under suspension of the rules, and that means suspension of all rules.

MR. HALL: Mr. Speaker, a further parliamentary inquiry. Would it not be in order, prior to the House going into the Consent Calendar or suspension of the rules, to lodge the point of order against the bills at this time?

THE SPEAKER: The point of order could be directed against such consideration when the bills are called up under the general rules of the House. The rules we are operating under today as far as these bills are concerned concerns suspension of the rules, and that motion will suspend all rules.

MR. HALL: Mr. Speaker, if I may inquire further, is it not true that, until such time as we go into that period of suspension of the rules, a point of

9. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

order would logically lie against such bills which violate the prerogatives of the House and of the individual Members thereof, to say nothing of the committee rules? My belief that a point of order should be sustained is based on improper committee procedure and addresses itself to the fact that the bills are improperly scheduled, listed, or programed on the calendar, or rule of suspension, and so forth.

THE SPEAKER: The Chair will state, as to points of order, at the time the Chair answered the specific inquiry of the gentleman from Missouri, a point of order would not lie until the bill is reached and brought up for consideration.

MR. HALL: Mr. Speaker, may I be recognized at that time to lodge such a point of order, and will this Member be protected?

THE SPEAKER: The Chair will always protect the rights of any Member. The Chair has frankly conveyed to the gentleman that we are operating under a suspension of the rules procedure today, and that suspends all rules.

MR. [LESLIE C.] ARENDS [of Illinois]: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ARENDS: Do I correctly understand the ruling of the Chair that suspending all the rules pertains to more than just the House; it pertains to the rules of committee action likewise?

THE SPEAKER: The gentleman from Illinois is correct.

MR. ARENDS: I thank the Speaker.

§ 17.9 A point of order that a bill was reported from committee in the absence of a quorum is in order while the motion that the House resolve itself into the Committee of the Whole for the consideration of the bill is pending.

On Oct. 11, 1968,[10] a point of order that a quorum was absent when the standing committee considered a bill was entertained pending a vote on a motion to resolve into the Committee of the Whole.

MR. [WILLIAM R.] POAGE [of Texas]: Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 2511) to maintain and improve the income of producers of crude pine gum, to stabilize production of crude pine gum, and for other purposes.

MR. [PAUL] FINDLEY [of Illinois]: Mr. Speaker, I make a point of order against consideration of S. 2511.

THE SPEAKER:[11] The gentleman will state his point of order.

MR. FINDLEY: Mr. Speaker, I make a point of order against the consideration of S. 2511 on the grounds that the Committee on Agriculture acted without a quorum being present when it ordered S. 2511 reported to the House on July 2, 1968.

Rule XI, clause 26(e), of the rules of the House states as follows:

---

10. 114 CONG. REC. 30739, 90th Cong. 2d Sess.

11. John W. McCormack (Mass.).

(e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.[12]

I have personally checked with the staff of the Committee on Agriculture and have been informed that on July 2, 1968, there were only 14 members of the committee present and that the vote to report S. 2511 to the House was 11 to 0 in favor of such action. Since the total membership of that committee is 35, there obviously was not a majority actually present as required by rule XI, clause 26(e).

THE SPEAKER: The Chair would like to inquire of the chairman of the Committee on Agriculture if a quorum was present when the bill was reported.

MR. POAGE: Mr. Speaker, the chairman of the Committee on Agriculture was not present the day this bill was reported. The record indicates that there were only 14 members of the committee present at the time it was reported.

THE SPEAKER: Does the gentleman from Texas state that the record of his committee shows there were 14 members present when the bill was acted upon and reported out?

MR. POAGE: That is correct.

THE SPEAKER: [The rule] states:

No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.

Upon the statement of the chairman of the committee, a majority of the committee were not actually present. Therefore, the point of order is sustained; and the bill is recommitted to the Committee on Agriculture.

§ 17.10 A point of order under Rule XI clause 27(e),[13] that a bill was reported from committee in the absence of a quorum, is properly raised when the bill is called up for consideration; such a point of order will not lie against a resolution providing for the consideration of the bill.

On Oct. 11, 1968,[14] Speaker John W. McCormack, of Massachusetts, made a ruling regarding the proper time to raise a point of order that a bill was reported from committee without a quorum being present.

MR. [JOHN A.] YOUNG [of Texas]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1256 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1256

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 2511) to maintain and improve the income of producers of crude pine gum. . . .

12. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

13. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

14. 114 CONG. REC. 30738, 90th Cong. 2d Sess.

MR. [PAUL] FINDLEY [of Illinois]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. FINDLEY: Mr. Speaker, I make a point of order against the consideration of House Resolution 1256 on the grounds that the Committee on Agriculture acted without a quorum being present when it ordered S. 2511 reported to the House on July 2, 1968.

Rule XI, clause 26(e), of the rules of the House states as follows:[15]

> (e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.

I have personally checked with the staff of the Committee on Agriculture and have been informed that on July 2, 1968, there were only 14 members of the committee present and that the vote to report S. 2511 to the House was 11 to 0 in favor of such action. Since the total membership of that committee is 35, there obviously was not a majority actually present as required by rule XI, clause 26(e).

Mr. Speaker, I raise the point of order at this time in order to have it presented to the Chair in a timely fashion. The precedents indicate that such a point of order is made too late if it comes after debate has started on either the rule or on the bill itself—VIII 2223 and February 24, 1947, page 1374.[16]

Furthermore, the Chair stated in a response to a parliamentary inquiry by the gentleman from Missouri [Mr. Hall] on Monday of this week—October 7, page 29764—that any point of order under rule XI, clause 26(e), would have to be made when the bill is called up.

Since House Resolution 1256 is the rule which calls up S. 2511 for consideration in the Committee of the Whole House on the State of the Union, I therefore insist on my point of order at this time.

THE SPEAKER: The Chair states, in response to the inquiry of the gentleman from Illinois, that the point of order at this time would be premature.

The Chair might state that the appropriate time to make the point of order would be at the time the motion is made to go in the Committee of the Whole.

MR. FINDLEY: That is after the rule is adopted?

THE SPEAKER: After the rule is adopted.

MR. FINDLEY: Mr. Speaker, I thank the Chair.

§ 17.11 Points of order against a bill on the ground that a quorum of the committee was not present when the bill was ordered reported should be made in the House; such points come too late after the House has resolved itself into the Committee of the Whole for consideration of the bill.

On June 14, 1946,[17] during consideration of S. 524, the na-

15. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

16. See § 17.14, infra, for proceedings on Feb. 24, 1947.

17. 92 CONG. REC. 6961, 79th Cong. 2d Sess.

tional cemetery bill, Jere Cooper, of Tennessee, Chairman of the Committee of the Whole, made a ruling on the proper time to raise objection to proceedings of the committee reporting a bill.

MR. [FOREST A.] HARNESS of Indiana: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HARNESS of Indiana: At what time would a point of order lie against the bill on the ground that the committee reporting it was without jurisdiction because at the time it reported the bill there was not a quorum present?

THE CHAIRMAN: Answering the gentleman's parliamentary inquiry the Chair will state that such a point of order would be too late now that the House is in the Committee of the Whole House on the State of the Union. Such a point of order should be made in the House before consideration of the bill.

§ 17.12 A point of order that a nonprivileged measure was reported from committee in the absence of a quorum will not lie until the House has agreed to consider the bill.

On Oct. 11, 1968,[18] Speaker John W. McCormack, of Massachusetts, ruled on the timeliness of a point of no quorum of the committee reporting a bill, when raised in the House against consideration of the bill.[19]

§ 17.13 Following the discharge of the Committee of the Whole from further consideration of a bill, a Member was permitted, pending consideration of the bill, to make the point of order that the measure had been reported from committee in the absence of a quorum.

On Oct. 11, 1968,[1] Speaker John W. McCormack, of Massachusetts, entertained a point of order concerning the lack of a quorum of the committee reporting a bill after the bill was read.

MR. [THADDEUS J.] DULSKI [of New York]: Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 1507) to include firefighters within the provisions of section 8336(c) of title 5, United States Code, relating to the retirement of Government employees engaged in certain hazardous occupations.

The Clerk read the title of the bill.

THE SPEAKER: Is there objection to the request of the gentleman from New York?

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, reserving the right to object, I would make a point of order

18. 114 CONG. REC. 30751, 90th Cong. 2d Sess.

19. See the excerpt from § 17.13, infra, for the proceedings of this date.

1. 114 CONG. REC. 30751, 90th Cong. 2d Sess.

against the bill. I make a point of order that report No. 1945 violates rule XI, clause 26,[2] and that a quorum was not present when the bill was passed by the Post Office and Civil Service Committee.

THE SPEAKER: The Chair will state that the unanimous-consent request is for the present consideration of the bill. In the opinion of the Chair, at this point a point of order is not in order. If the consent is granted, then a point of order might be in order, though the Chair does not indicate what the decision of the Chair might be.

MR. ASHBROOK: Mr. Speaker, I would say to the Chair, on that ground I would withdraw my reservation of objection.

THE SPEAKER: Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the bill, as follows:

S. 1507

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8336(c) of title 5, United States Code, is amended. . . .

THE SPEAKER: Now does the gentleman from Ohio want to make the point of order?

MR. ASHBROOK: Yes, Mr. Speaker. I make the point of order for the reasons already stated and request that the bill be recommitted to the Committee on Post Office and Civil Service.

THE SPEAKER: The Chair would like to ask the gentleman from New York if a quorum was present in his committee when the bill was reported?

MR. DULSKI: Mr. Speaker, the gentleman from Ohio is correct. There was no quorum present.

THE SPEAKER: Under those circumstances, the Chair sustains the point of order and the bill is recommitted to the Committee on Post Office and Civil Service.

Parliamentarian's Note: The Chair was, under the ruling of July 19, 1947, contained at Chapter 31, § 8.2, infra, and at Chapter 17, § 58.7, supra, justified in interpreting the granting of the original unanimous-consent request (to discharge the Committee of the Whole House on the state of the Union) as not tantamount to waiving the point of order, since the request here did not specify a waiver of all points of order.

§ 17.14 The point of order that a bill was reported from a committee without a formal meeting and a quorum present comes too late if debate has started on the bill in the House.

On Feb. 24, 1947,[3] during consideration of a bill providing for daylight saving time in the District of Columbia, Speaker Joseph W. Martin, Jr., of Massachusetts, made a ruling regarding timeli-

2. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

3. 93 CONG. REC. 1368, 1369, 1374, 80th Cong. 1st Sess.

ness of a point of no quorum in committee.[4]

MR. [EVERETT M.] DIRKSEN [of Illinois]: Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 1700) to provide for daylight saving in the District of Columbia, and ask for its immediate consideration.

The Clerk read the bill, as follows: . . .

THE SPEAKER: The gentleman from Illinois is recognized for 1 hour. . . .

MR. DIRKSEN: Mr. Speaker, this is the first District Day that has been claimed by the Committee on the District of Columbia. . . .

MR. [DANIEL A.] REED of New York: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. REED of New York: I believe the Reorganization Act [section 133(d)] provides that no bill shall come to the floor unless it is reported out of committee when a quorum is present. As I understand the statement of the gentleman from Illinois, there was no meeting of the committee.

THE SPEAKER: The point of order comes too late. It should have been made before debate started on the bill.

§ 17.15 A point of order that a quorum was not present in committee when a resolution was ordered reported comes too late if not made when the resolution was read.

On Feb. 25, 1954,[5] after debate had commenced on House Resolution 419, which was offered by the Committee on House Administration and provided by additional funds from the contingent fund to be paid for an investigation by a subcommittee of the Committee on Government Operations, Speaker Joseph W. Martin, Jr., of Massachusetts, made a ruling on the timeliness in the House of a point of no quorum in committee when the resolution was ordered reported.

MR. [KARL M.] LECOMPTE [of Iowa]: Mr. Speaker, by direction of the Committee on House Administration, I call up for consideration at this time House Resolution 419 with a committee amendment.

The Clerk read as follows: . . .

With the following committee amendment: . . .

MR. LECOMPTE: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. LECOMPTE: Mr. Speaker, this is a privileged resolution?

THE SPEAKER: Yes.

MR. LECOMPTE: And the same rules apply in this case as in the case of the resolution just agreed to by the House?

THE SPEAKER: Yes.

MR. LECOMPTE: Mr. Speaker, for the benefit of the Members of the House may I say that by the terms of this resolution the sum of $100,000 is provided for an investigation by one of the subcommittees of the Committee on Government Operations, the subcommittee being headed by the gentleman from Ohio [Mr. Bender]. . . .

4. See also § 17.10, supra.

5. 100 CONG. REC. 2294, 2295, 2303, 83d Cong. 2d Sess.

MR. [CLARE E.] HOFFMAN of Michigan: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. HOFFMAN of Michigan: Mr. Speaker, I object to consideration of the resolution at this time unless it appears that a quorum was present when the resolution was authorized by the committee or unless the chairman of the committee will so state that a quorum was present. If he does, that will be satisfactory.

THE SPEAKER: The gentleman from Michigan [Mr. Hoffman], makes the point of order that a quorum was not present in the committee reporting this resolution. Unfortunately for the gentleman from Michigan, he makes his point of order too late. That should have been made at the time the resolution was read.

MR. HOFFMAN of Michigan: Mr. Speaker, I want to make one correction. I did not make the point of order that a quorum was not present. The point of order was that consideration of the bill is not in order unless the record showed a quorum was present or unless the gentleman so stated

THE SPEAKER: The gentleman should have made that point of order at the time the resolution was read.

§ 17.16 After the adoption of a resolution by the House, it is too late to attack the validity of the action taken by the committee reporting the resolution on the ground that a quorum was not present when it was ordered reported.

On Feb. 28, 1968,[6] Speaker John W. McCormack, of Massachusetts, made a ruling as to the proper time to raise a point of order that a committee action was taken in the absence of a quorum.

Questioning the Committee Chairman

§ 17.17 Where a report from a committee was challenged on the ground that a quorum of the committee was not present when the report was authorized, the Speaker questioned the chairman of the committee concerning the truth of the contention.

On Oct. 11, 1968,[7] Speaker John W. McCormack, of Massachusetts, questioned the Chairman of the Committee on Agriculture with respect to a point of order.[8]

§ 17.18 Because the Chair has no knowledge of what occurred in a standing committee, he must rely on the certain statement of the chairman of the committee as to whether a quorum was

6. For the proceedings of this date, see § 17.6, supra.
7. 114 CONG. REC. 30739, 90th Cong. 2d Sess.
8. For the proceedings of this date, see § 17.9, supra.

present when the committee ordered the bill reported.

On July 9, 1956,[9] Speaker Sam Rayburn, of Texas, ruled on a point of order, as follows:

MR. [JOHN L.] MCMILLAN [of South Carolina]: Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 4697) to amend the Alcoholic Beverage Control Act of the District of Columbia, 1954, as amended, and I ask unanimous consent that the bill be considered in the House as in Committee of the Whole.

THE SPEAKER: Is there objection to the request of the gentleman from South Carolina?

MR. [ALBERT P.] MORANO [of Connecticut]: Mr. Speaker, I make the point of order against the consideration of this bill on the ground that when the committee considered this bill there was not a quorum present to report it to the House. . . .

MR. [SIDNEY E.] SIMPSON of Illinois: I will say for the benefit of the House that I was at the committee meeting when the gentleman from Virginia [Mr. Smith] brought up the point of no quorum; and there was a quorum present.

THE SPEAKER: That is what the Chair is trying to ascertain from the chairman of the committee.

MR. MCMILLAN: That is correct.

THE SPEAKER: That is the point that is involved here.

MR. MCMILLAN: The gentleman from Virginia [Mr. Smith] made that motion and there was a quorum present.

MR. MORANO: Mr. Speaker, I press my point of order. I would like to know whether or not there was a quorum present when this bill was reported, not when the gentleman from Virginia made his motion.

THE SPEAKER: The chairman of the legislative committee has just stated to the Chair that there was a quorum present when this bill was reported. The Chair is going to take the word of the chairman of the committee, because that is according to the rules and practices of the House.

MR. MORANO: Mr. Speaker, I understood the chairman to say that when the gentleman from Virginia [Mr. Smith] made his motion there was a quorum present. But I did not understand the chairman of the committee to say that when this bill was reported there was a quorum present.

THE SPEAKER: The Chair is going to ask the gentleman from South Carolina [Mr. McMillan] that question now.

MR. MCMILLAN: Mr. Speaker, when the gentleman from Virginia made his motion he stated that he wanted all bills that were considered that day passed with a quorum present.

THE SPEAKER: The Chair is going to ask the gentleman again if a quorum was present, to his certain knowledge, when this bill was reported. . . . The gentleman from South Carolina said that on the last action on the bill in the committee a quorum was present.

The Chair under the circumstances must overrule the point of order made by the gentleman from Connecticut.

§ 17.19 Where the chairman of a committee concedes that a bill was ordered reported

9. 102 CONG. REC. 12199, 12200, 84th Cong. 2d Sess.

when a quorum was not present, and a point of order is sustained against the bill on that ground, the bill is recommitted.

On Oct. 11, 1968,[10] a bill reported from the Committee on Agriculture was recommitted because a quorum had not been present when the bill was ordered reported.[11]

Withdrawal of Floor Consideration

§ 17.20 Where a point of order was raised against consideration of a privileged resolution, reported and called up by the Committee on House Administration, on the ground that a quorum of the committee was not present when the resolution was ordered reported, the resolution was withdrawn before the Chair ruled.

On Feb. 28, 1968,[12] a resolution was withdrawn after a point of order was raised in the House that the committee lacked a quorum when the resolution was reported.

MR. [SAMUEL N.] FRIEDEL [of Maryland]: Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 1127) on the resolution (H. Res. 1042) authorizing the expenditure of certain funds for the expenses of the Committee on Un-American Activities, and ask for immediate consideration of the resolution.

MR. [WILLIAM F.] RYAN [of New York]: Mr. Speaker, a point of order.

THE SPEAKER:[13] The gentleman will state his point of order.

MR. RYAN: Mr. Speaker, I make a point of order against the consideration of the privileged report on House Resolution 1042 on the ground that a quorum was not present in the Committee on House Administration when this matter was considered.

THE SPEAKER: Does the gentleman from Maryland desire to be heard on the point of order?

MR. FRIEDEL: Mr. Speaker, it is true that we did not have a quorum present for the consideration of House Resolution 1042, but we had unanimous consent by the members that they would not raise a point of order.

However, Mr. Speaker, under the circumstances, in view of the point of order being raised, I withdraw the resolution.

THE SPEAKER: The gentleman from Maryland withdraws the resolution.

§ 17.21 A report from the Committee on Rules, about to be

10. 114 CONG. REC. 30739, 90th Cong. 2d Sess.
11. See the proceedings discussed in § 17.9, supra. See also 114 CONG. REC. 30751, 90th Cong. 2d Sess., Oct. 11, 1968, for another illustration.
12. 114 CONG. REC. 4449, 90th Cong. 2d Sess.
13. John W. McCormack (Mass.).

reported from the floor, was not filed because of a question as to the presence of a quorum of the committee when the resolution was ordered reported.

On Feb. 2, 1951,[14] House Resolution 95, authorizing the Committee on the Judiciary to conduct studies and investigations relating to matters within its jurisdiction, was withdrawn.

MR. [ADOLPH J.] SABATH [of Illinois]: Mr. Speaker, I desire to file a privileged report for printing in the Record.

The Clerk read as follows:

> House Resolution 95, authorizing the Committee on the Judiciary to conduct studies and investigations relating to matters within its jurisdiction.

MR. [CLARENCE J.] BROWN of Ohio: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER:[15] The gentleman will state it.

MR. BROWN of Ohio: Mr. Speaker, may the gentleman from Ohio inquire what is the privileged report?

THE SPEAKER: The Clerk read the report. The Clerk will reread it.

The Clerk read as follows:

> House Resolution 95, authorizing the Committee on the Judiciary to conduct studies and investigations relating to matters within its jurisdiction.

Mr. Brown of Ohio and Mr. [Edward E.] Cox [of Georgia] rose.

THE SPEAKER: The gentleman from Illinois has the floor.

MR. COX: Mr. Speaker, will the gentleman yield?

MR. SABATH: For a question.

MR. COX: For a statement. The gentleman violates an agreement we had on the floor.

MR. SABATH: I did not violate any agreement.

THE SPEAKER: The gentleman from Illinois asked unanimous consent to have until midnight to file a report from the Committee on Rules. That was day before yesterday. The request was objected to. There was no agreement the Chair knows anything about.

MR. COX: Mr. Speaker, I had an agreement with the gentleman myself. The Committee on Rules reported this resolution when a quorum was not present.

MR. BROWN of Ohio: Mr. Speaker, I desire to make a point of order.

MR. COX: Mr. Speaker, I approached the gentleman on the floor and made a statement to him. He said he would not offer this resolution until the committee had had opportunity to act on it again. Now, that was fair of the gentleman. Of course, I do not mean to say the gentleman intentionally violates an agreement, but he has violated an agreement.

MR. SABATH: No. Wait a minute. Mr. Speaker, to make matters clear, two of the Republican Members left the committee—the committee remained in session—to answer a roll call. We had seven Members and there was no objection.

MR. COX: The gentleman is mistaken. There were six. I counted them.

MR. BROWN of Ohio: Mr. Speaker, I make the point of order that the reso-

---

14. 97 CONG. REC. 876, 82d Cong. 1st Sess.

15. Sam Rayburn (Tex.).

lution has not been properly reported by the Rules Committee.

MR. SABATH: It has been reported.

MR. BROWN of Ohio: I think an inquiry by the Chair will determine there was not a quorum present, and that the resolution was not before the committee at that time.

MR. COX: That is right. That is a correct statement.

MR. BROWN of Ohio: I must protest, Mr. Speaker, and I must make the point of order. . . .

MR. SABATH: Mr. Speaker, even if a quorum was not present, no point of order has been made. But a quorum was present, and I can give you the names of the seven Members who were present. They were Mr. Cox, Mr. Colmer, Mr. Madden, Mr. Delaney, Mr. Mitchell, Mr. Latham, and myself. Seven of twelve makes a quorum. But I withheld it because the gentleman from Ohio [Mr. Brown] objected due to some misunderstanding with the gentleman from New York [Mr. Celler]. Since that time I have learned that the gentleman from New York [Mr. Celler] has agreed with the gentleman from Ohio [Mr. Brown] on the assignment of committees and because the gentleman from New York [Mr. Celler] assured me that an agreement has been reached with the gentleman from Ohio [Mr. Brown] as to the number of subcommittees, I present it today. A quorum was present. The committee had jurisdiction.

MR. COX: Mr. Speaker, if the gentleman will yield there, the gentleman will recall that the gentleman from Virginia [Mr. Smith] and the gentleman from Texas were not present. There was not a single Republican present.

MR. SABATH: There was a Republican present.

MR. COX: Not a single Republican was present. This was not on the agenda but it was called up after the Republicans left, and there was not the majority present. . . .

MR. SABATH: I withdraw the resolution, Mr. Speaker.

Suspension of the Rules

§ 17.22 Because a motion to suspend the rules and pass a bill suspends all rules in conflict with the motion, a point of order will not lie against the bill on the ground that a quorum of the committee was not present when it was reported.

On Sept. 16, 1968,[16] Speaker John W. McCormack, of Massachusetts, ruled on the validity of a point of no quorum during a suspension of the rules procedure.

MR. [MORRIS K.] UDALL [of Arizona]: Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 19136) to amend title 5, United States Code, to provide for the payment of overtime and standby pay to certain personnel employed in the Department of Transportation.

The Clerk read as follows:

H.R. 19136

Be it enacted by the Senate and House of Representatives of the

16. 114 CONG. REC. 27029, 27030, 90th Cong. 2d Sess.

United States of America in Congress assembled, That section 5542(a) of title 5, United States Code, is amended by adding the following new paragraph after paragraph (2): . . .

Sec. 3. The amendments made by this Act shall take effect on the first day of the first pay period which begins on or after the thirtieth day after the date of enactment of this Act.

THE SPEAKER: Is a second demanded?

MR. [H. R.] GROSS [of Iowa]: Mr Speaker, at the proper time I ask to be recognized to make a point of order against consideration of this bill.

THE SPEAKER: The Chair will state that if the gentleman proposes to make a point of order, this is the time to make it.

MR. GROSS: Mr. Speaker, I make a point of order against the consideration of the bill (H.R. 19136) on the ground that it violates rule XI, clause 26(e),[1] in that it was reported from the committee without a quorum being present.

THE SPEAKER: The Chair will state that the motion to suspend the rules suspends all rules, including the rule mentioned by the gentleman from Iowa.

§ 17.23 Where a bill is being considered under suspension of the rules, a point of order will not lie against the bill on the ground that a quorum was not present when the bill was reported from committee.

On Oct. 7, 1968,[2] Speaker John W. McCormack, of Massachusetts, ruled on the point of no quorum under a suspension of the rules procedure.

MR. [DURWARD G.] HALL [of Missouri]: Mr. Speaker, relating to our program for today, a number of bills are slated to be considered under suspension of rules in the House. There are four bills from the Committee on Post Office and Civil Service which, from evidence I have, were reported in violation of rule XI, clause 26(e) which states:

> (e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.[3]

The evidence I have is that H.R. 17954 and H.R. 7406 were ordered reported from the Committee on Post Office and Civil Service in executive session on August 2, 1968, without a quorum present.

Additional evidence reveals that S. 1507 and S. 1190 were ordered reported from the Committee on Post Office and Civil Service in executive session on September 3, 1968, without a quorum present. I further cite from Jefferson's Manual, section 408:

> A bill improperly reported is not entitled to its place on the calendar; but the validity of a report may not be questioned after the House has voted to consider it, or after actual consideration has begun.

Mr. Speaker, I submit that the bills S. 1507, S. 1190, H.R. 17954, and H.R.

1. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

2. 114 CONG. REC. 29764, 90th Cong. 2d Sess.

3. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

7406 all were improperly reported. Mr. Speaker, my parliamentary inquiry is this: At what point in the proceedings would it be in order to raise the question against these bills as being in violation of rule XI, clause 26(e) inasmuch as they are scheduled to be considered under suspension of the rules, which would obviously suspend the rule I have cited?

Mr. Speaker, I ask the guidance of the Chair in lodging my point of order against these listed bills so that my objection may be fairly considered, and so that my right to object will be protected. Mr. Speaker, I intend to do so only because orderly procedure must be based on compliance with the rules of the House which we have adopted.

THE SPEAKER: The Chair will state that any point of order would have to be made when the bill is called up.

The Chair might also advise or convey the suggestion to the gentleman from Missouri that the bills will be considered under suspension of the rules, and that means suspension of all rules.

MR. HALL: Mr. Speaker, a further parliamentary inquiry. Would it not be in order, prior to the House going into the Consent Calendar or suspension of the rules, to lodge the point of order against the bills at this time?

THE SPEAKER: The point of order could be directed against such consideration when the bills are called up under the general rules of the House. The rules we are operating under today as far as these bills are concerned concerns suspension of the rules, and that motion will suspend all rules.

MR. HALL: Mr. Speaker, if I may inquire further, is it not true that, until such time as we go into that period of suspension of the rules, a point of order would logically lie against such bills which violate the prerogatives of the House and of the individual Members thereof, to say nothing of the committee rules? My belief that a point of order should be sustained is based on improper committee procedure and addresses itself to the fact that the bills are improperly scheduled, listed, or programed on the calendar, or rule of suspension, and so forth.

THE SPEAKER: The Chair will state, as to points of order, at the time the Chair answered the specific inquiry of the gentleman from Missouri, a point of order would not lie until the bill is reached and brought up for [consideration].

MR. HALL: Mr. Speaker, may I be recognized at that time to lodge such a point of order, and will this Member be protected?

THE SPEAKER: The Chair will always protect the rights of any Member. The Chair has frankly conveyed to the gentleman that we are operating under a suspension of the rules procedure today, and that suspends all rules.

MR. [LESLIE C.] ARENDS [of Illinois]: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. ARENDS: Do I correctly understand the ruling of the Chair that suspending all the rules pertains to more than just the House; it pertains to the rules of committee action likewise?

THE SPEAKER: The gentleman from Illinois is correct.

MR. ARENDS: I thank the Speaker.

Parliamentarian's Note: Two of the bills which were allegedly re-

ported in the absence of a quorum, H.R. 17954 and H.R. 7406, were scheduled for consideration on both the Consent Calendar and under suspension of the rules. In his response to the inquiry of Mr. Hall, the Speaker discussed the validity of a point of order only in relation to the suspension of the rules procedure. He did not foreclose the making of a point of order against a bill on the Consent Calendar. However, the two bills which might have been vulnerable when called on the Consent Calendar were passed over without prejudice, by unanimous consent.

None of the bills challenged by Mr. Hall were in fact considered on this date. When it became apparent to the leadership that the proceedings would be delayed by repeated points of no quorum, the Speaker informally advised Members that the four bills would not be called up under suspension. On Oct. 11, S. 1507 was recommitted when a point of order was sustained against its consideration on the ground that it was reported in the absence of a quorum. (See 114 CONG. REC. 30751, 90th Cong. 2d Sess.) A bill similar to H.R. 17954 was called up on Oct. 11 (S. 4120), considered, and passed by unanimous consent. (See 114 CONG. REC. 30752, 90th Cong. 2d Sess.)

Rule Waiving Quorum Requirement

§ 17.24 The House rejected a resolution reported from the Committee on Rules, providing for an "open" rule but including a waiver of Rule XI clause 27(e),[4] which requires that a majority of a committee be actually present when a measure is reported from committee, to permit consideration of a bill improperly voted on and reported by the Committee on Post Office and Civil Service.

On July 23, 1973,[5] the House defeated a resolution to waive the rule which requires presence of a quorum when a committee reports a bill.

> MR. [CLAUDE D.] PEPPER [of Florida]: Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 495 and ask for its immediate consideration.
>
> The Clerk read the resolution as follows:
>
> H. RES. 495
>
> *Resolved*, That upon the adoption of this resolution it shall be in order to move, clause 27(e), rule XI to the contrary notwithstanding, that the House resolve itself into the Com-

4. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).

5. 119 CONG. REC. 25476–79, 25482, 93d Cong. 1st Sess.

mittee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8929) to amend title 39, United States Code, with respect to the financing of the cost of mailing certain matter free of postage.

MR. PEPPER: Mr. Speaker, House Resolution 495 provides for an open rule with 2 hours of general debate on H.R. 8929, a bill to provide relief from postal rate increases for certain mailers.

House Resolution 495 provides that the provisions of clause 27(e), rule XI of the Rules of the House of Representatives are waived.

I will state to my able friend from Iowa, whose inquiry I anticipate, if I may, that the occasion for this request for a waiver by the Rules Committee is this: The committee had before it H.R. 7554. The committee, on the 21st of June, I believe it was, voted, with a quorum present, by a record vote of 33 to 10, to report out the committee bill, H.R. 7554, with amendments. The bill and the amendments were voted favorably by the committee. . . .

I am sorry. It was 13 to 10. I understand that there are 25 members of the committee, and 23 voted, and the vote to report out the bill was 13 to 10.

The committee voted to report out a clean bill, which would embody H.R. 7554 and the amendments in a single clean bill.

On the day following that meeting of the committee there was introduced a clean bill, embodying exactly H.R. 7554 plus the amendments that had been voted upon favorably by the committee. There was not a subsequent meeting of the committee upon the clean bill. But the clean bill embodying what was voted upon exactly by the committee, as H.R. 8929, was reported out and presented to the Rules Committee. The situation was reported to the Rules Committee, and the Rules Committee voted to recommend consideration of the bill to the House, but recommended that there be a waiver of points of order so that any technicality which might arise out of that situation would be cured by the waiver of the rule, if the House adopted the waiver of the rule. . . .

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I thank the gentleman for yielding.

I believe one slight correction should be made. A clean bill was introduced 2 days after the committee voted on the proposition, and I would have to differ again with the gentleman in his statement that this is an open rule. It is not an open rule since it waives a point of order.

MR. PEPPER: Mr. Speaker, it is an open rule.

MR. GROSS: The Committee on Rules in effect is doing the homework for the Committee on Post Office and Civil Service in that they did not abide by the rules of the House and vote on a clean bill

MR. DEL [M.] CLAWSON [of California]: Mr. Speaker, House Resolution 495 provides a rule with 2 hours of general debate for the consideration of H.R. 8929, Educational and Cultural Postal Amendments. The rule also includes a waiver of clause 27 (e) of rule XI. This rule requires the presence of a quorum when a bill is reported. In this case the committee, with a quorum Present agreed to report a clean bill, but never actually held a meeting offi-

cially reporting out the clean bill. Therefore, the waiver is necessary in order to prevent a point of order against consideration of the bill. . . .

I would suggest to the Members that regardless of their views on this bill itself that this is the kind of precedent we should not be setting and it makes for bad legislation. I think the rule should be defeated and we should let the committee produce a proper vehicle for final consideration and then we will not have any argument about the need for a protected rule. . . .

MR. [DELBERT L.] LATTA [of Ohio]: Mr. Speaker, anyone who has read the committee report is probably wondering how this bill ever got to the place where it is today. Let me say that the vote in the Post Office and Civil Service Committee was a close 13 to 10, and in the Rules Committee it was 7 to 5. I might hastily add I was one of the five who voted not to report this bill. . . .

MR. PEPPER: . . . Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:[6] The question is on the resolution.

The question was taken, and the Speaker pro tempore announced that the noes appeared to have it.

MR. [JAMES M.] HANLEY [of New York]: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 188, nays 202, not voting 51, as follows: . . .

So the resolution was rejected.

6. John J. McFall (Calif.).

Senate Precedent

§ 17.25 A point of order against a report on a bill was sustained on the ground that a quorum was not present at the time the Senate committee voted to report the measure; the Presiding Officer ruled that the bill was therefore still in the custody of the committee and had not been reported to the Senate.

On July 31, 1963,[7] a bill was not considered on the floor because of the absence of a quorum in the committee.

The Senate resumed the consideration of the bill (S. 1703) to amend title V of the Agricultural Act of 1949, as amended, and for other purposes. . . .

MR. [WILLIAM] PROXMIRE [of Wisconsin]: Mr. President, will the Senator from Florida yield for the purpose of my making a point of order?

MR. [SPESSARD L.] HOLLAND [of Florida]: I yield to the distinguished Senator from Wisconsin so that he may make a point of order.

MR. PROXMIRE: Mr. President, I make a point of order that the bill which is now under consideration is not properly before the Senate because, at the time the vote to report the bill was taken in committee, a quorum was not actually present. I have checked this with the clerk of the committee,

7. 109 CONG. REC. 13791, 13792, 88th Cong. 1st Sess.

and it is my understanding that only six Senators answered to their names. . . .

Mr. President, I ask for a ruling.

THE PRESIDING OFFICER:[8] The Chair must inquire of the chairman of the committee as to what the facts are. The Chair is not conversant with the facts, and must depend on the chairman of the committee. . . .

Will the chairman of the committee inform the Chair specifically whether a quorum was present at the time the vote was taken on S. 1703?

MR. [ALLEN J.] ELLENDER [of Louisiana]: At the time?

THE PRESIDING OFFICER: At the time.

MR. ELLENDER: By proxies, yes; but not actually.

MR. [CLAIR] ENGLE [of California]: Mr. President, will the Senator yield?

MR. ELLENDER: I yield.

MR. ENGLE: The committee record shows that a quorum was present. Is that correct?

MR. ELLENDER: That is correct.

MR. ENGLE: No point of no quorum was made at the time the bill was reported.

MR. ELLENDER: That is correct.

MR. ENGLE: The record shows that a quorum was present, and no point of order was made at that particular time, and members drifted in and out. Is that correct? . . .

THE PRESIDING OFFICER: Does the Senator from Wisconsin press his point of order?

MR. PROXMIRE: Yes; I press my point of order. I wish further to point out that it has now been disclosed and stipulated and agreed upon by the chairman of the committee that a quorum was not present at the time the vote on the bill was taken. It is true that a quorum was present earlier. It is true that a substantive majority was present earlier, but at the time the vote was taken no physical quorum was present in the committee room to vote.

MR. ELLENDER: The records of the committee show that a quorum was present at the meeting.

THE PRESIDING OFFICER: By proxy?

MR. ELLENDER: A quorum was present at the time the meeting began, when the question of a quorum arose.

THE PRESIDING OFFICER: Was a quorum present at the time the vote was taken on S. 1703?

MR. ELLENDER: No.

THE PRESIDING OFFICER: In view of the point of order that has been made, and the rule which necessitates that a ruling be made, the Chair rules that under section 133(d) of the Legislative Reorganization Act of 1946,[9] which operates as a rule of the Senate, and provides that: "No measure or recommendation shall be reported from any such committee unless a majority of the committee were actually present," the Chair sustains the point of order.

If the Committee on Agriculture and Forestry reported the bill (S. 1703) in question without a majority of the members being actually present, the action of the committee in ordering the bill to be reported to the Senate was in

8. Claiborne Pell (R.I.).

9. This section appears in 2 USC § 190a (d), and Rule XXV clause 5(a), *Senate Manual* § 25.5 (1973).

controvention of the above section of the Legislative Reorganization Act, and therefore such action was without authority and void.

Being "actually present" means the member would have had to be present in committee, and a poll does not present a compliance with the rule.

MR. HOLLAND: Mr. President, a parliamentary inquiry.

THE PRESIDING OFFICER: The Senator from Florida will state it.

MR. HOLLAND: What is the status of the bill following the ruling of the distinguished Presiding Officer?

THE PRESIDING OFFICER: The status of the bill is that legally it has never left the committee.

MR. HOLLAND: The status of the bill is that it is still in the custody of the committee?

THE PRESIDING OFFICER: It is in the custody of the committee.

§ 18. Withdrawal or Withholding of Objections or Points of No Quorum

When a point of no quorum is made, no "business"[10] is in order. The point may be withdrawn[11] or withheld[12] until announcement of absence of a quorum, after which the point may not be withdrawn even by unanimous consent.[13]

In General

§ 18.1 Withdrawal of a point of no quorum does not require unanimous consent.

On Nov. 15, 1967,[14] during consideration of S. 2388, the Economic Opportunity Amendments of 1967, Chairman John J. Rooney, of New York, commented on an objection to withdrawal of a point of no quorum.

MR. [SAM M.] GIBBONS [of Florida]: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count.

MR. GIBBONS: Mr. Chairman I withdraw the point of order.

MR. [H. R.] GROSS [of Iowa]: Mr. Chairman, I object.

THE CHAIRMAN: Withdrawal of a point of order does not require unani-

10. "Business" is a term of art which does not encompass all parliamentary proceedings. For example, the prayer, administration of the oath to a Member, receipt of messages from the President and Senate, motions incidental to a call of the House, and the motion to adjourn, which do not require a quorum, are in order after a point of no quorum. See § 10, supra, for a discussion of the definition of business. See also Rule XV clause 6, *House Rules and Manual* § 774c (1979).

11. §§ 18.5, 18.6, infra.

12. §§ 18.10, 18.11 infra.

13. §§ 18.7–18.9, infra.

14. 113 CONG REC. 32662, 90th Cong. 1st Sess.