

## B. INQUIRIES AND THE EXECUTIVE BRANCH

### § 2. Resolutions of Inquiry and Responses

Resolutions of inquiry are usually simple resolutions used to obtain information from the executive branch. Such resolutions, if addressed to the President or head of an executive department, are given privileged status in the House, provided they seek information of a factual nature, rather than request opinions or require an investigation on the subject.<sup>(19)</sup>

The effectiveness of such a resolution derives from comity between the branches of government rather than from any elements of compulsion.<sup>(20)</sup>

Certain conventions have arisen with regard to the wording of resolutions of inquiry. Thus, the House traditionally “requests” the President and “directs” the heads of executive departments to furnish information.<sup>(21)</sup> Moreover,

19. See *House Rules and Manual* §§ 856 and 857 (1973).

20. See § 4, *infra*, for a discussion of legal proceedings initiated by a Senate select committee to enforce a subpoena issued to the President. Other methods to obtain information include committee or subcommittee oral or written requests for documents or testimony from the President or cabinet officers.

21. 3 Hinds' Precedents §§ 1856, 1895; and Rule XXII clause 5, *House Rules and Manual* § 856 (1973).

such resolutions often include the qualifying phrase, “if not incompatible with the public interest,” particularly where the request is for information relating to foreign affairs.<sup>(1)</sup>

The ensuing precedents are illustrative of resolutions of inquiry directed to the President,<sup>(2)</sup> Secretary of State,<sup>(3)</sup> Secretary of Defense,<sup>(4)</sup> Attorney General,<sup>(5)</sup> Acting Attorney General,<sup>(6)</sup> Secretary of Commerce,<sup>(7)</sup> Secretary of the Interior,<sup>(8)</sup> Secretary of Health, Education, and Welfare,<sup>(9)</sup> and Postmaster General.<sup>(10)</sup> The emphasis in these precedents is upon the nature of the information requested in each case, and the response if any to the resolution of inquiry.<sup>(11)</sup> Actual floor procedures

1. See 3 Hinds' Precedents § 1899, “directing” the President, and §§ 2.1, 2.2, and 2.7, *infra*, “directing” the President and other officers, and §§ 2.15, and 2.21–2.23, *infra*, “requesting” certain department heads.
2. See §§ 2.1, 2.2, 2.7, and 2.16, *infra*.
3. See §§ 2.1–2.5, 2.9–2.11, 2.13–2.1.5, 2.21, and 2.26, *infra*.
4. See §§ 2.1, 2.6–2.8, 2.12, and 2.15 *infra*.
5. See §§ 2.18 and 2.19, *infra*.
6. See § 2.17, *infra*.
7. See §§ 2.20, 2.22, *infra*.
8. See § 2.23, *infra*.
9. See § 2.24, *infra*.
10. See § 2.25, *infra*.
11. See 2 Hinds' Precedents § 1596, 3 Hinds' Precedents §§ 1856–1910, and

relating to the use of resolutions of inquiry, and prerequisites for privileged status, are treated in detail elsewhere.<sup>(12)</sup> Generally, formal responses to resolutions of inquiry are laid before the House, referred to the committee having jurisdiction, and ordered printed but more informal responses to resolutions of inquiry are sometimes forwarded directly to the interested committee or Members, even where the resolution itself has been tabled or not otherwise disposed of. (See, *e.g.* §2.11, *infra.*)

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***Foreign Affairs—American Military Involvement in South Vietnam***

**§ 2.1 A resolution of inquiry directing the President, Secretary of State, Secretary of Defense, and Director of the Central Intelligence Agency to furnish information relating to the history and rationale for American involvement in South Vietnam, nature and capacity of the South Vietnamese government, and plans for elections in the Republic of South**

**Vietnam was held not privileged in response to a point of order.**

On July 7, 1971,<sup>(13)</sup> Speaker Carl Albert, of Oklahoma, sustained a point of order against a resolution of inquiry, House Resolution 491, directing the President, Secretary of State, Secretary of Defense, and Director of the Central Intelligence Agency to furnish, within 15 days after adoption of the resolution, full and complete information on the following: (1) the history and rationale of American involvement in South Vietnam since completion of the study "United States-Vietnam Relationships, 1945-1967," (the Pentagon Papers) prepared by the Vietnam Task Force, Office of the Secretary of Defense; (2) the known existing plans for a residual force of American armed forces in South Vietnam; (3) the nature and capacity of the South Vietnamese government, including but not limited to their past and present military capabilities; the capacity for self-sufficiency including but not limited to the political base of the Republic, the scope if any, of governmental malfunction and corruption; the depth of popular support and procedures for dealing with nonsupport including

<sup>6</sup> Cannon's Precedents §§ 404-437, for earlier precedents.

<sup>12</sup>. See Ch. 24, *infra.*

<sup>13</sup>. 117 CONG. REC. 23810, 23811, 92d Cong. 1st Sess.

but not limited to known existing studies of the economy and internal workings of the government of the Republic of South Vietnam; and (4) American and South Vietnamese plans and procedures for Nov. 1971 elections in the Republic of South Vietnam, including but not limited to United States covert or non-covert involvement in those elections.

The Speaker sustained the point of order raised by F. Edward Hebert, of Louisiana, Chairman of the Committee on Armed Services, on the ground that the resolution sought opinions rather than facts. The ruling was made when Ms. Bella S. Abzug, of New York, moved to discharge the Committee on Armed Services from further consideration of the resolution under Rule XXII clause 5.

*Parliamentarian's Note:* Although the issue was not raised in this instance, the reference to the Director of Central Intelligence would have destroyed the privilege if a point of order had been raised on that ground. 6 Cannon's Precedents §406 indicates that the term "heads of executive departments" in Rule XXII clause 5,<sup>(14)</sup> refers exclusively to members of the President's cabinet and only resolutions of inquiry ad-

ressed to these heads of executive departments are privileged. (The resolution at issue in §406 to which Cannon referred was addressed to the Federal Reserve Board.) See also 3 Hinds' Precedents §§1861-1863, and 5 Hinds' Precedents §7283, for other relevant precedents.

**§ 2.2 The House laid on the table resolutions of inquiry directing the President and Secretary of State to furnish the report entitled "United States-Vietnam Relationships, 1945-1967," also known as the Pentagon Papers.**

On June 30, 1971,<sup>(15)</sup> the House, by a roll call vote of yeas 272 to nays 113, tabled a privileged resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 489, directing the President to furnish the House, within 15 days after adoption of the resolution, the full and complete text of the study entitled "United States-Vietnam Relationships, 1945-1967," also known as the Pentagon Papers, prepared by the Vietnam Task Force, Office of the Secretary of Defense.

On the same date,<sup>(16)</sup> the House by voice vote tabled an identical

14. *House Rules and Manual* §§855, 856 (1973).

15. 117 CONG. REC. 23030, 23031, 92d Cong. 1st Sess.

16. *Id.* at p. 23031.

resolution, House Resolution 490, and on July 7, 1971,<sup>(17)</sup> by voice vote tabled House Resolution 494, directing the Secretary of State to furnish this study.

***South Vietnamese Presidential Election***

**§ 2.3 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish communications between the Department of State, the United States Embassy in Saigon, and certain Vietnamese presidential candidates which might relate to the Vietnamese presidential elections.**

On Sept. 30, 1971,<sup>(18)</sup> the House by voice vote tabled a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 595, directing the Secretary of State to furnish to the House, within one week after adoption of the resolution, the complete text of all communications, as described above, taking place since Jan. 1, 1971, pertaining to the 1971 Vietnamese presidential election.

Following this action the House by unanimous consent tabled

17. *Id.* at p. 23808.

18. 117 CONG. REC. 34266, 92d Cong. 1st Sess.

House Resolution 619, which was identical to House Resolution 595 and had also been adversely reported by the Committee on Foreign Affairs.

**§ 2.4 The House laid on the table two privileged resolutions of inquiry directing the Secretary of State to furnish information relating to an election in South Vietnam.**

On Oct. 20, 1971,<sup>(19)</sup> the House laid on the table two identically worded resolutions of inquiry, House Resolution 632 and House Resolution 638, directing the Secretary of State to furnish to the Committee on Foreign Affairs,<sup>(20)</sup> not later than 15 days after adoption of the resolution, materials relating to the Oct. 3, 1971, Vietnamese election, including: (1) all documents and other pertinent information relating to public opinion surveys financed by the United States in Vietnam; (2) all documents and other information relating to use by South Vietnamese authorities of radio and television facilities financed by the United States; (3) all press re-

19. 117 CONG. REC. 37055, 37057, 92d Cong. 1st Sess.

20. See § 2.26, *infra*, for a discussion of this precedent as it relates to requesting a head of an executive department to respond directly to a committee rather than to the House.

leases by American officials in Saigon; (4) all communications between American and South Vietnamese officials; and (5) all representations made to the participants in that election by American officials concerning the desire that the election be free and contested.

These resolutions, reported adversely by the Committee on Foreign Affairs, were laid on the table by voice votes.

### *Phoenix Program*

#### **§ 2.5 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish the House certain information regarding the Phoenix Program.**

On July 7, 1971,<sup>(1)</sup> the House by voice vote tabled a privileged resolution reported adversely from the Committee on Foreign Affairs, House Resolution 493, directing the Secretary of State, to the extent not incompatible with the public interest, to furnish the House, not later than 15 days following adoption of the resolution, all documents in the English language with respect to (1) the Phoenix Program, a counterintel-

1. 117 CONG. REC. 23808, 92d Cong. 1st Sess.

ligence operation conducted in South Vietnam, and (2) the extent of U.S. involvement in that program.

### *Bombardment of North Vietnam*

#### **§ 2.6 The House laid on the table a resolution of inquiry directing the Secretary of Defense to furnish information relating to American air and naval bombardment of North Vietnam.**

On Aug. 16, 1972,<sup>(2)</sup> the House by voice vote tabled a privileged resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 1078, directing the Secretary of Defense, to the extent not incompatible with the public interest, to furnish, not later than seven days after adoption of the resolution, information relating to American air and naval bombardment of North Vietnam since Mar. 1, 1972, including (1) the number of sorties flown and types of ordnance used each month; (2) post-action reports and bomb damage assessments, both written and photographic; and (3) specific descriptions and photographic evidence of all damage to dikes, cit-

2. 118 CONG. REC. 28365, 92d Cong. 2d Sess.

ies, and villages of North Vietnam.

**§ 2.7 The House laid on the table a resolution of inquiry directing the President and Secretary of Defense to furnish information relating to American bombing of North Vietnam in 1972 and 1973.**

On Mar. 6, 1973,<sup>(3)</sup> the House by voice vote tabled a resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 26, directing the President<sup>(4)</sup> and Secretary of Defense within 10 days after adoption of the resolution to furnish the House information relating to American bombing of North Vietnam from Dec. 17, 1972, through Jan. 3, 1973, including: (1) the number of sorties flown; (2) tonnage of bombs and shells fired or dropped; (3) the number and nomenclature of American airplanes lost; (4) the number of Americans killed, wounded, captured, and missing in action; (5) best available estimates of North Viet-

3. 119 CONG. REC. 6383, 6384, 93d Cong. 1st Sess.

4. To "direct" the President to furnish information contravenes standard practice. Although the House "directs" a head of an executive department, it usually "requests" the President to furnish information. See 3 Hinds Precedents §§ 1856, 1895.

namese casualties; (6) the cost of all bombing and shelling; and (7) the extent of damage to any and all facilities struck by bombs.

*Parliamentarian's Note:* House Resolution 26 was technically not privileged because the request for information on the "extent of damage" to facilities struck by bombs required an opinion or investigation.<sup>(5)</sup>

On the same date,<sup>(6)</sup> the House also tabled House Resolutions 114, 115, and 143, which were identical to House Resolution 26, except that they did not mention the President or "extent of damage" to facilities struck by bombs.

**§ 2.8 The House laid on the table a privileged resolution of inquiry directing the Secretary of Defense to furnish certain information relating to prisoner of war camps in North Vietnam and American bombing in North Vietnam.**

On Aug. 16, 1972,<sup>(7)</sup> the House by voice vote tabled a privileged resolution of inquiry, House Resolution 1079, reported adversely by

5. See Rule XXII clause 5, *House Rules and Manual* § 857 (1973) and Ch. 24, *infra*, for discussions of the requirements for privileged status.

6. 119 CONG. REC. 6384, 6385, 93d Cong. 1st Sess., Mar. 6, 1973.

7. 118 CONG. REC. 28365, 92d Cong. 2d Sess.

the Committee on Armed Services, directing the Secretary of Defense, to the extent not incompatible with the public interest, to furnish to the House not later than seven days after the adoption of the resolution: (1) maps showing all known or suspected prisoner of war camps in North Vietnam; (2) maps showing all bombing strikes and naval bombardments from Mar. 1, 1972, to date; and (3) rules of engagement promulgated for the bombing of North Vietnam for the same period, and a description of procedures, policies, and actions taken by American Armed Forces to prevent danger to American prisoners of war.

### *Laotian Operations*

**§ 2.9 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish the House certain information respecting bombing operations in northern Laos.**

On July 7, 1971,<sup>(8)</sup> the House by voice vote agreed to table a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 495, directing the Sec-

8. 117 CONG. REC. 23808-10, 92d Cong. 1st Sess.

retary of State, to the extent not incompatible with the public interest, to furnish, within 15 days after adoption of the resolution, any documents respecting the rules of engagement and targeting, and procedures followed by the U.S. Ambassador in Laos with respect to the direction and control of American bombing operations in northern Laos during the period from Jan. 1, 1965, through June 21, 1971, together with the most recent aerial photographs of 196 Laotian villages which were identified in the resolution.

**§ 2.10 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish information regarding American, Thai, and other foreign nation military and diplomatic operations in Laos.**

On July 7, 1971,<sup>(9)</sup> the House by a roll call vote of yeas 261 to nays 118, tabled a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 492, directing the Secretary of State, to the extent not incompatible with the public interest, to furnish to the House, not later than 15 days

9. 117 CONG. REC. 23800, 23807, 23808, 92d Cong. 1st Sess.

after adoption of the resolution, any documents containing policy instructions or guidelines given to the American Ambassador in Laos for the purpose of his administration of certain operations in Laos, between Jan. 1, 1964, and June 21, 1971. Information was sought particularly with regard to: (1) covert Central Intelligence Agency operations in Laos; (2) Thai and other foreign armed forces operations in Laos; (3) American bombing operations other than along the Ho Chi Minh Trail; (4) American Armed Forces operations in Laos; and (5) United States Agency for International Development operations which have served to assist, directly or indirectly, military or Central Intelligence Agency operations in Laos, and details of such assistance.

***American Bombing of Cambodia and Laos***

**§ 2.11 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish information relating to American bombing of Cambodia and Laos in 1973.**

On May 9, 1973,<sup>(10)</sup> the House by voice vote tabled a privileged

10. 119 CONG. REC. 14990, 14991, 14994, 93d Cong. 1st Sess.

resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 379, directing the Secretary of State to furnish within 10 days after adoption of the resolution information relating to American bombing of Cambodia and Laos from Jan. 27, 1973, through Apr. 30, 1973, including: (1) the number of sorties flown; (2) tonnage of bombs and shells fired and dropped; (3) number and nomenclature of American airplanes lost; (4) number of Americans killed, wounded, captured, or missing in action; (5) cost of all American bombing and shelling; (6) number of sorties flown by American military airplanes for purposes other than bombing; (7) cost of all actions other than bombing; (8) number, rank, location, and nature of activity of American ground personnel in Cambodia and Laos; (9) the order of battle of all forces, both combat and non-combat, in Cambodia and Laos, including North Vietnamese, ARVN (Army of the Republic of [South] Vietnam), Viet Cong, American, and indigenous; and, for the period from Oct. 30, 1972, through Jan. 27, 1973, certain related information, including the tonnage of bombs dropped and sorties flown by American airplanes emanating from Thailand.

The resolution also inquired as to the legal authority for American military activity in Cambodia and Laos since Jan. 27, 1973; and the extent of involvement of American Embassy personnel in military operations in or over Cambodia and Laos between Jan. 27, 1973, through Apr. 30, 1973.

Answers to questions in this resolution of inquiry were provided by witnesses from the Department of Defense at a hearing of the Committee on Armed Services held on May 8, 1973. Following this hearing, committee members voted 36 yeas to 0 nays to report the resolution adversely.<sup>(11)</sup>

The motion to table was offered immediately after the resolution was reported because the Chairman of the Committee on Armed Services, F. Edward Hébert, of Louisiana, requested and obtained unanimous consent for immediate consideration of the resolution, thereby waiving the three-day availability requirement of Rule XI clause 27(d)(4).

11. See 119 CONG. REC. 14991-93, 93d Cong. 1st Sess., for a transcript of answers and remarks of F. Edward Hébert (La.), Chairman of the Committee on Armed Services, explaining the hearing on May 8, 1973.

***Military Aid to Forward-defense and Mediterranean Nations***

**§ 2.12 The House laid on the table a privileged resolution of inquiry directing the Secretary of Defense to furnish information regarding the extent of military assistance to forward-defense and Mediterranean nations.**

On Aug. 3, 1971,<sup>(12)</sup> the House by voice vote tabled a privileged resolution of inquiry reported adversely by the Committee on Armed Services, House Resolution 557, directing the Secretary of Defense, to the extent not incompatible with the public interest, to furnish to the House, not later than 15 days after adoption of the resolution, any documents regarding all forms of American military aid extended to the forward-defense nations of Greece, Turkey, Nationalist China, and South Korea as well as to Israel, Jordan, Morocco, Libya, Tunisia, Lebanon, Syria, and Saudi Arabia, between Jan. 1, 1969, and July 21, 1971.<sup>(13)</sup>

12. 117 CONG. REC. 29063, 29064, 92d Cong. 1st Sess.

13. See Ch. 24, *infra*, for a discussion of the proper time to call up a resolution of inquiry.

***Presidential Agreements With  
British Prime Minister***

**§ 2.13 The House agreed to a privileged resolution of inquiry directing the Secretary of State to transmit information regarding any agreements made by the President and the Prime Minister of Great Britain during conversations held in Jan. 1952, after rejecting a motion to lay the resolution on the table.**

On Feb. 20, 1952,<sup>(14)</sup> after rejecting the motion to table by a roll call vote of yeas 150 to nays 184, the House by a roll call vote of yeas 189 to nays 143, approved a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 514, directing the Secretary of State, at the earliest practicable date, to transmit to the House information with respect to any agreements, commitments, or understandings entered into by the President and Prime Minister of Great Britain in the course of their conversations during Jan. 1952, which might require the shipment of additional members of the armed forces beyond the continental limits of the

14. 98 CONG. REC. 1205, 1207, 1208, 1215, 1216, 82d Cong. 2d Sess.

United States or involve American forces in armed conflict on foreign soil.<sup>(15)</sup>

The adverse report of the Committee on Foreign Affairs, the letter from the Assistant Secretary of State for the Secretary stating the position of the Department of State that sufficient information had been supplied, and communique relating to the subject matter of the resolution were included in the Record.<sup>(16)</sup> On Mar. 5, 1952,<sup>(17)</sup> a letter, dated Mar. 4, 1952, from the Secretary of State, Dean Acheson, citing the President's negative response to a question about such agreements at a press conference on Feb. 20, 1952, was laid before the House, referred to the Committee on Foreign Affairs, and ordered printed.

***Mexican-American Relations***

**§ 2.14 The House laid on the table a privileged resolution of inquiry directing the Secretary of State to furnish information relating to Mexican-American relations.**

On Feb. 7, 1937,<sup>(18)</sup> the House by voice vote tabled a privileged

15. See Ch. 24. *infra*, for a discussion of the time to report a resolution of inquiry.

16. See 98 CONG. REC. 1205, 1206, 82d Cong. 2d Sess., for these materials.

17. 98 CONG. REC. 1892, 82d Cong. 2d Sess.

18. 84 CONG. REC. 1181, 1182, 76th Cong. 1st Sess.

resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 78, directing the Secretary of State to transmit, within 15 days from receipt of the resolution answers to questions relating to whether: (1) Mexico bartered oil from expropriated American and British properties for German, Italian, and Japanese products; (2) American investments in Mexico were eliminated; (3) reported loss of American investments led to reductions in American-Mexican trade; (4) Mexico appointed a Minister to Berlin and Japanese experts participated in Mexican projects; (5) State Department officials sought to obtain adequate compensation for holders of American bonds in Mexican national railroads expropriated in 1937; (6) the State Department has evidence that Germany, Italy, and Japan had an agreement to absorb Mexican oil prior to expropriation of American and British properties; (7) Mexican real wages fell since 1937; (8) the Ambassador informed the State Department that railroads and oil properties would be expropriated or whether news of that development was a surprise; (9) the State Department possessed a full record of speeches and public remarks as well as reports to the Secretary of State relating to

Mexican expropriation of American properties and Mexico's relations with Germany, Italy, and Japan (the resolution sought the full text of these documents); (10) the Department of State was satisfied that the American Ambassador in Mexico City took steps to protect remaining American investments; and (11) the Department of State agreed to expropriation of American-owned property in Mexico.

Speaker William B. Bankhead, of Alabama, ruled out of order a question of consideration raised after the motion to table was made but prior to the vote.

### ***Removal of German Industrial Plants***

**§ 2.15 The House agreed to a privileged resolution requesting the Secretary of State and Secretary of Defense to transmit information relating to the dismantlement and removal of industrial plants from post-war Germany. The Under Secretary of State responded for the Department of State and Department of Defense.**

On Dec. 18, 1947,<sup>(19)</sup> the House by voice vote approved a privi-

<sup>19</sup> 93 CONG. REC. 11636, 11640, 80th Cong. 1st Sess.

leged resolution of inquiry reported favorably from the Committee on Foreign Affairs, House Resolution 365, requesting the Secretary of State and the Secretary of Defense to transmit information relating to: (1) the number of plants in Germany which were dismantled and removed from that country; (2) the character and capacity of plants removed and remaining to be dismantled; (3) the number of remaining plants which could be converted to peacetime production and were capable of contributing to German export trade; (4) the basis for the determination that a particular plant was surplus; (5) the amount of material and goods, and their cost needed to be sent from the United States to compensate for production of plants removed and scheduled for dismantling; (6) whether plants were removed from any of the German zones beyond the limits prescribed or contemplated in the Yalta agreement; (7) whether essential agricultural produce was removed from any zone for delivery outside Germany; (8) the extent of removal of harbor facilities and transportation equipment; and (9) whether the U.S. government had taken appropriate steps to delay temporarily further dismantling of plants in western Germany, in

order to permit further congressional study to determine whether transfers prejudice a general recovery program for western Europe.

A preamble was added by committee amendment, following voice vote approval of the resolution as amended.

On Jan. 26, 1948,<sup>(20)</sup> a letter, dated Jan. 24, 1948, from the Under Secretary of State, Robert A. Lovett, responding for the Department of State and Department of Defense to the resolution of inquiry was laid before the House and referred to the Committee on Foreign Affairs.

### *American Policy on Formosa*

#### **§ 2.16 The House tabled a privileged resolution of inquiry requesting the President to furnish information about American policy on Formosa.**

On Feb. 9, 1950,<sup>1</sup> the House by voice vote agreed to table a privileged resolution of inquiry reported adversely by the Committee on Foreign Affairs, House Resolution 452, requesting the President, if not incompatible with the public interest, to furnish

20. 94 CONG. REC. 541, 542, 80th Cong. 2d Sess.

1. 96 CONG. REC. 175.3—55, 81st Cong. 2d Sess.

within 15 days after adoption of the resolution, full and complete answers to questions relating to the President's statement of Jan. 5, 1950, on policy toward Formosa and the current situation in China and the Far East.<sup>(2)</sup>

***Domestic Affairs—Evidence of Criminal Activity***

**§ 2.17 The House discharged a committee from further consideration and laid on the table a privileged resolution of inquiry directing the Acting Attorney General to furnish all documents and items of evidence in the custody of the Watergate Special Prosecutor as of Oct. 20, 1973.**

On Nov. 1, 1973,<sup>(3)</sup> the House discharged the Committee on the Judiciary from further consideration and tabled House Resolution 634, directing the Acting Attorney General, to the extent not incompatible with the public interest, to furnish, not later than 15 days after adoption of the resolution, true copies of all papers, documents, recordings, memoranda, and items of evidence in the custody of the Special Prosecutor and

2. See Ch. 24, *infra*, for a discussion of the time to report back a resolution of inquiry.

3. 119 CONG. REC. 35644, 93d Cong. 1st Sess.

Director of the Special Prosecution Force, as of noon, Saturday, Oct. 20, 1973.<sup>(4)</sup>

*Parliamentarian's Note:* President Richard M. Nixon dismissed the Special Prosecutor, Archibald Cox, on the evening of Oct. 20, 1973.

When the Acting Attorney General subsequently turned the documents over to a federal court, thus assuring their preservation, the Member who introduced this resolution of inquiry, Mr. Paul M. McCloskey, of California, decided not to proceed further with it and sought and obtained unanimous consent to discharge the committee from further consideration and to table the resolution.

**§ 2.18 The House discharged a committee from further consideration and laid on the table a privileged resolution**

4. H. Res. 634 read as follows:

*Resolved,* That the Acting Attorney General of the United States, to the extent not incompatible with the public interest, is directed to furnish to the House of Representatives not later than fifteen days following the adoption of this resolution, true copies of all papers, documents, recordings, memorandums, and items of evidence in the custody of the Special Prosecutor and Director, Watergate Special Prosecution Force, Archibald Cox as of noon, Saturday, October 20, 1973.

**of inquiry directing the Attorney General to furnish all factual information as to whether the Vice President may have accepted bribes.**

On Oct. 10, 1973,<sup>(5)</sup> the House, pursuant to the unanimous-consent request of Mr. Paul Findley, of Illinois, discharged the Committee on the Judiciary from further consideration and tabled House Resolution 572, a privileged resolution of inquiry directing the Attorney General to inform the House of all facts within the knowledge of the Department of Justice relating to whether the Vice President, Spiro T. Agnew, accepted bribes or received consideration for services rendered or promised in the performance of his official responsibilities as a public official in Maryland or as Vice President or failed to declare his income for tax purposes.<sup>(6)</sup>

5. 119 CONG. REC. 33687, 93d Cong. 1st Sess.

6. H. Res. 572 read as follows:

*Resolved*, That the Attorney General of the United States be, and he is hereby directed to inform the House of all the facts within the knowledge of the Department of Justice that the Vice President of the United States, Spiro T. Agnew, accepted bribes or received consideration for services rendered or promised in the performance of his official responsibilities as a public official in

*Parliamentarian's Note:* Vice President Agnew resigned his office, and entered a plea of nolo contendere to a count of failure to report certain income, on Oct. 10, 1973.

**§ 2.19 The House laid on the table a privileged resolution of inquiry directing the Attorney General to transmit information relating to the kidnapping of David Levinson and Robert Minor.**

On May 16, 1935,<sup>(7)</sup> the House by a vote of yeas 276, to nays 40, tabled a privileged resolution of inquiry reported by the Committee on the Judiciary, House Resolution 219, directing the Attorney General to transmit to the House at the earliest practical moment: (1) copies of all official information on file in the Department of Justice or in possession of its agents concerning the kidnapping of David Levinson and Robert Minor, in Gallup, New Mexico, on May 2, 1935; (2) information as to whether a person or persons had been apprehended or taken into custody and charged with kidnapping and, if not, whether

the State of Maryland or Vice President of the United States, or failed to declare his income for tax purposes.

7. 79 CONG. REC. 7687, 7688, 74th Cong. 1st Sess.

the Department of Justice had instituted and prosecuted an investigation with a view to bringing to justice those guilty of violating 18 USC §408a, as amended by Public Law No. 232 of the 73d Congress (May 18, 1934); (3) name or names of all persons questioned in connection with this investigation and statements made by them; (4) information as to whether the crime was completed within Navajo Indian Reservation, western New Mexico; and (5) whether the reservation was under the jurisdiction of the U.S. government and whether the Attorney General had authority to prosecute crimes committed within the reservation.

Speaker Joseph W. Byrns, of Tennessee, overruled a point of order raised against the resolution because it sought information (testimony of witnesses given to New Mexico law enforcement officials) that was not in the possession of the Attorney General.

***Security Files on Government Officials***

**§ 2.20 The House agreed to a resolution of inquiry directing the Secretary of Commerce to transmit a letter from the Director of the Federal Bureau of Investigation to the Secretary regarding the Director of the National Bureau of Standards.**

On Apr. 22, 1948,<sup>(8)</sup> the House by a roll call vote of yeas 302 to nays 29, approved a privileged resolution of inquiry, House Resolution 522, reported favorably by the Committee on Interstate and Foreign Commerce, directing the Secretary of Commerce to transmit forthwith the full text of a letter dated May 15, 1947, written by the Director of the Federal Bureau of Investigation and addressed to the Secretary, relating to Dr. Edward U. Condon, Director of the National Bureau of Standards, about whom allegations of disloyal conduct had been made.<sup>(9)</sup>

On Apr. 26, 1948,<sup>(10)</sup> a communication dated Apr. 23, 1948, from the Acting Secretary of Commerce, William C. Foster, refusing to transmit the 1947 letter and citing a directive of President Harry S. Truman dated Mar. 13, 1948, ordering all executive

8. 94 CONG. REC. 4777, 4786, 80th Cong. 2d Sess.

9. See 94 CONG. REC. A2458-A2461, 80th Cong. 2d Sess., Apr. 22, 1948, for letters from former Attorney General Robert H. Jackson and Special Assistant to the Attorney General Peyton Ford and a legal memorandum relating to this incident and the broader issue of executive privilege.

10. 94 CONG. REC. 4879, 80th Cong. 2d Sess.

branch officials to decline to disclose Loyalty Board files to any person or agency was referred to the Committee on Interstate and Foreign Commerce and ordered to be printed.<sup>(11)</sup>

### ***Fish Imports***

**§ 2.21 The House agreed to a resolution requesting the Secretary of State to study the effect of increased imports on the domestic fishing industry. The Assistant Secretary responded for the Secretary.**

On Apr. 4, 1949,<sup>(12)</sup> the House by voice vote approved a resolution reported favorably by the Committee on Merchant Marine and Fisheries and called from the Consent Calendar.<sup>(13)</sup> House Reso-

lution 147 requested the Secretary of State to make an immediate study on the effect on the domestic fishing industry of increasing imports of fresh and frozen fish, especially ground fish fillets, into the United States; and, with the advice of and in coordination with appropriate executive departments and independent agencies of government, to recommend means by which the American fishing industry may survive; and to report not later than May 15, 1949.

The resolution contained a preamble.

On May 17, 1949,<sup>(14)</sup> a letter and report of findings from the Assistant Secretary of State, Ernest A. Gross, responding for the Secretary and Department to the resolution of inquiry, was laid before the House, referred to the Committee on Merchant Marine

11. See § 5.3, *infra*, for a discussion of House approval, and the text, of H.J. Res. 342, directing officers and employees of the executive branch to provide information to Congress. See also the minority report to H. REPT. NO. 1595, pp. 8–10 which accompanies the joint resolution and contains a Mar. 15, 1948, memorandum from President Truman stating precedents of Presidential refusals to respond to requests for information.

12. 95 CONG. REC. 3820–22, 81st Cong. 1st Sess.

13. *Parliamentarian's Note*: This measure would have been subject to points of order that it was not privi-

leged if the committee chairman had sought to call it up as privileged business because it required an investigation (see 3 Hinds' Precedents §§ 1872–74 and 6 Cannon's Precedents §§ 422, 427, 429, and 432) and contained a preamble (see 3 Hinds' Precedents §§ 1877, 1878 and 6 Cannon's Precedents §§ 422, 427). See also Rule XXII clause 5, *House Rules and Manual* § 857 (1973).

14. 95 CONG. REC. 6372, 81st Cong. 1st Sess.

and Fisheries, and ordered printed.

***Foreign Sales of Short Supply Goods***

**§ 2.22 The House agreed to a privileged resolution of inquiry requesting the Secretary of Commerce to furnish information regarding sales to foreign countries of supplies, shortages of which might endanger national defense and security.**

On Dec. 5, 1947,<sup>(15)</sup> the House by voice vote approved a privileged resolution of inquiry, House Resolution 366, reported favorably and unanimously by the Committee on Interstate and Foreign Commerce, with a committee amendment requesting<sup>(16)</sup> the Secretary of Commerce to furnish the House with information concerning shipments of heavy machinery, farm and railroad equipment, motor vehicles, metals and

15. 93 CONG. REC. 11075, 11076, 80th Cong. 1st Sess.

16. *Parliamentarian's Note*: To "request" the Secretary of Commerce to furnish information deviates from the standard practice which is to "request" the President and "direct" a head of an executive department to furnish information. See 3 Hinds' Precedents §§1856, 1895 and Rule XXII clause 5, *House Rules and Manual* §856 (1973).

metal products, coal, petroleum and petroleum products, building materials, meats and grains, and all other supplies shortages of which might endanger national defense or security, which were made to each foreign country since Jan. 1, 1947, including the most recent date for which figures were obtainable; names of firms or individuals making these sales, dates orders were received and supplies were delivered, and the nature of payments made in return for supplies; and information revealing the extent of unfilled orders for the above-listed supplies which each foreign country has on record with firms or individuals in the United States as of the date of adoption of the resolution.

On Jan. 8, 1948,<sup>(17)</sup> a letter in response dated Jan. 7, 1948, accompanied by reports of study findings from the Acting Secretary of Commerce, William C. Foster, were laid before the House and referred to the Committee on Interstate and Foreign Commerce.

***Domestic Energy Sources***

**§ 2.23 The House agreed to a resolution of inquiry requesting the Secretary of the Interior to furnish information**

17. 94 CONG. REC. 39, 80th Cong. 2d Sess.

**relating to domestic availability of petroleum and coal. The Secretary responded by providing reports.**

On Feb. 16, 1948,<sup>(18)</sup> the House by voice vote approved a resolution of inquiry (H. Res. 385) reported favorably by the Committee on Public Lands and called from the Consent Calendar requesting the Secretary of the Interior to furnish the House full information in his possession concerning domestic availability of fuel oil, gasoline, petroleum products, and coal, as well as information on the steps the government should take to make the proper and necessary supply available.

On Apr. 30, 1948,<sup>(19)</sup> a letter dated Apr. 30, 1948, and reports from Secretary of the Interior J. A. Krug, responding to the resolution of inquiry, were laid before the House and referred to the Committee on Public Lands.

### ***Busing***

**§ 2.24 After discharging a committee from further consideration of the measure, the House agreed to a resolution of inquiry directing the Secretary of Health, Education,**

**and Welfare to furnish a list of public school systems which receive federal funds and engage in busing of schoolchildren to achieve racial balance, and any departmental rules and regulations regarding busing. The Secretary responded that he was unable to provide the information.**

On Aug. 2, 1971,<sup>(20)</sup> the House by a roll call vote of yeas 252 to nays 129 discharged the Committee on Education and Labor from further consideration and then by a roll call vote of yeas 351 to nays 36, agreed to House Resolution 539, directing the Secretary of Health, Education, and Welfare, to the extent not incompatible with the public interest, to furnish to the House, not later than 60 days after adoption of the resolution, any documents containing a list of public school systems which, during the period between Aug. 1, 1971 through June 30, 1972, would be receiving federal funds and busing schoolchildren to achieve racial balance; and any documents respecting departmental rules and regulations regarding use of federal funds ad-

18. 94 CONG. REC. 1328, 1329, 80th Cong. 2d Sess.

19. *Id.* at p. 5163.

20. 117 CONG. REC. 28863, 28869, 92d Cong. 1st Sess.

ministered by the department for busing.

On Aug. 3, 1971,<sup>(1)</sup> the Secretary of Health, Education, and Welfare, Elliot L. Richardson, in a letter of the same date stated that because the department did not administer busing programs, it did not have a reason either to compile a list of school districts which bus schoolchildren or to draft rules or regulations respecting busing. He enclosed a memorandum from the Associate Commissioner, Equal Educational Opportunity, Office of Education, regarding the policy on funding transportation costs for the Emergency School Assistance Program, and a proposed amendment to a pending bill, H.R. 2266, the Emergency School Aid Act.

The letter, memorandum, and proposed amendment were laid before the House and referred to the Committee on Education and Labor.

### *Postal Temporaries*

**§ 2.25 The House laid on the table a privileged resolution of inquiry directing the Postmaster General to furnish the names of persons employed temporarily during the summer of 1965.**

1. 117 CONG. REC. 29137, 92d Cong. 1st Sess.

On Sept. 16, 1965,<sup>(2)</sup> the House by a roll call vote of yeas 185 to nays 181, tabled a privileged resolution of inquiry reported adversely by the Committee on Post Office and Civil Service, House Resolution 574, directing the Postmaster General to furnish to the House the names of all persons employed by the Post Office Department as temporary employees at any time during the period beginning on May 23, 1965, and ending on Sept. 6, 1965.<sup>(3)</sup>

### *Information Furnished to Committee*

**§ 2.26 Two resolutions of inquiry directing the Secretary of State to furnish information to a committee rather than to the House were called up and considered as privileged business.**

On Oct. 20, 1971,<sup>(4)</sup> two identically worded resolutions of inquiry, House Resolution 632 and House Resolution 638, directing the Secretary of State to furnish information to a committee relating to the South Vietnamese elec-

2. 111 CONG. REC. 24030, 24034, 89th Cong. 1st Sess.

3. See Ch. 24, *infra*, for a discussion of the privileged status of resolutions of inquiry.

4. 117 CONG. REC. 37055, 37057, 92d Cong. 1st Sess.

tion of Oct. 3, 1971,<sup>(5)</sup> were called up and considered as privileged business. The privileged status was not questioned when these resolutions were called up.<sup>(6)</sup>

*Parliamentarian's Note:* The privileged status of these resolutions could have been questioned because they directed the Secretary to furnish information to the committee rather than directly to the House. The only precedent on this point is 3 Hinds' Precedents §1860, in which Speaker Joseph G. Cannon, of Illinois, ruled that a resolution authorizing a committee to request information from the Postmaster General and requesting him to send certain papers to the committee was privileged as a resolution of inquiry.

### § 3. Executive Branch Refusals to Provide Information

The authority of Congress to obtain information needed to legislate effectively and oversee other branches has often been challenged by the efforts of the executive branch to withhold material

which that branch considers confidential, including information relating to military affairs and foreign policy. During the period prior to the "Watergate" investigations of 1973 and 1974, case law on these two potentially conflicting prerogatives developed independently.<sup>(7)</sup> Generally, such a conflict was averted, not because the executive branch complied with all requests and subpoenas<sup>(8)</sup> but because the Congress

7. See, for example, *Kilbourn v Thompson*, 103 U.S. 168 (1881), *McGrain v Daugherty*, 273 U.S. 135 (1927), *Sinclair v United States*, 279 U.S. 263 (1929), *Watkins v United States*, 354 U.S. 178 (1957), *Barenblatt v United States*, 360 U.S. 109 (1959), for judicial recognition of legislative authority to obtain information; and *United States v Burr*, 25 F Cas. 187 (No. 14, 694) (cc Va. 1807); *United States v Reynolds*, 345 U.S. 1 (1953); and *McPhaul v United States*, 364 U.S. 372, 382-383 (1960), for judicial recognition of executive authority to withhold information.

8. Commenting on a survey conducted by the Senate Subcommittee on Separation of Powers for the period 1964 to 1973, Chairman Sam J. Ervin, Jr., of North Carolina, stated that the executive branch on 284 occasions refused to provide testimony or documents requested by House or Senate committees or subcommittees. These refusals were in response to oral or written requests, as distinguished from subpoenas. See Senate Committee on the Judiciary, Sub-

5. See §2.4, *supra*, for the content of these resolutions.

6. See §2.4, *supra*, for the disposition of the resolutions.