

ordered a quorum call after the Senate reconvened following a recess.

The Senate met at 10 o'clock a.m., on the expiration of the recess, and was called to order by the Vice President.

. . .

#### CALL OF THE ROLL

THE VICE PRESIDENT: The Senate having taken a recess last night in the absence of a quorum, no business can be transacted until a quorum is present.

The clerk will therefore call the roll for the purpose of developing a quorum.

The legislative clerk called the roll; and the following Senators answered to their names: . . .

### **§ 2.28 Where the Senate recesses over the weekend because of lack of a quorum, the Vice President at the next meeting of that body causes the roll to be called to secure a quorum.**

On Mar. 7, 1938,<sup>(4)</sup> Vice President John N. Garner, of Texas, commented on the procedure following a recess.

THE VICE PRESIDENT: The Chair has examined the Record and finds that when the Senate took a recess on Friday last no quorum was present. The Chair, therefore, thinks it is his duty to direct the clerk to call the roll for

4. 83 CONG. REC. 2903, 2904, 75th Cong. 3d Sess.

the purpose of securing a quorum, for the Senate begins now just where it left off last Friday.

The Chief Clerk called the roll, and the following Senators answered to their names: . . .

THE VICE PRESIDENT: Eighty-six Senators have answered to their names. A quorum is present.

### **§ 3. The Chair's Count; Names Included on Calls**

Following the historic decision of Speaker Thomas B. Reed, of Maine, in 1890,<sup>(5)</sup> the House adopted Rule XV clause 3,<sup>(6)</sup> which provides that on the demand of any Member or at the suggestion of the Speaker, those Members present in the Hall of the House who do not vote may nevertheless be counted in determining the presence of a quorum; moreover, under Rule XV clause 4,<sup>(7)</sup> the Speaker, in determining the presence of a quorum, is au-

5. Speaker Reed directed the Clerk to enter on the Journal as part of a ye and nay vote the names of Members who were present but did not vote, thereby establishing a quorum of record. 4 Hinds' Precedents §2895.

6. *House Rules and Manual* §772 (1979); see 4 Hinds' Precedents §2905 for a discussion of adoption of this clause.

7. *House Rules and Manual* §773 (1979). See also §3.9, *infra*.

thorized to include Members who do not vote. In practice, the Speaker counts all Members he can see, including those leaving the Chamber<sup>(8)</sup> and those behind the railing.<sup>(9)</sup>

### ***Inclusion on the Roll***

#### **§ 3.1 Parliamentarian's Note: Where a Representative-elect dies before the House convenes, his name is included on the roll call by states to establish a quorum [and on subsequent calls] until the House is informed of his death.**

On Jan. 10, 1967,<sup>(10)</sup> the name of Representative-elect John E. Fogarty, of Rhode Island, who had died in his office shortly before the House was to convene on Jan. 10, was included on the call of the states to establish a quorum since his certificate of election was on file with those of the other Members-elect. Following this roll call, the Clerk announced the death to the House and Representative-elect Fogarty's name was removed from subsequent calls.

THE CLERK: Representatives-elect to the 90th Congress, pursuant to the

8. § 3.5, *infra*.

9. § 3.6, *infra*.

10. 113 CONG. REC. 11, 12, 90th Cong. 1st Sess.

20th amendment of the Constitution and to Public Law 89-704 of the 89th Congress, this is the day fixed for the meeting of the 90th Congress.

As the law directs, the Clerk of the House has prepared the official roll of the Representatives-elect.

Credentials covering the 435 seats in the 90th Congress have been received and are now on file with the Clerk of the 89th Congress.

The names of those persons whose credentials show they were regularly elected in accordance with the laws of the several States and of the United States will be called; and as the roll is called, following the alphabetical order of the States, beginning with the State of Alabama, Representatives-elect will answer to their names to determine whether or not a quorum is present.

The reading clerk will call the roll.

The Clerk called the roll by States and the following Representatives-elect answered to their names: . . .

[*Parliamentarian's Note:* The name of Fogarty was called when the Clerk reached the state of Rhode Island in the call.]

THE CLERK: The rollcall discloses that 434 Representatives-elect have answered to their names.

A quorum is present. . . .

#### VACANCY IN THE SECOND DISTRICT OF RHODE ISLAND

THE CLERK: The Clerk also wishes to announce there is a vacancy in the Second District of Rhode Island occasioned by the recent death of the Honorable John E. Fogarty.

#### **§ 3.2 During a call of the roll by states to determine the**

**presence of a quorum at the opening of a Congress, the Clerk announced receipt of the Proclamation of Alaskan Statehood and directed that names of Members-elect from Alaska be called.**

On Jan. 7, 1959,<sup>(11)</sup> at the commencement of the 86th Congress, the Member from Alaska was included in the roll call by states after the proclamation of statehood was announced.

#### CALL OF THE ROLL

THE CLERK: Representatives-elect of the 86th Congress, this is the day fixed by law, pursuant to the Constitution of the United States, for the meeting of the 86th Congress and, as the law directs, the Clerk of the House has prepared the official roll of the Representatives-elect. Certificates of election covering the 436 seats in the 86th Congress have been received and are now on file with the Clerk of the 85th Congress. The names of those persons whose credentials show they were regularly elected in accordance with the laws of the several States and of the United States will be called.

As the roll is called, following the alphabetical order of the States, beginning with the State of Alabama, Representatives-elect will answer to their names to determine whether a quorum is present.

The reading clerk will call the roll by States.

11. 105 CONG. REC. 11, 86th Cong. 1st Sess.

The reading clerk called the roll by States, and the following Representatives-elect answered to their names:

. . .

THE CLERK: A certified copy of the Presidential proclamation indicating that the Territory of Alaska has qualified as a State pursuant to provisions of law has been received.

The clerk will proceed.

#### ALASKA

Rivers, Ralph J. (at large) . . .

**§ 3.3 Parliamentarian's Note: Members-elect, elected to fill vacancies occurring in the first session, are not included on the roll call to ascertain the presence of a quorum when the second session convenes; their names are included on the roll only after their certificates of election have been laid before the House and the oath has been administered to them.**

On Jan. 10, 1966,<sup>(12)</sup> the Clerk omitted the names of Members-elect on the first call of the House.

#### CALL OF THE HOUSE

THE SPEAKER PRO TEMPORE:<sup>(13)</sup> The Clerk will call the roll to ascertain the presence of a quorum.

The Clerk called the roll, omitting the names of Members-elect

12. 112 CONG. REC. 5, 6, 89th Cong. 2d Sess.

13. Carl Albert (Okla.).

Clarence J. Brown, Jr., of Ohio, and Thomas M. Rees, of California. Following presentation of their certificates of election, the Member select took the oath.

SWEARING IN OF MEMBERS

Mr. Clarence J. Brown, Jr., and Mr. Rees appeared at the bar of the House and took the oath of office.

*Who Is Counted*

**§ 3.4 In determining the presence of a quorum, the Chair counts Members present but not voting.**

On Aug. 13, 1940,<sup>(14)</sup> Speaker William B. Bankhead, of Alabama, counted Members who were present but had not voted on a division.

MR. [WILLIAM M.] COLMER [of Mississippi]: Mr. Speaker, I move the previous question on the resolution [H. Res. 406, providing for consideration of H.R. 8157, a bill to establish a national land policy and provide homesteads free of debt for actual farm families].

The previous question was ordered.

THE SPEAKER: The question is on agreeing to the resolution.

The question was taken; and there were on a division (demanded by Mr. Colmer)—ayes 47, noes 123.

MR. [KNUTE] HILL [of Washington]: Mr. Speaker, I object to the vote on the ground there is not a quorum present.

14. 86 CONG. REC. 10257, 10258, 76th Cong. 3d Sess.

THE SPEAKER: The Chair will count. [After counting.] Two hundred and thirty-five Members are present—a quorum.

MR. [HUGH] PETERSON of Georgia: Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were refused.

So the resolution was rejected.

**§ 3.5 In counting for a quorum in Committee of the Whole, the Chair counts all Members visible in the Chamber, even though they may be in the process of leaving the Chamber.**

On Apr. 25, 1963,<sup>(15)</sup> during consideration in the Committee of the Whole of H.R. 4997, a bill to extend the Feed Grains Act, the Chair, James C. Wright, Jr., of Texas, counted all Members who were visible.

MR. [ROBERT T.] STAFFORD [of Vermont]: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count.

MR. [PAUL C.] JONES of Missouri: Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. JONES of Missouri: Will the Chair state whether the Chair is counting those Republicans who went back in the cloakroom?

15. 109 CONG. REC. 7116, 88th Cong. 1st Sess.

THE CHAIRMAN: The Chair will respond to the inquiry, which is not a parliamentary inquiry, that he is counting Members as they leave the Chamber.

The Chair counts 102 Members present, a quorum.

**§ 3.6 In determining the presence of a quorum, the Chair counts all Members visible, including those behind the railing.**

On July 10, 1958,<sup>(16)</sup> Members behind the railing were counted for purposes of determining the presence of a quorum

THE SPEAKER PRO TEMPORE:<sup>(17)</sup> The question is on suspending the rules and passing the bill.

The question was taken; and the Speaker pro tempore announced that in his opinion two-thirds had voted in the affirmative.

MR. [H. R.] GROSS [of Iowa]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count. [After counting.] One hundred and ninety-nine Members are present, not a quorum.

MR. [NOAH M.] MASON [of Illinois]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. MASON: Under the rules of the House, is it proper to count Members who are behind the railing?

16. 104 CONG. REC. 13382, 85th Cong. 2d Sess.

17. John W. McCormack (Mass.).

THE SPEAKER PRO TEMPORE: The Chair has made the count and the Chair's count will not be disputed.

MR. MASON: Mr. Speaker, I am not questioning the count. I am just asking whether it is proper and in order to count those behind the railing.

THE SPEAKER PRO TEMPORE: In response to the gentleman's inquiry, the Chair may and the present occupant of the chair will always, when he is in the chair, count any Member who is visible and in the Chamber.

**§ 3.7 When a quorum does not appear, the Speaker may order the Clerk to call his name and cast a vote to make a quorum.**

On occasion, after waiting for a quorum to appear, the Speaker has cast his vote to make a quorum.

For example, on Oct. 20, 1966,<sup>(18)</sup> during an automatic roll call while Conference Report No. 2327 on H.R. 13103, the Foreign Investors Tax Act of 1966, was being considered, the Speaker, John W. McCormack, of Massachusetts, voted to make a quorum.<sup>(19)</sup>

18. 112 CONG. REC. 28254, 28255, 89th Cong. 2d Sess.

19. See also, for example, 89 CONG. REC. 9478, 78th Cong. 1st Sess., Nov. 13, 1943 (roll call); 89 CONG. REC. 769, 78th Cong. 1st Sess., Feb. 10, 1943 (count of the House); and 88 CONG. REC. 9116, 9117, 77th Cong. 2d

THE SPEAKER: The question is on agreeing to the conference report.

The question was taken; and the Speaker announced that the “ayes” appeared to have it

MR. [GLENN] CUNNINGHAM [of Nebraska]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 171, nays 46, not voting [216], as follows: . . .

THE SPEAKER: The Clerk will call my name.

The Clerk called the name of Mr. McCormack, and he answered “yea.”

So the conference report was agreed to.

**§ 3.8 The Speaker ordered the tally clerk to record as present a Member whom he observed on the floor although that Member had not responded to his name during a call of the House.**

On the legislative day of Oct. 8, 1968,<sup>(20)</sup> Speaker John W. McCormack, of Massachusetts, ordered

Sess., Nov. 24, 1942 (motion to recommit).

20. 114 CONG. REC. 30102, 30103, 30209, 90th Cong. 2d Sess., Oct. 9, 1968 (Calendar Day).

the name of a Member, Ogden R. Reid, of New York, to be recorded as present.

CALL OF THE HOUSE

MR. [FLETCHER] THOMPSON of Georgia: Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

MR. [CARL] ALBERT [of Oklahoma]: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

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

THE SPEAKER: The Clerk will call the name of the gentleman from New York [Mr. Reid].

THE CLERK: Mr. Reid of New York.

THE SPEAKER: The Chair observes the gentleman from New York [Mr. Reid] present, and directs that he be recorded as present.

On this roll call 218 Members have answered to their names, a quorum.

**§ 3.9 Under Rule XV clause 4<sup>(1)</sup> the Speaker has the authority to note the names of Members present but not voting to establish a quorum and decide the pending question.**

As an exercise of this authority, the Speaker, after observing the presence of two Members who had not been recorded on an automatic

1. See *House Rules and Manual* §773 (1979).

roll call being conducted under Rule XV clause 4, directed the Clerk to call their names, and, when one Member did not respond, directed the Clerk to record him "present" in order to establish a quorum and pass a joint resolution.

On Dec. 31, 1970,<sup>(2)</sup> Speaker John W. McCormack, of Massachusetts, observing Members on the floor who did not respond to the roll call, ordered the Clerk to call their names.

THE SPEAKER: The question is on the passage of the joint resolution.

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER: Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll. . . .

THE SPEAKER: The Chair observes that the gentleman from Wisconsin (Mr. Kastenmeier) is present in the Chamber, and directs the Clerk to call his name.

Does the gentleman desire to vote? Otherwise, the Clerk will record the gentleman as "present."

2. 116 CONG. REC. 44302, 91st Cong. 2d Sess. Under consideration was H.J. Res. 1421, making further continuing appropriations for fiscal 1971.

MR. [ROBERT W.] KASTENMEIER: Mr. Speaker, I vote "nay."

THE SPEAKER: The gentleman from Wisconsin votes "nay."

The Chair observes the gentleman from Michigan (Mr. Conyers) is present in the Chamber, and directs the Clerk to call his name.

Does the gentleman desire to vote? Otherwise, the Clerk will record the gentleman as "present."

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

THE SPEAKER: The Chair will state that the Chair is about to announce the vote.

One hundred and eighty Members voting in the affirmative, 37 Members in the negative, and one "present," and the Chair being present, making a quorum, the joint resolution is passed.

### *Who Is Not Counted*

#### **§ 3.10 In counting for a quorum the Chair may not count Members in the cloakrooms out of sight.**

On Feb. 15, 1950,<sup>(3)</sup> Speaker Sam Rayburn, of Texas, responded to an inquiry with respect to counting Members in the cloakrooms.<sup>(4)</sup>

3. 96 CONG. REC. 1810, 1811, 81st Cong. 2d Sess.

4. See also 96 CONG. REC. 3065, 81st Cong. 2d Sess., Mar. 8, 1950. And see 4 Hinds' Precedents §2970, a 1907 precedent in which the Chairman of the Committee of the Whole counted "the head of every Member looking out of the cloakrooms that is

MR. [ANTHONY] CAVALCANTE [of Pennsylvania]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. CAVALCANTE: Under the rules of the House, are the cloakrooms a part of the Hall of the House?

THE SPEAKER: The Chair cannot count any Members that he cannot see.

The Chair will count. [After counting.] Evidently there is no quorum present.

**§ 3.11 After announcing that there was one short of a quorum, the Speaker refused to count a Member who entered the Chamber after the announcement.**

On Dec. 16, 1943,<sup>(5)</sup> Speaker Sam Rayburn, of Texas, refused to count a Member who entered the Chamber subsequent to announcement of the result of a roll call.

THE SPEAKER: . . . The question is on the motion offered by the gentleman from New Mexico that the House recede and concur in the Senate amendment.

visible," and 8 Cannon's Precedents §3120, a 1921 precedent in which the Speaker pro tempore, after ruling that the Hall of the House included cloakrooms and lobbies adjacent to the Chamber, counted 11 Members who had left the Chamber after the order for a yea and nay vote on a motion to recommit.

5. 89 CONG. REC. 10776, 78th Cong. 1st Sess.

The question was taken; and the Chair being in doubt, the House divided, and there were—ayes 131, noes 63.

MR. [CLARENCE] CANNON of Missouri: Mr. Speaker, I ask for the yeas and nays.

The yeas and nays were refused.

MR. CANNON of Missouri: Mr. Speaker, I make the point of order that a quorum is not present and object to the vote on that ground.

THE SPEAKER: The Chair will count.

MR. CANNON of Missouri: On the announcement of the vote, it appeared that only 194 had voted—22 less than a quorum.

THE SPEAKER: The gentleman from Missouri must understand that some Members in the House may not have voted. The Chair thinks he must count. [After counting.] Two hundred and fifteen Members are present, lacking one of being a quorum.

MR. [EARL R.] LEWIS [of Ohio]: Mr. Speaker, I came in while the Chair was announcing the result of the count.

THE SPEAKER: The Chair had announced that a quorum was not present. Gentlemen coming in after the announcement was made cannot be counted.

**§ 3.12 A Member may not be recorded on a roll call after the result of the Vote has been announced, even though he could have qualified prior to the announcement.**

On Mar. 29, 1962,<sup>(6)</sup> Speaker John W. McCormack, of Massa-

6. 108 CONG. REC. 5438, 87th Cong. 2d Sess.

chusetts, refused to permit a Member's vote to be recorded after announcement of the result.

PERSONAL ANNOUNCEMENT

MR. [CARROLL D.] KEARNS [of Pennsylvania]: Mr. Speaker, I was standing behind the rail eulogizing our great Speaker after Drew Pearson's article about him. I was here and qualify and vote "no" on the last vote [Roll No. 52].<sup>(7)</sup>

THE SPEAKER: The Chair regrets that the gentleman cannot be recorded after the vote has been announced. The gentleman can state for the Record that he would have voted "no."

**§ 3.13 A Member failing to respond on a quorum call may not have himself recorded as present on that call if the House has already agreed to a motion to dispense with further proceedings under the call.**

On Apr. 3, 1935,<sup>(8)</sup> the Speaker pro tempore, John E. Rankin, of Mississippi, made a ruling regarding a Member who arrived after the House had agreed to a motion to dispense with further proceedings under the call.

THE SPEAKER PRO TEMPORE: Three hundred and forty-four Members have answered to their names, a quorum.

7. See 108 CONG. REC. 5432, 5433, 87th Cong. 2d Sess., for this roll call.

8. 79 CONG. REC. 4925, 74th Cong. 1st Sess.

MR. [EDWARD T.] TAYLOR of Colorado: Mr. Speaker, I move to dispense with further proceedings under the call.

The motion was agreed to.

The doors were opened.

MR. [JOHN J.] MCSWAIN [of South Carolina]: Mr. Speaker, I was present and did not hear my name called. I desire to have my name called and to answer "present."

THE SPEAKER PRO TEMPORE: The request of the gentleman comes too late, but the Record will show that he is here. The gentleman from Texas is recognized for 1 hour.

***Quorum Established on Teller Vote***

**§ 3.14 After the Chairman of the Committee of the Whole announced that a quorum was not present, a quorum was established on a teller vote rejecting a motion that the Committee rise.**

On Feb. 28, 1945,<sup>(9)</sup> during consideration in Committee of the Whole of H.R. 2374, the first defense appropriation bill of 1945, a quorum was established on a teller vote.

MR. [FRANCIS H.] CASE of South Dakota: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN:<sup>(10)</sup> The Chair will count. [After counting.] Fifty-eight Members are present, not a quorum.

9. 91 CONG. REC. 1576, 1577, 79th Cong. 1st Sess.

10. John J. Sparkman (Ala.).

MR. [CLARENCE] CANNON of Missouri: Mr. Chairman, I move that the Committee do now rise.

THE CHAIRMAN: The question is on the motion offered by the gentleman from Missouri.

The question was taken; and on a division (demanded by Mr. Cannon of Missouri) there were—ayes 27, noes 52.

MR. CANNON of Missouri: Mr. Chairman, I demand tellers.

Tellers were ordered, and the Chairman appointed as tellers Mr. Cannon of Missouri and Mr. Taber.

The Committee again divided; and the tellers reported that there were—ayes 57, noes 61.

So the motion was rejected.

THE CHAIRMAN: A quorum is present. The gentleman from New York is recognized.

*Parliamentarian's Note:* A quorum of the Committee of the Whole is not required to adopt a motion to rise but here was required on rejecting the motion, in order that the Committee could proceed with business.

### ***Verification of Chair's Count by Tellers Not Permitted***

**§ 3.15** In recent practice, the Chair has refused to recognize a demand for tellers to verify his count of a quorum.

On May 20, 1949,<sup>(11)</sup> during consideration of H.R. 4591, providing

11. 95 CONG. REC. 6556, 81st Cong. 1st Sess.

for pay, allowances, and physical disability retirement for members of the armed forces, the Chair<sup>(12)</sup> refused to appoint tellers.

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.] One hundred and five Members are present, a quorum.

MR. [CARL] VINSON [of Georgia]: Mr. Chairman, I demand tellers.

THE CHAIRMAN: The gentleman from Georgia has demanded tellers. The gentleman from Wisconsin made the point of order that a quorum was not present. The Chair counted 105 Members present. At this time there is no question before the House on which tellers can be ordered.

MR. VINSON: Mr. Chairman, I make the point of order that a quorum is not present.

THE CHAIRMAN: The Chair will count. [After counting.] One hundred and fourteen Members are present, a quorum.

### ***Corrections of Quorum Calls***

**§ 3.16** Where a quorum is established by a call of the roll, the omission of the name of a Member who was present and responded when he was called, can be corrected by unanimous consent of the House but not by an insertion in the Record.

12. Oren Harris (Ark.).

On June 28, 1966,<sup>(13)</sup> a Member, Lawrence H. Fountain, of North Carolina, extended his remarks to correct the Journal and Record.

(Mr. Fountain (at the request of Mr. Patten) was granted permission to extend his remarks at this point in the Record and to include extraneous matter.)

MR. FOUNTAIN: Mr. Speaker, the Record of yesterday's rollcall No. 153 has me recorded as being absent. I was present and so answered to my name. I ask unanimous consent that the Journal be so corrected.

I ask unanimous consent that the Congressional Record of June 27, 1966, be corrected, in that, on rollcall No. 153 I am recorded as absent. I was present and so answered to my name.

On June 29, 1966,<sup>(14)</sup> Mr. Fountain asked unanimous consent to correct the Journal and Record.

MR. FOUNTAIN: Mr. Speaker, on rollcall No. 153, a quorum call, on June 27, 1966, I am recorded as being absent. I was present in the Chamber and answered to my name. I ask unanimous consent that the Journal and permanent Record be corrected accordingly.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from North Carolina?

13. CONG. REC. (daily ed.), 89th Cong. 2d Sess. [The proceedings appear in the daily edition only, not in the permanent edition.]
14. CONG. REC. (daily ed.), 89th Cong. 2d Sess. [The proceedings appear in the daily edition only, not in the permanent edition.]

There was no objection.

*Parliamentarian's Note:* Insertion of remarks in the Record, by unanimous consent, reciting an error in a quorum call, does not constitute consent of the House to effect a change of the Record or Journal.

### § 3.17 The correction of a roll call, by unanimous consent, is "business" of the House.

On Oct. 8, 1968,<sup>(15)</sup> Speaker pro tempore Carl Albert, of Oklahoma, determined that a correction of a roll call by unanimous consent constitutes "business" of the House.<sup>(1)</sup>

[MR. YATES: Mr. Speaker, on rollcall No. 379, which took place early this morning, a quorum call, I am recorded as absent. I was present and answered to my name. I ask unanimous consent that the permanent Record be corrected accordingly.]

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Illinois?

There was no objection.]

15. 114 CONG. REC. 30224, 90th Cong. 2d Sess.
1. *Parliamentarian's Note:* The request to correct the roll call (the bracketed excerpt) by a Member [Sidney R. Yates (Ill.)] appeared in the daily edition of the Record [CONG. REC. (daily ed.), 90th Cong. 2d Sess.] but does not appear in the permanent edition which carried the roll call as corrected.

## CALL OF THE HOUSE

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The gentleman from Ohio makes the point of order that a quorum is not present.

MR. [BROCK] ADAMS [of Washington]: A point of order, Mr. Speaker. There has been no intervening business since the rollcall on the resolution which indicated a quorum.

THE SPEAKER PRO TEMPORE: The Chair will state that the gentleman is in error, since we have had a correction of a rollcall.

The gentleman from Ohio makes the point of order that a quorum is not present. Evidently a quorum is not present.

MR. [WILBUR D.] MILLS [of Arkansas]: Mr. Speaker, I move a call of the House.

A call of the House was ordered.

### ***Chair's Responsibility to Count all Members***

**§ 3.18 Instance where the Speaker recounted the House where Members were missed on the first count. After the Speaker announced the absence of a quorum, he counted the House again, on the statement of a Member that more Members had entered the Chamber during the first count, thus establishing a quorum.**

On May 23, 1939,<sup>(2)</sup> Speaker William B. Bankhead, of Alabama, recounted the House after being advised that a quorum was present.

MR. [CHARLES R.] CLASON [of Massachusetts]: Mr. Speaker, I make the point of order there is not a quorum present.

THE SPEAKER: The gentleman from Massachusetts makes the point of order that there is no quorum present. The Chair will count. [After counting.] Two hundred and thirteen Members are present, not a quorum.

Mr. Clason and Mr. Woodrum of Virginia rose.

MR. CLASON: Mr. Speaker, I withdraw the point of order in view of the large number that are present.

THE SPEAKER: Under the circumstances, the Chair is not authorized to recognize the gentleman inasmuch as the Chair had already announced no quorum present. A constitutional question is raised.

MR. [CLIFTON A.] WOODRUM of Virginia: Mr. Speaker, five or six more came in over here.

THE SPEAKER: Were these gentlemen here present when the Chair was counting?

Were the gentlemen in the rear of the hall who are holding up their hands not present when the Chair counted a moment ago?

The Chair will count the present membership again. [After counting.] Two hundred and twenty-seven Members are present, a quorum.

2. 84 CONG. REC. 6004, 76th Cong. 1st Sess.

*Senate Precedent*

**§ 3.19 To decide whether one-fifth of the Senators have seconded a demand for the yeas and nays, the Chair may assume that a quorum is present using as a basis for his determination the number who answered to their names on the last roll call.**

On May 8, 1936,<sup>(3)</sup> during consideration of H.R. 12527, the Navy appropriation bill, the Presiding Officer, Kenneth D. McKellar, of Tennessee, ruled on a request for the yeas and nays.

THE PRESIDING OFFICER: The Senator from North Dakota asks for the yeas and nays on the adoption of the amendment.

The yeas and nays were not ordered.

THE PRESIDING OFFICER: The question is upon agreeing to the amendment.

MR. [ELMER A.] BENSON [of Minnesota] obtained the floor.

MR. [DAVID I.] WALSH [of Massachusetts]: Mr. President, what was the ruling on the request for the yeas and nays?

MR. [LYNN J.] FRAZIER [of North Dakota]: That is what I wish to know.

THE PRESIDING OFFICER: The ruling was that the yeas and nays were not ordered, as only five Members held up their hands.

MR. FRAZIER: That is more than one-fifth of those present.

3. 80 CONG. REC. 6901, 6902, 74th Cong. 2d Sess.

MR. WALSH: I suggest that the request be resubmitted, and I am sure it will be granted.

MR. FRAZIER: I appeal from the ruling of the Chair, because five Members held up their hands, and I believe that is more than one-fifth of the number present.

THE PRESIDING OFFICER: Of course, the Chair assumes that a quorum is present.

MR. [TOM T.] CONNALLY [of Texas]: Mr. President, a point of order.

THE PRESIDING OFFICER: The Senator will state it.

MR. CONNALLY: I submit that five is not one-fifth of those present, because presumptively there is a quorum present.

THE PRESIDING OFFICER: The Senator is correct about that.

MR. CONNALLY: Therefore, since 5 is not 20 percent of 49, the call of the yeas and nays is not in order.

MR. [CHARLES L.] McNARY [of Oregon]: Mr. President, no presumption whatsoever is indulged in a case of this kind.

THE PRESIDING OFFICER: The present occupant of the chair is advised by the parliamentarian that it is.

MR. McNARY: I disagree with the parliamentarian. That is not correct practice and it has never been followed. The number necessary to order the yeas and nays is one-fifth of those present, and it is the duty of the Chair to count the number present.

THE PRESIDING OFFICER: The Chair will state that the custom has been to go back to the last roll call. On the last roll call 69 Senators were present, and 5 is not one-fifth of 69; so the ruling of the Chair will stand.

MR. CONNALLY: On the point of order that there must be a demand by one-fifth of those present in order to secure a ye and nay vote, I desire to set down in the Record my own view, without speaking for anyone other than myself.

I state as a matter of fundamental parliamentary law, whether there is any rule on the question or not, that the presumption always exists that there is a quorum present in the Senate unless a point of no quorum is made and the Senate by having the roll call determines that there is not a quorum present. Therefore, when a demand is made for the yeas and nays, unless one fifth of the presumptive quorum present hold up their hands, the Chair is under no compulsion to order the roll called for a ye and nay vote.

THE PRESIDING OFFICER: The Chair has so held.

*Parliamentarian's Note:* In the House, the Speaker counts the House anew after counting those standing to demand the yeas and nays.

#### § 4. Calls by Electronic Device; Time Allowed for Attendance

Under authority granted by section 121 of the Legislative Reorganization Act of 1970,<sup>(4)</sup> permitting use of electronic equipment to record names of Members voting

4. Pub. L. No. 91-510, 84 Stat. 1140.

or present, the House on Oct. 13, 1972,<sup>(5)</sup> approved a privileged resolution from the Committee on Rules (H. Res. 1123) which amended Rules I, VIII, XV, and XXIII. The resolution provided for a 15-minute minimum procedure for a recording of quorum calls in the House and Committee of the Whole by electronic device at the discretion of the Chair; a "backup" electronic procedure for recorded teller votes; and nonelectronic quorum calls to be conducted by clerk tellers in lieu of calling the roll.

#### Cross Reference

Voting, Ch. 30, *infra*.

#### Collateral Reference

Committee on House Administration, The Electronic Voting System for the United States House of Representatives, 92d Cong. 1st Sess. (1972).

#### *In General*

**§ 4.1 The Speaker may direct that a call of the House be conducted by an alphabetical call of the roll by the Clerk, notwithstanding the requirement of Rule XV clause 2(b)<sup>(6)</sup> that quorum calls be**

5. See 118 CONG. REC. 36005-12, 92d Cong. 2d Sess., for the consideration and vote.

6. See *House Rules and Manual* § 771b (1979).