

Office of Speaker vacant presents a question of constitutional privilege (VI, 35).

#### SEC. X—ADDRESS

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A joint address of both Houses of Parliament is read by the Speaker of the House of Lords. It may be attended by both Houses in a body, or by a Committee from each House, or by the two Speakers only. An address of the House of Commons only may be presented by the Whole House, or by the Speaker, *9 Grey, 473; 1 Chandler, 298, 301;* or by such particular members as are of the privy council. *2 Hats., 278.*

§ 316. Addresses to the President.

In the first years of Congress the President annually delivered an address to the two Houses in joint session, and the House then prepared an address, which the Speaker, attended by the House, carried to the President. A joint rule of 1789 also provided for the presentation of joint addresses of the two Houses to the President (V, 6630). In 1876 the joint rules of the House were abrogated, including the joint rule providing for presentation of the joint addresses of the two Houses to the President (V, 6782-6787). In 1801 President Jefferson transmitted a message in writing and discontinued the practice of making addresses in person. From 1801 to 1913 all messages were sent in writing (V, 6629), but President Wilson resumed the custom of making addresses in person on April 8, 1913, and, with the exception of President Hoover (VIII, 3333), the custom has been followed generally by subsequent Presidents.

#### SEC. XI—COMMITTEES

Standing committees, as of Privileges and Elections, &c., are usually appointed at the first meeting, to continue through the session. The person first named is generally permitted to act as chairman. But this is a matter of courtesy; every committee having a right to

§ 317. Appointment of standing committees; and designation and duties of chairmen thereof.

elect their own chairman, who presides over them, puts questions, and reports their proceedings to the House. *4 inst.*, 11, 12; *Scob.*, 9; *1 Grey*, 122.

Prior to the 62d Congress, standing as well as select committees and their chairmen were appointed by the Speaker, but under the present form of rule X, adopted in 1911, continued as a part of the Legislative Reorganization Act of 1946, and revised under the Committee Reform Amendments of 1974 (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470), standing committees and their respective chairmen are elected by the House (IV, 4448; VIII, 2178). Owing to their number and size, committees are not usually elected immediately, but resolutions providing for such elections are presented by the majority and minority parties pursuant to clause 5 of rule X as soon as they are able to perfect the lists. A committee may order its report to be made by the chairman, or by some other member (IV, 4669), even by a member of the minority party (IV, 4672, 4673), or by a Delegate, July 1, 1958 (Burns of Hawaii) p. 12871; and the chairman sometimes submits a report in which he has not concurred (IV, 4670). Clause 2 of rule XIII requires that a report which has been approved by the committee must be filed with the House within seven calendar days after a written request from a majority of the committee is submitted to the committee clerk.

At these committees the members are to speak standing, and not sitting; though there is reason to conjecture it was formerly otherwise. *D'Ewes*, 630, col. 1; *4 Parl. Hist.*, 440; *2 Hats.*, 77.

§ 318. Parliamentary law as to debate in standing and select committees.

Their proceedings are not to be published, as they are of no force till confirmed by the House. *Rushw.*, part 3, vol. 2, 74; *3 Grey*, 401; *Scob.*, 39.\* \* \*

§ 319. Secrecy of committee procedure.

In the House it is entirely within rule and usage for a committee to conduct its proceedings in secret (IV, 4558-4564; see also clause 2(g) of rule XI), and the House itself may not abrogate the secrecy of a committee's proceedings except by suspending the rule (IV, 4565). The House has no information concerning the proceedings of a committee not officially reported by the committee (VII, 1015) and it is not in order in debate to refer to executive session proceedings of a committee which have not formally been reported to the House (V, 5080-5083; VIII, 2269, 2485, 2493; June 24, 1958, pp. 12120, 12122; Apr. 5, 1967, p. 8411). However, a com-

plaint that certain remarks that might be uttered in debate would improperly disclose executive-session material of a committee is not cognizable as a point of order in the House where the Chair is not aware of the executive-session status of the information (Nov. 5, 1997, p. —). On one occasion a Member was permitted to refer to the unreported executive session proceedings of a subcommittee to justify his point of order that a resolution providing for a select committee to inquire into action of the subcommittee was not privileged (June 30, 1958, p. 12690). In one case the House authorized the clerk of a committee to disclose by deposition its proceedings (III, 2604). Where a committee takes testimony it is sometimes very desirable that the proceedings be secret (III, 1694), as in the investigation in the Bank of the United States in 1834, when the committee determined that its proceedings should be confidential, not to be attended by any person not invited or required (III, 1732). It is for the committee, in its discretion, to determine whether the proceedings of the committee shall be open or not (clause 2(g) of rule XI). Clause 2(k) of rule XI establishes the procedure for closing a hearing because of defamatory, degrading, or incriminating testimony. Clause 11(d) of rule X establishes special rules governing the closing of hearings of the Permanent Select Committee on Intelligence.

Under clause 2 of rule XI, all hearings and business meetings conducted by standing committees shall be open to the public, except when a committee, in open session, by record vote, with a majority present, determines to close the meeting or hearing for that day for the reasons stated in that clause.

§ 320. Reception of petitions by committees.

\* \* \* Nor can they receive a petition but through the House. *9 Grey, 412.*

§ 321. Parliamentary law of procedure when a committee inquiry involves a Member.

When a committee is charged with an inquiry, if a Member prove to be involved, they can not proceed against him but must make a special report to the House; whereupon the Member is heard in his place, or at the bar, or a special authority is given to the committee to inquire concerning him. *9 Grey, 523.*

§ 322. Practice of House when a committee inquiry involves a Member.

While the authority of this principle has not been questioned by the House, there have in special instances been deviations from it. Thus, in 1832, when a Member had been slain in a duel, and the fact was notorious that all the principals and seconds were Members of the House, the committee, charged only with investigating the causes and whether or not there had been a breach of privilege, reported with

their findings recommendations for expulsion and censure of the Members found to be implicated. There was criticism of this method of procedure as deviating from the rule of Jefferson's Manual, but the House did not recommit the report (II, 1644). In 1857, when a committee charged with inquiring into accusations against Members not named found certain Members implicated, they gave them copies of the testimony and opportunities to explain to the committee, under oath or otherwise, as they individually might prefer (III, 1845), but reported recommendations for expulsion without first seeking the order of the House (II, 1275; III, 1844). In 1859 and 1892 a similar procedure occurred (III, 1831, 2637). But the House, in a case wherein an inquiry had incidentally involved a Member, evidently considered the parliamentary law as applicable, since it admitted as of privilege and agreed to a resolution directing the committee to report the charges (III, 1843). And in cases wherein testimony taken before a joint committee incidentally impeached the official characters of a Member and a Senator, the facts in each case were reported to the House interested (III, 1854). A select committee, appointed to report upon the right of a Member-elect to be sworn (H. Res. 1, 90th Cong., pp. 14-27, Jan. 10, 1967), invited him to appear, to testify, and permitted him to be accompanied by counsel (see H. Rept. 90-27).

And where one House, by its committee, has found a Member of the other implicated, the testimony has been transmitted (II, 1276; III, 1850, 1852, 1853). Where such testimony was taken in open session of the committee, it was not thought necessary that it be under seal when sent to the other House (III, 1851).

§ 323. Inquiries involving Members of other House.

So soon as the House sits, and a committee is notified of it, the chairman is in duty bound to rise instantly, and the members to attend the service of the House. *2 Nals., 319.*

§ 324. Duty of chairman of a committee when the House sits.

For the current practice of the House, see the annotation following clause 2(i) of rule XI (§ 801, *infra*).

It appears that on joint committees of the Lords and Commons each committee acted integrally in the following instances: *7 Grey, 261, 278, 285, 338; 1 Chandler, 357, 462.* In the following instances it does not appear whether they did or not: *6 Grey, 129; 7 Grey, 213, 229, 321.*

§ 325. Action of joint committees.

It is the practice in Congress that joint committees shall vote per capita, and not as representatives of the two Houses (IV, 4425), although the membership from the House is usually, but not always (IV 4410), larger than that from the Senate (III, 1946; IV, 4426–4431). But ordinary committees of conference appointed to settle differences between the two Houses are not considered joint committees, and the managers of the two Houses vote separately (V, 6336), each House having one vote. A quorum of a joint committee seems to have been considered to be a majority of the whole number rather than a majority of the membership of each House (IV, 4424). The first named of the Senate members acted as chairman in one notable instance (IV, 4424), and in another the joint committee elected its chairman (IV, 4447).

#### SEC. XII—COMMITTEE OF THE WHOLE

The speech, messages, and other matters of great concernment are usually referred to a Committee of the Whole House (6 *Grey*, 311), where general principles are digested in the form of resolutions, which are debated and amended till they get into a shape which meets the approbation of a majority. These being reported and confirmed by the House are then referred to one or more select committees, according as the subject divides itself into one or more bills. *Scob.*, 36, 44. Propositions for any charge on the people are especially to be first made in a Committee of the Whole. 3 *Hats.*, 127. The sense of the whole is better taken in committee, because in all committees everyone speaks as often as he pleases. *Scob.*, 49. \* \* \*

This provision is largely obsolete, the House having by its rules and practice provided specifically for procedure in Committee of the Whole, and having also by its rules for the order of business left no privileged status for motions to go into Committee of the Whole on matters not already referred to that committee. The Committee of the Whole no longer originates resolutions or bills, but receives such as have been formulated by standing or select committees and referred to it; and when it reports, the