

cerning a question of privilege on rule IX.

THE CHAIRMAN: The gentlewoman is not in order.

MR. [JOHN J.] MCFALL [of California]: Mr. Chairman, I make a point of order against the resolution.

MRS. ABZUG: Mr. Chairman, a question of privilege under rule IX in my understanding is in order at any time and it takes precedence over any other.

THE CHAIRMAN: The Chair states the gentlewoman is not correct. Question[s] of privilege of the House may not be raised in the Committee of the Whole.

§ 5. Time for Consideration; Precedence of the Question

Precedence of Motions to Adjourn

§ 5.1 A question of privilege is not entertained pending a vote on a motion to adjourn.

On Apr. 15, 1970,⁽⁴⁾ following a point of order objecting to a vote on a motion to adjourn based on the absence of a quorum, Mr. Louis C. Wyman, of New Hampshire, rose to a question of "privilege." The Speaker pro tempore⁽⁵⁾ indicated that the pendency of the motion to adjourn precluded the entertainment of the question.⁽⁶⁾

4. 116 CONG. REC. 11940, 11941, 91st Cong. 2d Sess.

5. Charles M. Price (Ill.).

6. By explicit provision Rule IX, *House Rules and Manual* §661 (1973),

§ 5.2 The House may adjourn pending a decision on a question of privilege of the House.

On June 5, 1940,⁽⁷⁾ Mr. Hamilton Fish, Jr., of New York, offered a resolution⁽⁸⁾ raising a question of the privilege of the House. A point of order that a quorum was not present was then made by Mr. William P. Cole, of Maryland. When the count of the House by the Speaker⁽⁹⁾ disclosed the absence of a quorum, the House agreed to a motion offered by Mr. Sam Rayburn, of Texas, adjourning until the following day.

Precedence of Question of Privilege

§ 5.3 Parliamentarian's Note: A question of privilege has priority over all other questions except motions to adjourn,⁽¹⁰⁾ and supercedes the consideration of the original question

mandates that questions of privilege "shall have precedence of all other questions, except motions to adjourn."

7. 86 CONG. REC. 7633, 76th Cong. 3d Sess.

8. H. Res. 510.

9. William B. Bankhead (Ala.).

10. Rule IX, *House Rules and Manual* §661 (1973), and 3 Hinds' Precedents §2521.

and must be disposed of first.⁽¹¹⁾

Precedence of Prior Question of Privilege

§ 5.4 At a time when a question of privilege is pending in the House, a Member will not be recognized to present another question of privilege.

On May 28, 1936,⁽¹²⁾ Mr. C. Jasper Bell, of Missouri, offered a privileged resolution⁽¹³⁾ raising a question of the privileges of the House. Thereafter, Mr. Joseph P. Monaghan, of Montana, sought recognition to raise a point of personal privilege and of the privilege of the House. Declining to extend recognition, the Speaker⁽¹⁴⁾ stated:⁽¹⁵⁾

The question now pending is a question of the privilege of the House, and that takes precedence over the question of privilege of the gentleman from Montana. There can be only one question of privilege before the House at a time, and one is now pending.

11. *House Rules and Manual*, Jefferson's Manual §458, and annotation to Rule IX, §664 (1973); and 3 Hinds' Precedents §2522.
12. 80 CONG. REC. 8222, 74th Cong. 2d Sess. For a similar example see 80 CONG. REC. 5704-06, 74th Cong. 2d Sess., Apr. 20, 1936.
13. H. Res. 532.
14. Joseph W. Byrns (Tenn.).
15. 80 CONG. REC. 8222, 74th Cong. 2d Sess., May 28, 1936.

Question of Privilege as Unfinished Business

§ 5.5 A question of the privilege of the House pending at the time of adjournment becomes the unfinished business on the next day.

On Aug. 27, 1940,⁽¹⁶⁾ the House adjourned during debate on a resolution involving the question of the privilege of the House offered by Mr. Jacob Thorkelson, of Montana. At the commencement of the succeeding day's business the Speaker⁽¹⁷⁾ stated:

The unfinished business before the House is the question of the privilege of the House raised by the gentleman from Montana. Does the gentleman from Montana desire to be recognized?

Precedence as to the Journal

§ 5.6 The Speaker indicated that, unlike a question of personal privilege, a question of the privilege of the House could interrupt the reading of the Journal.

On the legislative day of Oct. 8, 1968,⁽¹⁸⁾ during the reading of the

16. 86 CONG. REC. 11046-49, 76th Cong. 3d Sess. For an additional example see 112 CONG. REC. 27641, 89th Cong. 2d Sess., Oct. 19, 1966.
17. William B. Bankhead (Ala.).
18. 114 CONG. REC. 30214-16, 90th Cong. 2d Sess., Oct. 9, 1968 (calendar day).

Journal the following proceedings occurred:

MR. [ROBERT] TAFT [Jr., of Ohio]: Mr. Speaker—

THE SPEAKER:⁽¹⁹⁾ For what purpose does the gentleman from Ohio rise?

MR. TAFT: Mr. Speaker, I have a privileged motion.

MR. [SIDNEY R.] YATES [of Illinois]: A point of order, Mr. Speaker. That is not in order until the reading of the Journal has been completed.

THE SPEAKER: Will the gentleman from Ohio state his privileged motion?

MR. TAFT: Mr. Speaker, my motion is on a point of personal privilege.

THE SPEAKER: Will the gentleman from Ohio state whether it is a point of personal privilege or a privileged motion?

MR. TAFT: It is a privileged motion, and a motion of personal privilege.

Under rule IX questions of personal privilege are privileged motions, ahead of the reading of the Journal.

THE SPEAKER: The Chair will advise the gentleman that a question of personal privilege should be made later after the Journal has been disposed of.

If the gentleman has a matter of privilege of the House, that is an entirely different situation.

MR. TAFT: I believe, Mr. Speaker, this involves not only personal privilege as an individual, but also as a Member of the House and also the privileges of all Members of the House.

THE SPEAKER: The Chair does not recognize the gentleman at this time on a matter of personal privilege.

But the Chair will, after the pending matter, the reading of the Journal has

been disposed of, recognize the gentleman if the gentleman seeks recognition.

Precedence Over Calendar Wednesday Business

§ 5.7 A matter involving the privilege of the House takes precedence over the continuation of the call of committees under the Calendar Wednesday rule.

On Feb. 8, 1950,⁽²⁰⁾ during the call of committees pursuant to the Calendar Wednesday rule,⁽¹⁾ the following proceedings occurred:

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER.⁽²⁾ The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, this is Calendar Wednesday, and I ask that the business of Calendar Wednesday proceed. I submit that the regular order is the continuation of the call of committees by the Clerk.

THE SPEAKER: The Chair at this time is going to lay before the House a matter of highest privilege.

The Speaker then laid before the House as a matter involving the privileges of the House a communication from the Clerk of the House reporting the receipt of a

20. 96 CONG. REC. 1695, 81st Cong. 2d Sess.

1. Rule XXIV clause 7, *House Rules and Manual* § 897 (1973).

2. Sam Rayburn (Tex.).

19. John W. McCormack (Mass.).

subpena duces tecum from a U.S. district court.

Precedence Over District of Columbia Business

§ 5.8 A resolution involving a question of the privilege of the House takes precedence over District of Columbia business under Rule XXIV clause 8.

On Dec. 14, 1970,⁽³⁾ it being the day set aside by House rule⁽⁴⁾ for consideration of District of Columbia business, the House nevertheless entertained a resolution⁽⁵⁾ concerning the printing and publishing of a report of the Committee on Internal Security presented by Mr. Richard H. Ichord, of Missouri, as a matter involving the question of the privilege of the House. Mr. Ichord stated in part as follows:

I rise to a question of privilege in a matter affecting the rights of the House collectively, the integrity of its proceedings, and the rights of the Members in their respective capacity. See House rule XI. As you know, this question comes before us as a consequence of proceedings instituted on October 13, 1970, in the U.S. District

3. 116 CONG. REC. 41355, 41358, 91st Cong. 2d Sess.

4. Rule XXIV clause 8, *House Rules and Manual* § 899 (1973).

5. H. Res. 1306.

Court for the District of Columbia to enjoin the filing, printing, publishing, and dissemination of a report of the House Committee on Internal Security (No. 91-1607), titled "Limited Survey of Honoraria Given Guest Speakers for Engagements at Colleges and Universities," which I reported to the House on October 14. On October 28, 1970, a single judge of that court . . . entered a final order permanently enjoining the Public Printer and the Superintendent of Documents from printing and distributing any copy of the report, or any portion, restatement, or facsimile thereof, and declared that any publication of the report at public expense would be illegal. . . .

Never in the constitutional history of this Nation . . . has any court of the United States . . . sustained any such final restraint upon the printing and dissemination of a report of a committee of the Congress.

Precedence Over Motion for the Previous Question

§ 5.9 A resolution properly asserting a question of the privilege of the House could take precedence over a motion for the previous question on a bill already reported from the Committee of the Whole.

On May 24, 1972,⁽⁶⁾ the Committee of the Whole House on the state of the Union rose and reported to the House a bill⁽⁷⁾ con-

6. 118 CONG. REC. 18675, 92d Cong. 2d Sess.

7. H.R. 15097.

cerning certain appropriations for the Department of Transportation. Thereafter, prior to consideration of the motion for the previous question on the bill made by Mr. John J. McFall, of California, Ms. Bella S. Abzug, of New York, submitted a resolution⁽⁸⁾ asserting as a question of privilege of the House that the House recess for the purpose of receiving a petition for the redress of certain grievances. After the resolution was read, the Speaker⁽⁹⁾ sustained a point of order that the resolution did not state a question of the privileges of the House.⁽¹⁰⁾

Application of Three-day Rule Regarding Committee Reports

§ 5.10 A committee report submitted as a matter involving the privileges of the House, as distinguished from a report merely privileged under the rules, may be considered on the same day reported notwithstanding the requirement by House rule that committee reports be available to Members at least three calendar days prior to their consideration.

8. H. Res. 1003.
 9. Carl Albert (Okla.).
 10. See §3.1, supra.

On July 13, 1971,⁽¹¹⁾ Mr. Harley O. Staggers, of West Virginia, rising to a question of the privilege of the House, sought to submit and call up for immediate consideration a report⁽¹²⁾ of the Committee on Interstate and Foreign Commerce on the contemptuous conduct of a witness in refusing to respond to a subpoena duces tecum issued by the committee. A point of order was then raised by Mr. Sam M. Gibbons, of Florida, that consideration of the matter violated a House rule⁽¹³⁾ requiring committee reports to be available to Members for at least three calendar days prior to their consideration. Following some debate, the Speaker⁽¹⁴⁾ in overruling the point of order stated:

The Chair has studied clause 27(d)(4) of rule XI and the legislative history in connection with its inclusion in the Legislative Reorganization Act of 1970. That clause provides that "a matter shall not be considered in the House unless the report has been available for at least 3 calendar days."

The Chair has also examined rule IX, which provides that:

Questions of privilege shall be, first, those affecting the rights of the

11. 117 CONG. REC. 24720-23, 92d Cong. 1st Sess.
 12. H. REPT. NO. 92-349.
 13. *House Rules and Manual* §735 (1973).
 14. Carl Albert (Okla.).

House collectively, its safety, dignity, and the integrity of its proceedings . . . and shall have precedence of all other questions, except motions to adjourn.

Under the precedents, a resolution raising a question of the privileges of the House does not necessarily require a report from a committee. Immediate consideration of a question of privilege of the House is inherent in the whole concept of privilege. When a resolution is presented, the House may then make a determination regarding its disposition.

When a question is raised that a witness before a House committee has been contemptuous, it has always been recognized that the House has the implied power under the Constitution to deal directly with such conduct so far as is necessary to preserve and exercise its legislative authority. However, punishment for contemptuous conduct involving the refusal of a witness to testify or produce documents is now generally governed by law—Title II, United States Code, sections 192–194—which provides that whenever a witness fails or refuses to appear in response to a committee subpoena, or fails or refuses to testify or produce documents in response thereto, such fact may be reported to the House. Those reports are of high privilege.

When a resolution raising a question of privilege of the House is submitted by a Member and called up as privileged, that resolution is also subject to immediate disposition as the House shall determine.

The implied power under the Constitution for the House to deal directly with matters necessary to preserve and exercise its legislative authority; the

provision in rule IX that questions of privilege of the House shall have precedence of all other questions; and the fact that the report of the committee has been filed by the gentleman from West Virginia as privileged—all refute the argument that the 3-day layover requirement of clause 27(d)(4) applies in this situation.

The Chair holds that the report is of such high privilege under the inherent constitutional powers of the House and under rule IX that the provisions of clause 27(d)(4) of rule XI are not applicable.

Therefore, the Chair overrules the point of order.

§ 6. Recognition to Offer; Determinations as to Validity

Speaker's Power to Recognize Member

§ 6.1 Questions asserted to involve the privilege of the House are addressed to the Speaker; and he may refuse recognition if the resolution is not shown to be admissible as a question of privilege under the rule.

On the legislative day of Oct. 8, 1968,⁽¹⁵⁾ Mr. Robert Taft, Jr., of Ohio, presented a resolution pur-

15. 114 CONG. REC. 30214, 30215, 90th Cong. 2d Sess., Oct. 9, 1968 (calendar day).