§ 15. Effect of Derogatory Information

In 1955, the House amended its rules to prescribe the procedures to be followed upon a determination that evidence at a hearing "may tend to defame, degrade, or incriminate a person." The provisions of the rule, and their application, are discussed in detail in succeeding sections.[11]

The three requirements of the rule are cumulative and mandatory.[12] Thus, a committee, upon determining that evidence adduced at an investigative hearing may tend to defame, degrade, or incriminate a person, must (1) receive the evidence in executive session; (2) afford the person an opportunity to appear voluntarily as a witness; and (3) receive and dispose of requests from such a person to subpena additional witnesses.

If a committee affords a witness the opportunity to appear voluntarily to testify in executive session and that opportunity is ignored by the witness, the committee cannot thereafter proceed as if it had fully complied with the rule but must issue a subpena and comply with all other requirements of the rule. However, if the witness thereafter appears in response to a subpena and, when called, asks for an executive session, the committee must determine, as provided by the rule, whether the testimony will tend to defame, degrade, or incriminate. If the committee determines that the evidence will not so tend, it may then proceed in open session.[13]

Although the rule was intended to apply to third parties rather than witnesses,[14] it has been the subject of points of order relating to rights of witnesses.[15]

In General

§ 15.1 As part of the Code of Fair Procedures, the House amended the rules to provide that, "If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate a person, it shall (1) receive

11. See § 15.1, infra, for a discussion of the rule and its adoption. See §§ 15.2–15.6, infra, for application of particular provisions.
12. See the ruling of the Chair set forth in § 15.4, infra.
13. See the proceedings discussed in § 15.6, infra. See also 112 CONG. REC. 27506, 89th Cong. 2d Sess., Oct. 18, 1966.
14. See § 15.1, infra.
15. See §§ 15.2–15.6, infra.

such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses."

On Mar. 23, 1955,[16] the House by voice vote approved House Resolution 151, known as the Code of Fair Procedures, which included a provision providing safeguards to be followed in the reception of derogatory testimony.[17]

Commenting on this provision, the Chairman of the Committee on Rules, Howard W. Smith, of Virginia, stated that, ". . . when a person is named in a committee hearing and his good reputation besmirched, he shall have a prompt opportunity to appear and refute the charges.[18] The effects of this provision were further discussed:[19]

> MR. [CLARENCE J.] BROWN of Ohio: . . . Then if the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, this resolution provides that it shall receive such testimony in executive session; that is, if it is possible to do so, they may go immediately into executive session. They shall afford such person an opportunity voluntarily to appear as a witness to refute such statements or testimony against him; and it shall receive and dispose of requests from such a person to subpena additional witnesses. Those rights are given to the witness. . . .
>
> MR. [JAMES C.] MURRAY of Illinois: We had considerable discussion when another bill was up today concerning the meaning of the words "shall" and "may." I notice in line 16 on page 2, it says with reference to testimony that may tend to defame, degrade, or incriminate a person that the committee shall do so and so. Is that mandatory or is it permissive?
>
> MR. BROWN of Ohio: Where it finds that it may tend to defame, degrade, or incriminate a person, it shall do so and so; it shall receive such evidence and testimony until it satisfies itself whether it is true.
>
> MR. MURRAY of Illinois: Is that mandatory?
>
> MR. BROWN of Ohio: Yes, that is mandatory, in my opinion. They shall afford such person who had been defamed the right voluntarily to come before the committee and refute it, which is a fair thing and a procedure which practically all the committees of the House now follow.
>
> MR. [PORTER] HARDY [Jr., of Virginia]: Mr. Speaker, will the gentleman yield?
>
> MR. BROWN of Ohio: I yield to the gentleman from Virginia.

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16. 101 CONG. REC. 3569, 3585, 84th Cong. 1st Sess.

17. See *House Rules and Manual* § 735(m) (1973).

18. 101 CONG. REC. 3569, 84th Cong. 1st Sess.

19. 101 CONG. REC. 3572, 3573, 84th Cong. 1st Sess.

MR. HARDY: On that particular point, the discussion centers around whether or not the testimony would tend to degrade or intimidate the witness. That is what the section says.

MR. BROWN of Ohio: The gentleman reads into it something that is not in there. It says "degrade any person."

MR. HARDY: That is exactly my point. It would mean, then, that if a committee held an executive session and determined that they were going to receive testimony which would indicate that an individual not the witness had misappropriated Government property, for instance, under this language it could not hold that testimony in open session.

MR. BROWN of Ohio: That is right. If I charge you with being a thief, the committee goes into executive session to explore as to whether or not I have any justification for that charge and you have the right to answer it. Then, if they determine that there is some ground for my charge against you, they can have all the open sessions they want to have.

MR. HARDY: Is there anything in here that shows that you can open that hearing up?

MR. BROWN of Ohio: Certainly, because it provides only the two things they shall do in such circumstances. . . .

MR. [EDWIN E.] WILLIS [of Louisiana]: That provision under discussion refers to a person not on the stand?

MR. BROWN of Ohio: That is right.

MR. WILLIS: It refers to defaming third parties, not the man on the stand?

MR. BROWN of Ohio: That is right.

MR. HARDY: I understand that, but suppose you have a situation that clearly shows that there has been abuse?

MR. BROWN of Ohio: What does it say here? They consider that in executive session, then they come back into open session after they have got the information and, if they decide there is some substance to your charge, or my charge against you, then they can go ahead and have all the open hearings they want.

MR. HARDY: They can have all the open hearings they want, then.

MR. WILLIS: I think this is important. The controlling part of that particular section is that "If the committee determines," then such and such happens.

MR. BROWN of Ohio: That is right.

MR. WILLIS: But the determination must be made first.

MR. BROWN of Ohio: It rests entirely with the committee.

MR. HARDY: The gentleman is absolutely correct. It is only where the person is brought up for the first time and when the committee determines that the matter should be gone into; then you can have all the public hearings you want.

MR. BROWN of Ohio: If they think the man has been defamed. If I say you are a Communist and the evidence shows you are not, then I have not told the truth. The committee determines whether or not you have been defamed.

MR. HARDY: That is exactly right. Then you can have all the public hearings you want.

MR. SMITH of Virginia: Mr. Speaker, I yield 5 minutes to the gentleman from Georgia [Mr. Forrester].

MR. [ELIJAH L.] FORRESTER [of Georgia]: . . . With regard to the particular portion which was inquired about by the gentleman from Virginia [Mr. Hardy], the answer given by the gentleman from Ohio [Mr. Brown] is absolutely correct. All on earth this provision does is that if a man's name is brought up before a committee for the first time, you go into executive session and you somewhat simulate the action of a grand jury. That is a fair provision.

MR. [EDWARD T.] MILLER of Maryland: Mr. Speaker, will the gentleman yield?

MR. FORRESTER: I yield.

MR. MILLER of Maryland: I share the view of the gentleman from Virginia that that may be the intention, but certainly the language here does not indicate how it would be possible to bring out evidence that you knew was going to degrade somebody except in executive session. I do not see any language here that permits that.

MR. FORRESTER: No matter where it is brought out, if it is in executive session, then, of course, you can deal with it, but if it is in public session, then you simply suspend and go into executive session and determine whether or not there is a reason to expose that man's name publicly. That is a right which the Congress should be the first to concede to any person. . . .

This clause aroused some criticism, as shown in the remarks below:[20]

MR. HARDY: I am in complete accord with the objectives of the committee, and I congratulate the committee on attempting to deal with a very difficult problem. However, I think that subsection (m), as now written, will hamper every investigation that is ever undertaken.

MR. FORRESTER: I do not think so. * * *

MR. [KENNETH B.] KEATING [of New York]: * * * I am also puzzled and troubled a little about subparagraph (m) and the way it is intended to work. In the first place, it specifies that "if the committee determines" that certain evidence or testimony is defamatory, degrading, or incriminating, it must then hear the same in executive session—but in order for the committee to make such a determination it would appear that some consideration of the evidence or testimony would already have to have taken place. So I wonder if the requirement is not self-defeating, in that the harm would be done before the committee would ever be in a position to provide the intended protection.

In passing, I should also like to raise a grave question about this matter of executive sessions. Undoubtedly, it is a good and desirable thing to create a right, at least in limited circumstances, for a person who is likely to be injured by testimony to have the testimony taken at a secret hearing. I favor that, if some practical way to accord it without tying the committee's hands can be worked out.

But I am also persuaded that there is, as a practical possibility at least, a considerable danger of abuse in the other direction, namely, a danger that the secret hearing may also be used as a truly terrible reincarnation of the star chamber. If a hostile and unwill-

20. 101 CONG. REC. 3573, 3583, 84th Cong. 1st Sess.

ing witness is forced to submit to lengthy examination, under oath and on record, in a secret session, he can be put at a terrible disadvantage when the committee later raises the curtain and conducts the interrogation again publicly. He is bound to everything he said, at the peril of imminent prosecution for perjury, and his interrogators are able to pick and choose from only the most damaging concessions and exactions. In some of the drafts last year this matter was handled by creating, in the witness, a right to insist upon being heard publicly if he feared the secret session. There are some possible difficulties with this, although the hostile witness who invokes such a right would probably be of little legitimate value to the committee in any case. . .[21]

Receiving Testimony in Executive Session

§ 15.2 A point of order was raised against a committee report citing a witness in contempt, on the ground that the committee had violated a House rule by not receiving certain testimony in executive session.

On Oct. 18, 1966, Mr. Sidney R. Yates, of Illinois, raised points of order against House Report Nos. 2302 [22] 2305 [23] and 2306 [24] relating to refusals of three named individuals to testify before the Committee on Un-American Activities, on the ground that the committee violated Rule XI clause 27(m), [1] by not receiving in executive session evidence and testimony which would allegedly defame, degrade, or incriminate these individuals.

Speaker John W. McCormack, of Massachusetts, overruled each point of order, stating as his reasons those set forth in sections following.[2]

Prerequisite for Committee Determination

§ 15.3 Where a person subpenaed as a witness responded to his name and then left the hearing room without making any statement other than that he refused to testify, the committee could not be said to violate the House rule relating to derogatory informa-

21. See § 13.2, supra, for other criticism of this provision.

22. See § 15.3, infra, for this point of order.

23. See § 15.6, infra, for this point of order.

24. See 112 CONG. REC. 27505, 89th Cong. 2d Sess., for this point of order.

1. See House Rules and Manual § 735(m) (1973).

2. See §§ 15.3, 15.6, infra.

tion since the proceedings had never reached the point where the testimony could be said to tend to degrade, defame, or incriminate.

On Oct. 18, 1966,[3] Speaker John W. McCormack, of Massachusetts, in response to a point of order by Mr. Sidney R. Yates, of Illinois, against privileged House Report No. 2302, citing Milton Mitchell Cohen, of Chicago, Ill., in contempt for refusal to respond to questions at a hearing, ruled that the Committee on Un-American Activities had not violated Rule XI clause 27(m),[4] because the proceedings had not reached the stage at which the committee determines whether to hear evidence or testimony in executive session.

PROCEEDINGS AGAINST MILTON MITCHELL COHEN

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise on a question of the privilege of the House, and by direction of the Committee on Un-American Activities I submit a privileged report—House Report No. 2302. . . .

MR. YATES: Mr. Speaker, I make a point of order against the resolution offered by the Committee on Un-American Activities. The committee appears here today claiming the privilege of the House. It asserts that this House has been injured, that its dignity and its integrity have been threatened, even impaired, by reason of the refusal of the respondents to give testimony to the committee at a public hearing duly convened. It now asks this House in this resolution to hold the respondent in contempt so that he may be punished by the criminal processes of the law for his refusal to testify.

Mr. Speaker, there is no doubt that the respondent did refuse to give testimony. The question I raise for the consideration of the Chair is whether a witness may be required to give such testimony when the committee itself has violated the [rights] of the respondent by refusing to follow the Rules of the House which were specifically established to protect the rights of the respondents for this purpose. . . .

This committee, the Committee on Un-American Activities, has failed and refused to follow the Code of Fair Procedure by denying the request of the respondent that his testimony be taken in executive session. . . .[5]

May a committee of this House deny the protection of the rules which were approved by this House for the purpose of protecting witnesses who request that protection? There are no precedents of the House on this point, but the Supreme Court[6] faced with a

3. See the proceedings at 112 CONG. REC. 27439–48, 89th Cong. 2d Sess.

4. See *House Rules and Manual* § 735(m) (1973).

5. See § 13.1, supra, for discussion of adoption of this code.

6. See *Yellin* v *United States*, 374 U.S. 109 (1963), which reversed a conviction because the Committee on Un-American Activities failed to comply with its own rule, not a House rule, regarding executive sessions rather

similar question decided that a committee could not compel a witness to testify under such circumstances, and the Court, the Supreme Court of the United States, vacated a criminal contempt conviction that had been entered against a defendant whose case had come up from the Committee on Un-American Activities.

Mr. Speaker, what does rule 26(m) provide? I read it, Mr. Speaker. It says this:

If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall do the following:

First. It shall receive such evidence or testimony in executive session;

Second. It shall afford such person an opportunity voluntarily to appear as a witness; and—not "or" but "and," Mr. Speaker.

Third. Receive and dispose of requests from such persons to subpena additional witnesses.

It is to be noted, Mr. Speaker, that the three requirements of the committee are not in the alternative. They are cumulative.

In his letter of May 25, the chairman of this committee wrote a letter to the respondent saying that the committee was acting pursuant to [Rule XI clause 27(m)] in offering to take the testimony in executive session. Thus, the rule had been activated and a decision had been made by the committee that the testimony was of a type that would tend to defame, degrade, or incriminate.

Mr. Speaker, in offering the witness this opportunity to appear voluntarily and give testimony in executive session, the committee was complying with section 2 of the rule.

But, Mr. Speaker, when the witnesses did not appear voluntarily, in spite of the fact that the conditions for requiring testimony to be taken in executive session were still present; namely, that the testimony would tend to degrade, defame, or incriminate, the committee determined to receive the testimony in public session. . . .

The SPEAKER: The Chair will hear the gentleman from Georgia [Mr. Weltner].

MR. [CHARLES L.] WELTNER: . . .

[T]he report before the Speaker and before the Members shows that on May 18, Mr. Cohen, without relying upon any constitutional protection, announced through his attorney that he was departing from the witness room without submitting himself to any questions by the committee, after stating only his name and address.

The rules of the House have been religiously followed in this instance, in each case, in each of the three burdens upon the House committee pursuant to rule 26(m). . . .

There was a request by his attorney that he be called and examined in executive session. The record of the hearing will show, Mr. Speaker, that subsequent to the making of that request, this committee recessed the public hearings; that it undertook to consider his request in executive session; that the factors making up the substance of his request were considered; and the request was by unanimous vote of that committee denied. . . .

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than the House rule discussed here. *Yellin* is discussed at § 1 5.6, infra.

The SPEAKER: The Chair is ruling only in these cases on this particular case concerning Milton Mitchell Cohen. The gentleman from Illinois [Mr. Yates] has raised a point of order against the privileged report filed by the gentleman from Georgia [Mr. Weltner] citing a witness before a subcommittee of the Committee on Un-American Activities of the House for contempt. The point of order is based on the ground that the subcommittee while holding hearings in Chicago failed or refused to follow the rules of the House, specifically rule XI, clause 26(m) and, at the demand of the witnesses' attorney, take the testimony in executive session rather than in an open hearing. . . .

The Chair agrees with the gentleman from Illinois that the three subclauses are not in the alternative. Each subclause stands by itself. The Chair will point out, however, that the subsection places the determination with the committee, not with the witness. . . .

Now the Chair will cite clause 26(a) of rule XI, which states that the rules of the House are the rules of its committees so far as applicable. This provision also applies to the subcommittees of any such committee. Consequently, the Chair must examine the facts to see if the subcommittee did in fact comply with clause 26(m) of rule XI.

The Chair will call attention to the fact that it is pointed out on page 8 of the report that the witness was invited to appear and testify in executive session. The invitation was ignored.

It will be noted, on pages 11 and 12 of the committee report, that the attorney for witness Cohen instructed his client not to give any testimony pending determination of a legal action in the U.S. District Court for the Northern District of Illinois.

The witness then left the hearing room, notwithstanding the admonition of the chairman of the subcommittee.

The Chair fails to see how clause 26 (m) of rule XI becomes involved since the witness left the hearing room after his attorney had instructed him not to answer any questions pending determination of the legal proceedings.

The Chair, therefore, overrules the point of order.

Committee Determinations

§ 15.4 The determination that evidence may tend to defame, degrade, or incriminate a person, a prerequisite to certain procedural steps under House rules lies with the committee and not with the witness.

On Oct. 18, 1966, Speaker John W. McCormack, of Massachusetts, in the course of ruling on the point of order discussed above, stated[7] that the committee, not

7. 112 CONG. REC. 27448, 89th Cong. 2d Sess. See § 15.3, supra, for the point of order. See also § 15.6 and 112 CONG. REC. 27505, 27506, 89th Cong. 2d Sess., Oct. 18, 1966, for the same ruling on this issue to points of order raised by Mr. Sidney R. Yates (Ill.), against H. REPT. Nos. 2305 and 2306 relating to refusals of Yolanda Hall and Dr. Jeremiah

the witness, determines whether evidence may tend to defame, degrade, or incriminate a person under Rule XI clause 27(m).[8]

The SPEAKER: . . . The point of order is based on the ground that the subcommittee while holding hearings in Chicago failed or refused to follow the rules of the House, specifically rule XI, clause 26(m) and, at the demand of the witnesses' attorney, take the testimony in executive session rather than in an open hearing. . . .

The Chair has . . . refreshed his recollection of clause 26(m), rule XI, which reads as follows:

> If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session;
>
> (2) afford such person an opportunity voluntarily to appear as a witness; and
>
> (3) receive and dispose of requests from such person to subpena additional witnesses.

The Chair agrees with the gentleman from Illinois that the three subclauses are not in the alternative. Each subclause stands by itself. The Chair will point out, however, that the subsection places the determination with the committee, not with the witness.

§ 15.5 With respect to evidence or testimony at an investigative hearing which may tend to defame, degrade, or incriminate a person, the committee, under the rules of the House, determines whether to hold an executive session or publicize material which has been received in executive session.

On Apr. 5, 1967,[9] during consideration of House Resolution 221, providing additional expense funds for the Committee on Un-American Activities, Speaker John W. McCormack, of Massachusetts, responded to parliamentary inquiries relating to the discretion of a committee under Rule XI clause 27(m).[10]

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Speaker [rule XI, 27(m)] of the Rules of the House of Representatives states as follows:

> If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session;

Mr. Speaker, my question is this: If the committee determines that the evidence it is about to receive may tend to defame, degrade or incriminate a witness, is it not compulsory under the Rules of the House for the committee

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Stamler, respectively, to testify before the Committee on Un-American Activities.

8. See *House Rules and Manual* § 735(m) (1973).

9. 113 CONG. REC. 8420, 8421, 90th Cong. 1st Sess.

10. See *House Rules and Manual* § 735(m) (1973).

to hold such hearings in executive session?

THE SPEAKER: The Chair will state that that is a matter which would be in the control of the committee for committee action. . . .

MR. YATES: I must say that I do not understand the ruling. Is the Chair ruling that a committee can waive this rule? That it can refuse to recognize this rule?

THE SPEAKER: The Chair would not want to pass upon a general parliamentary inquiry, as distinguished from a particular one with facts, but the Chair is of the opinion that if the committee voted to make public the testimony taken in executive session, it is not in violation of the rule, and certainly that would be a committee matter.

MR. YATES: A further parliamentary inquiry, Mr. Speaker. What the Chair is now stating is that if the committee votes at a subsequent time to make public such a hearing, under the rules it may do so. But that does not bear upon the question I addressed to the Speaker, which was this: in the first instance, when testimony is to be taken by the committee, and such testimony tends to defame, degrade, or incriminate any person, must it be taken in executive session? . . .

THE SPEAKER: The Chair will be very frank. The Chair recognizes the power of the committee. If the committee goes into executive session, the Chair is not going to make a ruling under those circumstances as to whether a committee could make public testimony taken in executive session.

MR. YATES: May I pursue one further parliamentary inquiry, Mr. Speaker. The rule states:

> If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) receive such evidence or testimony in executive session.

The question I addressed to the Chair was whether the committee could waive that rule.

THE SPEAKER: The rule says:

> If the committee determines

And there has to be a determination by the committee—

> that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—

First it has to make a determination. Without passing on this, the Chair can look into the future and see where the committee might make a determination, and then when it goes into executive session and receives the evidence, it may find there the evidence did not justify the original determination, or the evidence is of such a nature that it justifies being made public.

MR. YATES: I thank the Chair. Then I take it from the Chair's response to my inquiry that so long as the committee has made such a finding and has not vacated it, the rule is applicable.

THE SPEAKER: The Chair is not even going to go that far—not on this occasion. The Chair has been perfectly frank. Of course, sometimes the word "shall" I know has been construed by the courts sometimes as "may". The gentleman is familiar with that, I am sure. The Chair is not doing that on this occasion. The Chair would have to ascertain the facts in a particular case.

Consequence of Committee Determination

§ 15.6 A point of order that a committee violated a House rule relating to the reception of derogatory evidence, made against a committee report citing a witness for refusal to testify, could not be sustained where the subpenaed witness requested through counsel that evidence and testimony be taken in executive session, and the committee recessed, considered, and denied the request, having determined during the recess that these materials would not tend to defame, degrade, or incriminate any person; such committee actions, it was held, constituted compliance with the clause.

On Oct. 18, 1966,[11] Speaker John W. McCormack, of Massachusetts, overruled a point of order raised by Mr. Sidney R. Yates, of Illinois, that the Committee on Un-American Activities violated Rule XI clause 27(m),[12] by not holding an executive session; the Speaker found that the committee had duly considered and rejected the request.

PROCEEDINGS AGAINST YOLANDA HALL

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise to a question of the privilege of the House and by direction of the Committee on Un-American Activities, I submit a privileged report-House Report No. 2305.

The Clerk read as follows: . . . [13]

MR. YATES: Mr. Speaker, I make a point of order against the resolution on the grounds that it is violative of [rule XI, paragraph 27 (m)] of the rules of the House, requiring that testimony which may tend to defame, degrade, or incriminate the witness be taken in executive session. I do not intend to go into the same delineation of my reasons that I gave in connection with the preceding resolution.[14] But I suggest, with due respect, that the Chair should consider the fact that in this case, even though the Supreme Court of the United States decision is not controlling, it is nevertheless persuasive, and I should like to read to the Chair from the decision in the case of *Yellin* v. *the United States*, 374 U.S.

11. See the proceedings at 112 CONG. REC. 27486–95, 89th Cong. 2d Sess. See also 112 CONG. REC. 27500–06, 89th Cong. 2d Sess., Oct. 18, 1966, for the same ruling on a point of order raised against H. REPT. NO. 2306, regarding the refusal of Dr. Jeremiah Stamler to testify before the Committee on Un-American Activities.

12. See *House Rules and Manual* § 735(m) (1973).

13. The report is omitted.

14. See § 15.3, supra, relating to a contempt citation against Milton Mitchell Cohen, during which Mr. Sidney R. Yates (Ill.), raised similar objections.

109, page 114, where the Court recited the rule which was then under consideration as follows: [1]

> Executive hearings: If a majority of the committee or subcommittee duly appointed as provided by the Rules of the House of Representatives believes that the interrogation of a witness in a public hearing might endanger national security or unjustly injure his reputation or the reputation of other individuals, the committee shall interrogate such witness in an executive session for the purpose of determining the necessity or the advisability of conducting such interrogation thereafter in a public hearing.

Mr. Speaker, I now read from the decision of the Court on this particular rule, where the Court, discussing the rules that make up the Code of Fair Procedure that were approved in the year 1955, said as follows:

> All these rules work for the witness' benefit. They show that the committee has in a number of instances intended to assure the witness fair treatment, even the right to advice of counsel or undue publicity, and even the right not to be photographed by television cameras.
>
> Rule IX, in providing for an executive session when a public hearing might unjustly injure a witness' reputation, has the same protection import. And if it is the witness who is being protected, the most logical person to have the right to enforce those protections is the witness himself.

I respectfully suggest, Mr. Speaker, that the respondent, who was called as a witness, requested in the instant case that she be afforded the opportunity to testify in an executive session, a request that was denied by the committee. The respondent subsequently walked out on the committee without testifying.

I read from the court, to show that the respondent had no alternative under such circumstances. On page 121 the court says this:

> Petitioner has no traditional remedy, such as the writ of habeas corpus . . . by which to redress the loss of his rights. If the Committee ignores his request for an executive session, it is highly improbable that petitioner could obtain an injunction against the Committee that would protect him from public exposure. . . . Nor is there an administrative remedy for petitioner to pursue should the Committee fail to consider the risk of injury to his reputation. To answer the questions put to him publicly and then seek redress is no answer. For one thing, his testimony will cause the injury he seeks to avoid; under pain of perjury, he cannot by artful dissimulation evade revealing the information he wishes to remain confidential. For another, he has no opportunity to recover in damages. Even the Fifth Amendment is not sufficient protection, since petitioner could say many things which would discredit him without subjecting himself to the risk of criminal prosecution. The only avenue open is that which petitioner actually took. He refused to testify.

This is the decision of the Court. I respectfully suggest to the Speaker that it would sustain the dignity and integrity of the House if the interpretation of the rule for which I contend were sustained. . . .

MR. [RICHARD H.] ICHORD [of Missouri]: . . . To assist the Chair in rul-

1. The quoted rule is taken from the rules of the Committee on Un-American Activities, not the rules of the House.

ing on the point of order of the gentleman from Illinois I would point out to the Chair that the facts are essentially the same as in the Cohen case, and that the gentleman from Illinois has raised a point of order again under [rule XI 27(m)] that the witness, Yolanda Hall, should have been afforded an executive session.

Mr. Speaker, in this case the question of executive session is not at issue. . . .

I direct the Speaker's attention to page 14 of the committee report, which sets out the hearings in full.

I direct the Speaker's attention to line 16, which will make it clear to the Speaker that the witness, Yolanda Hall, did not request an executive session from the House Committee on Un-American Activities. . . .

MR. YATES: . . . I . . . refer the Chair to page 337 of the hearings where there appears a statement by Mr. Sullivan as follows:

> I ask this committee to take in executive session any testimony by my clients, that is, Dr. Stamler and Mrs. Hall, and any testimony by any other witnesses about Dr. Stamler and Mrs. Hall. That is my request.

So that the request was made, Mr. Speaker, for testimony to be taken in executive session. . . .

THE SPEAKER: The Chair is prepared to rule.

The gentleman from Illinois [Mr. Yates] has raised a point of order against the privileged report filed by the gentleman from Louisiana, citing a witness before a subcommittee of the Committee on Un-American Activities for contempt. The point of order is based on the ground that the subcommittee, while holding hearings in Chicago, failed or refused to follow the rules of the House—specifically, [rule XI, clause 27 (m)]—and, at the demand of the witnesses' attorney, take the testimony in executive session rather than in an open hearing.

The Chair will again read [clause 27 (m), rule XI], as follows:

> (m) If the committee determines that evidence or testimony at an investigative hearing may tend to defame, degrade, or incriminate any person, it shall—
>
> (1) Receive such evidence or testimony in executive session;
>
> (2) Afford such person an opportunity voluntarily to appear as a witness; and
>
> (3) Receive and dispose of requests from such person to subpena additional witnesses.

The Chair again agrees with the gentleman from Illinois that the three subclauses are not in the alternative. Each subclause stands by itself. The Chair will point out, however, that the subsection places the determination with the committee, not with the witness. . . .

Now the Chair will cite [clause 27(a) of rule XI], which states that the rules of the House are the rules of its committees so far as applicable. This provision also applies to the subcommittees of any such committee. Consequently, the Chair must examine the facts to see if the subcommittee did in fact comply with [clause 27(m) of rule XI].

The Chair will call attention to the fact that it is pointed out on page 8 of the report that the witness in this instance was invited to appear and testify in executive session. The invitation was ignored.

It will be noted, on pages 11 through 14 of the committee report, that the attorney for witness Hall made demand for an executive session. You will note, on page 11 of the report, that when the demand for an executive session was made, the subcommittee took a recess. It is obvious from the subcommittee chairman's statement following that recess, that the subcommittee had considered and determined not to take the testimony in executive session. The chairman so states, on page 12 of the Hall citation:

> Your motion, now made, that Mrs. Hall be now heard in executive session I deny after consideration of the subcommittee. We have complied with [rule 27(m)] and all other applicable rules of the House and of this committee.

It is patently clear to the Chair that the subcommittee did comply with [clause 27 (m)], and made the determination necessary thereunder. Accordingly, the Chair overrules the point of order.

§ 16. Calling Witnesses; Subpenas

This section discusses the calling of witnesses generally, and, specifically, subpenas ad testificandum to compel testimony, and subpenas duces tecum to compel production of papers, before the House or Senate or their committees or subcommittees.[2] It does not encompass all material relating to calling witnesses; subjects not discussed here include court subpenas for House papers,[3] investigations leading to impeachment,[4] inquiries into conduct of Members,[5] or qualifications or disqualifications of Members or Members-elect.[6]

A subpena is not a necessary prerequisite to an indictment and conviction for contempt under the

2. See § 4, supra, for a discussion of subpenas issued to the executive branch, and § 11, supra, for discussion of fourth amendment considerations. See also 1 Hinds' Precedents § 25; 2 Hinds' Precedents §§ 1313 and 1608; 3 Hinds' Precedents §§ 1668, 1671, 1673, 1695, 1696, 1699, 1700, 1714, 1732, 1733, 1738, 1739, 1750, 1753, 1763, 1766, 1800, 1801–1810, 1813–1820; 6 Cannon's Precedents §§ 336, 338, 339, 341, 342, 344, 346–349, 351, 354, 376, for earlier precedents. For related discussion, see § 13.11, supra, regarding a subpenaed witness right not to be photographed; §§ 15.1 and 13.6, supra, relating to disposition of requests to subpena witnesses when derogatory information has and has not been received, respectively; and §§ 17.4 and 19.4, infra, relating to citation of persons who have not been subpenaed. See also all precedents in § 20, infra, as they relate to refusals to appear, be sworn, testify, or produce documents in response to subpenas.

3. See Ch. 11, supra, discussing privilege.

4. See Ch. 14, Impeachment Powers, supra.

5. See Ch. 12, supra.

6. See Ch. 7, Members, supra.