

House Rule XI 25(m) and the purposes of House Resolution 99 were in violation of the rules and purposes of the House. That the special committee report back these findings to the House within 10 days along with any recommendations it may make for correction and other actions, which might include recommendations of approval or censure of the subcommittee, its members or employees, recommendations for changing the rules of the House of Representatives, recommendations for instructions to the Committee on Interstate and Foreign Commerce as to future procedure, recommendations for enlarging the life and scope of investigation and subject matter of this special committee.

Immediately after the Clerk read the resolution, Mr. Oren Harris, of Arkansas, raised a point of order against the resolution on the ground that it was not a privileged resolution. In the course of so doing, he began to discuss the record of the subcommittee:

A member of the committee, the gentleman from California [Mr. Moss] made a motion in executive session at that time to the effect that it did not come within the rule [requiring an executive session] and that the testimony of the witness, as he had presented it to us in a written statement, be taken in public session as paragraph (g) of the rule provides. That motion was voted on. Nine of the 11 members of the subcommittee were present, and there was not a dissenting vote. The motion was agreed to, and thereupon

the subcommittee ended its executive session and proceeded to hear the witness in public.

At this juncture, the following<sup>(13)</sup> exchange and resultant ruling occurred:

MR. [TIMOTHY P.] SHEEHAN [of Illinois]: A point of order, Mr. Speaker.

THE SPEAKER: Well, there is one point of order pending.

MR. SHEEHAN: I am making a point of order on what he is talking about now. According to the ruling the Speaker gave to the gentleman from Missouri [Mr. Curtis] last week a Member could not speak in the House about anything that happened during a committee session until such time as the committee report was tendered to the House. And, as a result, he is out of order.

THE SPEAKER: Well, here is a question of privilege of the House being raised by the gentleman from Missouri [Mr. Curtis], and in order for the gentleman from Arkansas [Mr. Harris] to justify his point of order, he has got to discuss these matters. And, they are in the printed record.<sup>(14)</sup>

## § 21. Executive Sessions

### *Generally; Voting to Close a Meeting or Hearing*

#### § 21.1 The House adopted a resolution reported from the

13. 104 CONG. REC. 12690, 12691, 85th Cong. 2d Sess.
14. For a comparable situation involving the same issue but with respect to subcommittee reports that had not yet been printed see § 20.1, *supra*.

**Committee on Rules (1) amending the rules to require that business meetings of standing committees and subcommittees (except on internal budget and personnel matters) shall be open to the public except when the committee in open session determines by roll call vote that all or part of the remainder of that meeting be closed, and permitting committee staff and authorized congressional and executive department staff to be present at closed meetings; and (2) further amending the rules to impose similar requirements for open hearings on all committees and subcommittees unless the committee closes the remainder of that hearing because matters to be considered would endanger national security or violate a law or rule of the House.**

On Mar. 7, 1973,<sup>(15)</sup> the House adopted a resolution (H. Res. 272) providing for consideration, under an open rule, of House Resolution 259. Accordingly, the House resolved itself into the Committee of the Whole for the consideration of the resolution (H. Res. 259), to amend the rules of the House to

15. 119 CONG. REC. 6700, 93d Cong. 1st Sess.

strengthen the requirement that committee proceedings be held in open session.<sup>(16)</sup>

The resolution, as originally considered, read as follows:

*Resolved*, That clause 26 (f) of rule XI<sup>(17)</sup> of the Rules of the House of Representatives is amended to read as follows:

(f) Each meeting for the transaction of business, including the markup of legislation, of each standing committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a quorum present, determines by rollcall vote that all or part of the remainder of the meeting on that day shall be closed to the public: *Provided, however*, That no person other than members of the committee and such congressional staff as they may authorize shall be present at any business or markup session which has been closed to the public. This paragraph does not apply to open committee hearings which are provided for by paragraphs (f)(2) and (g)(3) of clause 27 of this rule; or to any meeting that

16. *Id.* at pp. 6706–20.

17. In the previous Congress, Rule XI clause 26(f) had [H. Jour. 1602, 92d Cong. 2d Sess. (1972)] read: “(f) Meetings for the transaction of business of each standing committee shall be open to the public except when the committee, by majority vote, determines otherwise. This paragraph does not apply to open committee hearings which are provided for by paragraphs (f)(2) and (g)(3) of clause 27 of this Rule.”

relates solely to internal budget or personnel matters.”

Sec. 2. Clause 27(f)(2) of rule XI<sup>(18)</sup> of the Rules of the House of Representatives is amended to read as follows:

“(2) Each hearing conducted by each committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a quorum present, determines by rollcall vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or rule of the House of Representatives.”

Sec. 3. The first sentence of clause 27(g) (3) of rule XI<sup>(19)</sup> of the Rules of the House of Representatives is amended to read as follows: “Hearings pursuant to subparagraph (1) of this paragraph, or any part thereof,<sup>(1)</sup> shall

18. In the previous Congress, Rule XI clause 27(f)(2) had [H. Jour. 1603, 92d Cong. 2d Sess. (1972)] read: “(2) Each hearing conducted by each committee shall be open to the public except when the committee, by majority vote, determines otherwise.”
19. In the previous Congress, the first sentence of Rule XI clause 27(g)(3) had [H. Jour. 1603, 92d Cong. 2d Sess.(1972)] read: “(3) Hearings pursuant to subparagraph (1) of this paragraph shall be held in open session, except when the committee determines that the testimony to be taken at that hearing may relate to a matter of national security.”
1. The subparagraph referred to, Rule XI clause 27(g)(1) remained un-

be held in open session, except when the committee, in open session and with a quorum present, determines by rollcall vote that the testimony to be taken at that hearing may be related to a matter of national security.”

Several issues arose in the ensuing debate. Some Members took exception to the proviso in proposed Rule XI clause 26(f) which precluded all persons “other than members of the committee and such congressional staff as they may authorize” from being present “at any business or markup session which has been closed to the public.” Others expressed reservations as to the “workability” of the requirement that a committee’s decision to close a public meeting [26(f)] or a public hearing [26(f)(2)] be determined daily.

Although the debate entailed other considerations, the afore-

changed from the previous Congress and read [H. Jour. 1603, 92d Cong. 2d Sess. (1972)] as follows: “(g)(1) The Committee on Appropriations shall, within thirty days after the transmittal of the Budget to the Congress each year, hold hearings on the Budget as a whole with particular reference to—(A) the basic recommendations and budgetary policies of the President in the presentation of the Budget; and (B) the fiscal, financial, and economic assumptions used as bases in arriving at total estimated expenditures and receipts.”

mentioned issues were the most extensively discussed, and each was contained in a proposed amendment. Mr. Samuel S. Stratton, of New York, proposed that clause 26(f) be amended to allow “departmental representatives” to be present at closed meetings with the committee’s authorization,<sup>(2)</sup> and Mr. Richard H. Ichord, of Missouri, proposed that the words, “on that day” be struck from both parts of the resolution where they appeared.<sup>(3)</sup> Both the Stratton<sup>(4)</sup> and Ichord<sup>(5)</sup> amendments were agreed to by the Committee of the Whole and by the House.

The resolution, as amended, was agreed to in the House by a vote of 371–27.<sup>(6)</sup>

*Parliamentarian’s Note:* This rule (Rule XI clauses 2(g) (1) and (2) in the 1979 *House Rules and Manual*) was amended on Jan. 14, 1975, to limit to one day (in the case of a committee meeting) or to one day plus one subsequent day

2. 119 CONG. REC. 6714, 93d Cong. 1st Sess.

3. *Id.* at p. 6715.

4. *Id.* at p. 6715.

5. *Id.* at p. 6718.

6. *Id.* at p. 6720.

See §21.2, *infra*, for an instance in which a committee ordered a bill reported in closed session without having voted by roll call in open session to close that meeting.

(in the case of a hearing) the period during which a committee may close its session. These clauses were again amended on Jan. 4, 1977, to require that a majority (rather than a quorum) be present when a committee or subcommittee votes to close a meeting or hearing and to provide that a noncommittee member cannot be excluded from a hearing except by a vote of the House. In the 96th Congress, paragraph 2 was amended further to permit a majority of those present under the rules of the committee for the purpose of taking testimony (not less than two members as provided in clause 2(h)(1) of Rule XI) to vote to close a hearing either to discuss whether the testimony would endanger national security or would violate clause 2(k)(5) of Rule XI, or to proceed to close the hearing as provided by clause 2(k)(5).

### ***Reporting of Bill From Improperly Convened Executive Session***

**§ 21.2 The Committee on Interstate and Foreign Commerce having ordered a bill reported in closed session without having voted by roll call in open session to close the meeting (in violation of the rules), the chairman of the committee disclosed that**

**fact during consideration of the bill in the Committee of the Whole.**

On May 22, 1973,<sup>(7)</sup> the House resolved itself into the Committee of the Whole for the consideration of a bill (H.R. 7200), to amend the Railroad Retirement Act of 1937, the Railroad Retirement Tax Act, and the Interstate Commerce Act, among other purposes. The Clerk proceeded to read the title of the bill, and, by unanimous consent, the first reading was dispensed with.

Shortly thereafter, Chairman William J. Green, of Pennsylvania, recognized r. Harley O. Staggers, of West Virginia, and the following exchange took place:

Mr. Chairman, I will not take very long on the bill.

MR. [DANTE B.] FASCELL [of Florida]: Mr. Chairman, will the gentleman yield?

MR. STAGGERS: I yield to the gentleman from Florida.

MR. FASCELL: Mr. Chairman, thank the gentleman for yielding.

I take this time to ask if I am not correct in my information that at the time the full committee considered the bill in executive session, it was a closed session, but a recorded vote to close the session was not taken.<sup>(8)</sup>

7. 119 CONG. REC. 16521, 93d Cong. 1st Sess.

8. Mr. Fascell was concerned, here, with what appeared to be an inad-

MR. STAGGERS: That is correct.

MR. FASCELL: I thank the gentleman for saying that.

Mr. Chairman, let me say that the present rule which makes this bill in order does not waive points of order, and an issue could have been raised with respect to the consideration of this bill, which I certainly did not want to raise, but it would have put the committee in the awkward position, had the point of order been raised on consideration of the bill, of either going back to the Rules Committee and getting a rule which waived points of order or of going back to the committee and having another vote on the bill which had been marked up.

I thank the chairman for yielding me this time to raise this issue, because I think it is important that in consideration of our bills we do not inadvertently violate the rules of the House with respect to the recorded vote on closed meetings.

*Parliamentarian's Note:* Mr. Fascell was an author of House

vertent failure to follow clause 26(f) of Rule XI which read [Rule XI clause 2(g)(1) *House Rules and Manual* §708 (1979)] in pertinent part: "(f) Each meeting for the transaction of business, including the markup of legislation, of each standing committee or subcommittee thereof shall be open to the public except when the committee or subcommittee, in open session and with a quorum present, determines by rollcall vote that all or part of the remainder of the meeting shall be closed to the public . . . ."

See also Rule XI clause 2(g)(2), *House Rules and Manual* §708 (1979).

Resolution 259<sup>(9)</sup> which incorporated Rule XI clause 26(f) into the rules of the House. He had indicated he would raise a point of order against consideration of the bill when the motion was made to go into the Committee of the Whole,<sup>(10)</sup> but declined to do so after agreeing to make legislative history on the issue during general debate.

***Committee Response to Press Allegation of Unauthorized Attendance at Executive Session***

**§ 21.3 A committee has adopted a resolution refuting a newspaper account to the effect that an unauthorized person had attended an executive session.**

On Aug. 3, 1967,<sup>(11)</sup> Thaddeus J. Dulski, of New York, Chairman of the Committee on Post Office and Civil Service, obtained unanimous consent to extend his remarks in the Record. The opportunity was utilized to respond to certain statements in the press regarding an executive session of the Subcommittee on Postal Rates. Ac-

9. 119 CONG. REC. 6720, 93d Cong. 1st Sess., Mar. 7, 1973.

10. *Id.* at p. 16521.

11. 113 CONG. REC. 21179, 90th Cong. 1st Sess.

cordingly, Mr. Dulski inserted the following resolution which was agreed to, unanimously, by the Committee on Post Office and Civil Service:<sup>(12)</sup>

Whereas in the Washington Post on Sunday, July 23, 1967, in the column headed "The Federal Diary" by Jerry Klutz, there appeared the statement in connection with an article about a certain legislative consultant that "he walked out of Wednesday's closed session with subcommittee members.;"

Whereas this same allegation has appeared in other subsequent newspaper articles;

Whereas such allegation is false; Now, therefore, be it

*Resolved*, That the subcommittee in executive session does hereby declare that to the personal knowledge of the individual Members of the subcommittee, including the chairman of the full committee and ranking minority member, both of whom were in attendance throughout the course of the executive session, and in the personal knowledge of the Staff Director and other staff present, and based upon the official records kept by the subcommittee, neither the legislative consultant in question nor any other person except members and authorized committee staff personnel was in the committee room or participated in the subcommittee executive session on the date specified or on any other date during which the subcommittee met in executive session.

12. *Id.* at p. 21180.