

§ 22. —Use of Information Obtained in Executive Session

Insertion In Record of Executive Session Minutes

§ 22.1 Instance where a Member inserted in the Record a transcript from the minutes of an executive session of the Committee on House Administration, indicating the votes of members of that committee (including proxies) on amendments to a resolution providing funds for the Committee on Internal Security.

On Apr. 29, 1971,⁽¹³⁾ by direction of the Committee on House Administration, Mr. Frank Thompson, of New Jersey, called up a funding resolution (H. Res. 274), for the Committee on Internal Security and asked for its immediate consideration. The resolution limited the committee's funding to \$670,000 but was reported with a committee amendment⁽¹⁴⁾ striking the latter figure and inserting the sum of "\$450,000".

This amendment had been agreed to by the Committee on House Administration following

13. 117 CONG. REC. 12483, 92d Cong. 1st Sess.

14. *Id.* at p. 12484.

the rejection of an amendment to the amendment which called for a figure of \$570,000. The latter amount was rejected by a one-vote margin on a record vote in which five proxy votes were cast.

In the course of the House's consideration of House Resolution 274, Mr. James C. Cleveland, of New Hampshire, sought to draw attention to the use of proxy votes⁽¹⁵⁾ in this instance by inserting in the Record an account of the committee proceedings with respect to the amendments. The following⁽¹⁶⁾ exchange resulted:

MR. CLEVELAND: . . . Am I correct in saying that this particular result that we have on the floor of the House, and for which the chairman has expressed some regret, would never have occurred if there had not been proxy

15. Proxy voting is expressly permissible under the rules which provide [see Rule XI clause 27(e), *House Rules and Manual* §735(e) (1973)] in pertinent part: "No vote by any member of any committee with respect to any measure or matter may be cast by proxy unless such committee, by written rule adopted by the committee, permits voting by proxy and requires that the proxy authorization shall be in writing, shall designate the person who is to execute the proxy authorization, and shall be limited to a specific measure or matter and any amendments or motions pertaining thereto."

16. 117 CONG. REC. 12488, 12489, 92d Cong. 1st Sess.

votes? It is an example of why I oppose proxy voting. Were they not decisive in the vote that resulted in the cut that has been characterized here as too drastic?

MR. [WILLIAM L.] DICKINSON [of Alabama]: As the gentleman knows, that was the deciding factor, the proxy vote, because most of us were there and voting.

MR. CLEVELAND: Thank you. For the information of the Members an account of the committee action and the deciding role of the proxies may be of interest, as follows:

COMMITTEE VOTE

After considerable discussion Mr. Podell offered a motion to strike out the entire amount requested. Mr. Devine then offered a motion to table Mr. Podell's amendment. Mr. Abbitt seconded the motion. On a voice vote the motion carried.

Mr. Podell then offered a motion to reduce the amount to \$450,000.

Mr. Dickinson then offered a motion to amend the Podell proposal to read \$570,000. Mr. Gray seconded the motion. This motion failed to carry on a record vote, 9 ayes to 10 nays.

The next vote was on Mr. Podell's motion to cut the amount to \$450,000. On a roll call vote there were 11 ayes and 7 nays.

The Committee then agreed to the amended (\$450,000) resolution by voice vote.

AMENDMENT BY MR. DICKINSON TO
REDUCE AMOUNT TO \$570,000

Hays: Aye (Proxy).
Thompson: Nay.
Abbitt: Aye.
Dent: Nay (Proxy).
Brademas: Nay (Proxy).
Gray: Aye.

Hawkins: Nay (Proxy).
Gettys: Aye.
Bingham: Nay (Proxy).
Podell: Nay.
Annunzio: Nay.
Mollohan: Nay.
(4 ayes, 8 nays.)
Devine: Aye.
Dickinson: Aye.
Cleveland: Aye.
Schwengel: Nay.
Harvey: Aye.
Veysey: Aye.
Frenz 1: Nay.
(5 ayes, 2 nays.)

AMENDMENT BY MR. PODELL TO
REDUCE AMOUNT TO \$450,000

Thompson: Aye.
Abbitt: Nay.
Dent: Aye (Proxy).
Brademas: Aye (Proxy).
Gray: Aye.
Hawkins: Aye (Proxy).
Gettys: Nay.
Bingham: Aye (Proxy).
Podell: Aye.
Annunzio: Aye.
Mollohan: Aye.
(9 ayes, 2 nays.)
Devine: Nay.
Dickinson: Nay.
Cleveland: Nay.
Schwengel: Aye.
Harvey: Nay.
Veysey: Nay.
Frenzel: Aye.
(2 ayes, 5 nays.)

Disclosure of Evidence Taken in Executive Session

§ 22.2 Evidence taken in an executive session of a committee may later be made public by vote of the committee.

On Apr. 26, 1972,⁽¹⁷⁾ Speaker Carl Albert, of Oklahoma, recognized F. Edward Hebert, of Louisiana, Chairman of the Committee on Armed Services, who called up a privileged resolution (H. Res. 918), and asked for its immediate consideration. The resolution directed the President and the Secretary of Defense to furnish the House of Representatives, within 10 days after the adoption of the resolution “full and complete information” concerning the specifics of various military operations in Southeast Asia.

As Mr. Hébert explained,⁽¹⁸⁾

Mr. Speaker, the Committee on Armed Services spent an entire day in acting on the subject matter of the resolution sponsored by the gentlewoman from New York.

The committee began its hearings in open session at 10 a.m. on April 18 and finally, after a number of interruptions, including a break for lunch concluded its hearings in executive session at 5:17 p.m.

Mr. Hébert proceeded to discuss the committee's vote on the measure, among other matters, after which he yielded 10 minutes' time to Ms. Bella Abzug, of New York, sponsor of the resolution of inquiry. At the conclusion of her re-

17. 118 CONG. REC. 14348, 92d Cong. 2d Sess.

18. *Id.* at p. 14349.

marks and pursuant to the requisite committee approval,⁽¹⁹⁾ Ms. Abzug inserted⁽¹⁾ the text of the hearings, including that of an executive session,⁽²⁾ in the Record. As she explained in so doing,⁽³⁾ however, certain deletions⁽⁴⁾ were required to be made in the text of the executive session.⁽⁵⁾

§ 22.3 Evidence or testimony taken in executive session, because of a committee determination that it may tend to degrade, defame, or incriminate, does not, in every

19. Since the text of the hearings on this resolution included an executive session, Ms. Abzug was obliged to obtain prior approval from the committee before inserting the text in the Record in accordance with the rules [see Rule XI clause 27(o), *House Rules and Manual* §735(o) (1973)] which provide that: “No evidence or testimony taken in executive session may be released or used in public sessions without the consent of the committee.”

1. 118 CONG. REC. 14352, 92d Cong. 2d Sess.
2. *Id.* at pp. 14372–77.
3. *Id.* at p. 14352.
4. All deletions were of classified material as the text of that session [*id.* at p. 14376] reveals. The record of the executive session had been routinely released by the committee after classified portions of the testimony had been deleted.
5. See also § 22.3, *infra*.

case, remain forever under the restrictions imposed by the “executive session” label; a committee has the right to make such information public at a later time and may, by vote of the committee, do so.

On Apr. 5, 1967,⁽⁶⁾ the House entertained consideration of privileged resolution (H. Res. 221), authorizing the expenditure of certain funds for the expenses of the Committee on Un-American Activities.

In the course of the ensuing debate, Mr. Sidney R. Yates, of Illinois, addressed a series of parliamentary inquiries to Speaker John W. McCormack, of Massachusetts. One of those inquiries prompted the following exchange

MR. YATES: Mr. Speaker, Rule XI, 26 (m) of the Rules of the House of Representatives⁽⁷⁾ 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

6. 113 CONG. REC. 8420, 90th Cong. 1st Sess.

7. See Rule XI clause 27(m), *House Rules and Manual* §735 (m) (1973) .

defame, degrade or incriminate a witness, is it not compulsory under the Rules of the House for the Committee 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: Mr. Speaker, a further parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

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.⁽⁸⁾

Reference to Executive Session Testimony Without Quotation

§ 22.4 While it is not in order in debate for a Member to make unauthorized reference to the proceedings of an executive session of a com-

8. For an instance in which a committee [the Committee on Armed Services] elected to make public certain information which it had obtained in the course of an executive session, see §22.2. *supra*.

mittee, the Chair has permitted a Member to discuss certain matters "on his own responsibility" where the Member has informed the Chair that he did not purport to quote from committee proceedings in executive session but was only referring to events or statements which occurred outside of or independently of such session.

On Feb. 1, 1940,⁽⁹⁾ Speaker pro tempore R. Ewing Thomason, of Texas, recognized Mr. Frank E. Hook, of Michigan, who requested unanimous consent to withdraw certain remarks he had made on Jan. 23, 1940, with respect to a group of letters, known as the "Pelly letters." Under reservation of objection, the matter was briefly discussed and ultimately objected to by Mr. Frank B. Keefe, of Wisconsin.

A short while later, Mr. Keefe, having obtained unanimous consent to speak for 10 minutes, proceeded to discuss the authenticity of the letters, which he stated were written by another individual, named Mayne. In the course of these remarks⁽¹⁰⁾ he stated:

9. 86 CONG. REC. 952, 76th Cong. 3d Sess.

10. *Id.* at p. 954.

The Dies committee, despite the innuendoes to the contrary, have been pretty careful about this thing, so they have brought before the committee the typewriter of Mr. Mayne and had these letters examined by comparison with the typewriter of Mr. Mayne, which they subpoenaed. This afternoon, before the Dies committee, Mr. Charles Appel, special agent in charge of laboratories of the Department of Justice—

At this juncture, the following exchange took place:

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

THE SPEAKER PRO TEMPORE: Does the gentleman yield for a parliamentary inquiry?

MR. KEEFE: I do not.

MR. HOOK: A point of order, Mr. Speaker.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. HOOK: The gentleman is quoting testimony taken before an executive meeting. The point of order is that this is out of order and the gentleman has no right to quote testimony taken in an executive meeting of a committee.

THE SPEAKER PRO TEMPORE: If the gentleman from Wisconsin purports to discuss the executive proceedings of a committee it will not be in order.

MR. KEEFE: I am not discussing the executive proceedings. . . .

MR. HOOK: He has referred to the testimony.

MR. KEEFE: I am quoting on my own responsibility.

THE SPEAKER PRO TEMPORE: Does the gentleman purport to quote the proceedings of a committee in executive session?

MR. KEEFE: No.

THE SPEAKER PRO TEMPORE: If that is what the gentleman undertakes to do, the point of order will be sustained.

MR. HOOK: Mr. Speaker, a point of order. I will have to ask, then, that the remarks, if any, referring to the testimony taken in the executive meeting be stricken.

THE SPEAKER PRO TEMPORE: All the Chair knows is that the gentleman says he is not purporting to quote the proceedings of an executive session of a committee of this House. If that be true, the point of order is overruled.

Reference in Debate to Minutes of Executive Session

§ 22.5 It has been held not in order in debate in the House to refer to or quote from the minutes of an executive session of a committee, unless the committee has voted to make such proceedings public.

On Apr. 5, 1967,⁽¹¹⁾ debate ensued over a resolution (H. Res. 364), providing for payment from the contingent fund of certain expenses incurred by the Committee on Science and Astronautics pursuant to a previous resolution (H. Res. 312). In the course of that debate, differences of opinion were voiced as to the committee's need for two minority staff positions.

Referring to an earlier debate about staffing which had taken

11. 113 CONG. REC. 8410, 90th Cong. 1st Sess.

place among the members of that committee during one of its meetings, Mr. Joe D. Waggoner, Jr., of Louisiana, noted that:⁽¹²⁾

We entered into a discussion regarding the question of minority staff, and during the course of the discussion the gentleman from Texas [Mr. Teague] was recognized by Chairman Miller. Mr. Teague posed this question:

Mr. Chairman, I would like to ask whether anyone on the committee on either side, has asked the staff for something they did not get and get it in the form they wanted it.

Mr. Wydler, minority member, replied—and I think this is the point he wanted to clarify in asking me to yield earlier—in this manner:

MR. WYDLER: I would answer by saying they get it. That is not the purpose of a minority staff. The purpose of a minority staff is really that they are present, operating within the confines of the committee on a daily basis, to keep the minority membership informed what is coming up, what is happening, and what is going to happen in the future, to do advanced thinking on some of these problems, and give us on the minority some idea of those things the minority should be rightfully looking into.

At this point, Mr. John W. Wydler, of New York, immediately raised a point of order with Speaker John W. McCormack, of Massachusetts. The following exchange ensued:

MR. WYDLER: Mr. Speaker, is it proper to read from the minutes of an

12. *Id.* at pp. 8411, 8412.

executive committee meeting of a committee of the House of Representatives on the floor of the House?

THE SPEAKER: The Chair would like to inquire of either the gentleman from Louisiana or the gentleman from Texas whether the gentleman from Louisiana is reading from the executive session record?

MR. WAGGONER: Mr. Speaker, are you addressing the inquiry to me or to the gentleman from Texas?

THE SPEAKER: Either one may answer. . . .

MR. [OLIN E.] TEAGUE of Texas: Mr. Speaker, it is my remembrance that what he is quoting was what took place at an executive session.

THE SPEAKER: The Chair would like to make the further inquiry as to whether or not the members in the executive session voted to make public what took place in the executive session?

MR. TEAGUE of Texas: It is my memory that we did not vote on that and it was not discussed.

THE SPEAKER: The Chair would suggest to the gentleman from Louisiana that he refrain from referring to what took place in the executive session.

§ 23. Reporting Measure From Committee Requires Quorum

Quorum Consists of Majority of Members of Committee Who Must Be Actually Present

§ 23.1 No measure is to be reported from any committee

unless a majority of the committee was actually present when the measure was ordered reported.

On May 11, 1950,⁽¹³⁾ a resolution was withdrawn when a point of order was raised that the measure had been reported out of committee in the absence of a quorum. Mr. John E. Rankin, of Mississippi, then initiated the following exchange with Speaker pro tempore John W. McCormack, of Massachusetts:

Mr. Speaker, under the rules of the House and the rules of every committee, legislation is passed every day without a quorum being present, and unless that question is raised they cannot go into the courts and contest the legislation. The same thing applies to the committee. A ruling to the contrary would simply demoralize legislative procedure as far as the committees of this House are concerned.

THE SPEAKER PRO TEMPORE: The Chair calls the attention of the gentleman from Mississippi to paragraph (d) of section 133 of the Legislative Reorganization Act [of 1946], which reads as follows:

No measure or recommendation shall be reported from any such committee unless a majority of the committee was actually present.⁽¹⁴⁾

Formal Meeting Requirement

§ 23.2 A standing committee cannot validly report a meas-

13. 96 CONG. REC. 6920, 81st Cong. 2d Sess.

14. See Rule XI clause 2(l)(2)(A), *House Rules and Manual* § 713(c) (1979).