a record vote of 33 to 10, to report out the committee bill, H.R. 7554, with amendments. The bill and the amendments were voted favorably by the committee.

MR. [EDWARD J.] DERWINSKI [of Illinois]: Mr. Speaker, will the gentleman yield?

MR. PEPPER: I yield to the gentleman from Illinois.

MR. DERWINSKI: The gentleman said the vote was 33 to 10. It was 13 to 10.

MR. PEPPER: I am sorry. It was 13 to 10. I understand that there are 25 members of the committee, and 23 voted, and the vote to report out the bill was 13 to 10.

The committee [on Post Office and Civil Service] voted to report out a clean bill, which would embody H.R. 7554 and the amendments in a single clean bill.

On the day following that meeting of the committee there was introduced a clean bill, embodying exactly H.R. 7554 plus the amendments that had been voted upon favorably by the committee. There was not a subsequent meeting of the committee upon the clean bill. But the clean bill embodying what was voted upon exactly by the committee, as H.R. 8929, was reported out and presented to the Rules Committee. The situation was reported to the Rules Committee, and the Rules Committee voted to recommend consideration of the bill to the House, but recommended that there be a waiver of points of order so that any technicality which might arise out of that situation would be cured by the waiver of the rule, if the House adopted the waiver of the rule.

Following further discussion, the resolution was rejected[9] by a rollcall vote.

9. *Id.* at p. 25482.

§ 24. Point of Order Based on Lack of Committee Quorum—Timing

Effect of Failure to Raise in Committee

§ 24.1 Failure to raise a point of no quorum upon the taking of a committee vote to report a privileged resolution does not bar the subsequent raising of such a point of order when the measure is reported as privileged to the House.

On May 11, 1950,[10] Speaker pro tempore John W. McCormack, of Massachusetts, recognized Mary T. Norton, of New Jersey, Chairwoman of the Committee on House Administration, who, acting by direction of that committee, offered and asked for the immediate consideration of a privileged resolution (H. Res. 495), providing for the payment of certain investigatory expenses of the Committee on the District of Columbia. Immediately thereafter, Mr. Wayne L. Hays, of Ohio, made a point of order against the resolution on the ground that a quorum was not present when it was reported out of committee.

Before the Chair was able to conclusively determine whether or

10. 96 CONG. REC. 6920, 81st Cong. 2d Sess.

not a quorum had been present, Mr. John E. Rankin, of Mississippi, raised a point of order against the point of order, prompting the following exchange:

> MR. RANKIN: Mr. Speaker, a further point of order. This is a very serious proposition that really affects the orderly procedure of the House. I make the point of order that it is too late to raise a point of order that there was no quorum present in the committee unless that point of order was made in the committee.
>
> THE SPEAKER PRO TEMPORE: The Chair will state that the point of order can be made in the House when the report is made. A point of order that a quorum was not present when the resolution was reported out can be made when the resolution is reported to the House. For that reason the Chair rules that the gentleman from Ohio [Mr. Hays] is within his rights at this particular time in making the point of order that he has.

Against Resolution Providing for Consideration of Bill

§ 24.2 A point of order that a bill may not be reported from committee in the absence of a quorum is properly raised when the bill is called up for consideration—and such a point of order will not lie against a resolution providing for the consideration of the bill.

On Oct. 11, 1968,[11] by direction of the Committee on Rules, Mr. John A. Young, of Texas, called up House Resolution 1256 and asked for its immediate consideration. The resolution provided that upon its adoption, it would be in order to move that the House resolve itself into the Committee of the Whole for the consideration of a bill (S. 2511), to maintain and improve the income of producers of crude pine gum, and for other purposes.

Immediately after the Clerk read the resolution, Speaker John W. McCormack, of Massachusetts, recognized Mr. Paul Findley, of Illinois, who raised the following point of order:

> Mr. Speaker, I make a point of order against the consideration of House Resolution 1256 on the grounds that the Committee on Agriculture acted without a quorum being present when it ordered S. 2511 reported to the House on July 2, 1968.
>
> Rule XI, clause 26(e), of the rules of the House[12] states as follows:
>
>> (e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.

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11. 114 CONG. REC. 30738, 90th Cong. 2d Sess.

12. Mr. Findley was referring to clause 27(e) [H. Jour. 1318, 90th Cong. 2d Sess. (1968)]; see Rule XI clause 2(1)(2)(A), *House Rules and Manual* § 713(c) (1979).

I have personally checked with the staff of the Committee on Agriculture and have been informed that on July 2, 1968, there were only 14 members of the committee present and that the vote to report S. 2511 to the House was 11 to 0 in favor of such action. Since the total membership of that committee is 35, there obviously was not a majority actually present as required by rule XI, clause 26(e).

Mr. Speaker, I raise the point of order at this time in order to have it presented to the Chair in a timely fashion. . . . [T]he Chair stated in a response to a parliamentary inquiry by the gentleman from Missouri [Mr. Hall] on Monday of this week—October 7, page 29764 that any point of order under rule XI, clause 26(e), would have to be made when the bill is called up.[13]

Since House Resolution 1256 is the rule which calls up S. 2511 for consideration in the Committee of the Whole House on the State of the Union, I therefore insist on my point of order at this time.

The Speaker replied, as follows:

The Chair states, in response to the inquiry of the gentleman from Illinois, that the point of order at this time would be premature.[14]

13. Note, however, that such a point of order would not lie where a bill was being considered under suspension of the rules; see § 24.8, infra.

14. Such a point of order will lie, however, pending a vote on a motion that the House resolve itself into the Committee of the Whole for the consideration of the bill; see § 24.4, infra.

Following Discharge of Committee of the Whole

§ 24.3 Following the discharge of the Committee of the Whole from further consideration of a bill, a Member was permitted, pending consideration of the bill, to make the point of order that the measure had been reported from committee in the absence of a quorum.

The following proceedings were reported in the House Journal of Oct. 11, 1968:[15]

On motion of Mr. [Thaddeus J.] Dulski [N.Y.], by unanimous consent, the Committee of the Whole House on the State of the Union was discharged from further consideration of the bill of the Senate (S. 1507) to include firefighters within the provisions of section 8336(c) of title 5, United States Code, relating to the retirement of Government employees engaged in certain hazardous occupations.

Pending consideration of said bill, Mr. [John M.] Ashbrook [Ohio], made a point of order against the bill and said:

"I make a point of order that report No. 1945 violates rule XI, clause 26, and that a quorum was not present when the bill was passed by the Post Office and Civil Service Committee."

The Speaker[16] sustained the point of order and said:

"The Chair sustains the point of order and the bill is recommitted to

15. H. Jour. 1292, 90th Cong. 2d Sess.

16. John W. McCormack (Mass.).

the Committee on Post Office and Civil Service."

The bill (S. 1507) was recommitted to the Committee on Post Office and Civil Service.

Pending Vote on Motion to Resolve Into Committee of the Whole

§ 24.4 A point of order that a bill was reported from committee in the absence of a quorum is in order pending a vote on the motion that the House resolve itself into the Committee of the Whole for the consideration of the bill.

On Oct. 11, 1968,[17] by direction of the Committee on Rules, Mr. John A. Young, of Texas, called up House Resolution 1256 and asked for its immediate consideration. The resolution provided that upon its adoption, it would be in order to move that the House resolve itself into the Committee of the Whole for the consideration of a bill (S. 2511), to maintain and improve the income of producers of crude pine gum, and for other purposes.

Immediately after the Clerk read the resolution, Speaker John W. McCormack, of Massachusetts, recognized Mr. Paul Findley, of Illinois, who raised the point of order[18] that a quorum of the Committee on Agriculture was not present when that committee voted to report S. 2511 to the House.

The Speaker's reply was, as follows:

> The Chair states, in response to the inquiry of the gentleman from Illinois, that the point of order at this time would be premature.
>
> The Chair might state that the appropriate time to make the point of order would be at the time the motion is made to go in the Committee of the Whole.

After a brief discussion, House Resolution 1256 was agreed to,[19] whereupon William R. Poage, of Texas, Chairman of the Committee on Agriculture, moved that the House resolve itself into the Committee of the Whole for the consideration of S. 2511.

Immediately thereafter, the following exchange took place:

> MR. FINDLEY: Mr. Speaker, I make a point of order against the consideration of S. 2511 on the grounds that the Committee on Agriculture acted without a quorum being present when it ordered S. 2511 reported to the House on July 2, 1968.
>
> Rule XI, clause [27(e)], of the rules of the House[1] states as follows:

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17. 114 CONG. REC. 30738, 90th Cong. 2d Sess.

18. For more details, see § 24.2, supra.

19. 114 CONG. REC. 30739, 90th Cong. 2d Sess.

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

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

I have personally checked with the staff of the Committee on Agriculture and have been informed that on July 2, 1968, there were only 14 members of the committee present and that the vote to report S. 2511 to the House was 11 to 0 in favor of such action. Since the total membership of that committee is 35, there obviously was not a majority actually present as required by Rule XI clause [27(e)].

Mr. Findley having raised his point of order at the appropriate moment, the Speaker interrogated Mr. Poage and sustained the point of order.[2]

§ 24.5 A point of order against a bill on the ground that a quorum of the committee was not present when the bill was ordered reported should be made in the House and such points come too late after the House has resolved itself into the Committee of the Whole for consideration of the measure.

On June 14, 1946,[3] Speaker Sam Rayburn, of Texas, recognized Mr. Andrew J. May, of Kentucky, who immediately moved that the House resolve itself into the Committee of the Whole for the consideration of a bill (S. 524), to provide for one national cemetery in every state and for certain other national cemeteries. The motion was agreed to, and, after the first reading of the bill was dispensed with by unanimous consent, debate ensued in the Committee of the Whole.

The discussion had proceeded at some length when Chairman John W. Flannagan, Jr., of Virginia, recognized Mr. Forest A. Harness, of Indiana, for a parliamentary inquiry:[4]

Mr. Chairman, a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. HARNESS of Indiana: At what time would a point of order lie against the bill on the ground that the committee reporting it was without jurisdiction because at the time it reported the bill there was not a quorum present?

THE CHAIRMAN: Answering the gentleman's parliamentary inquiry the Chair will state that such a point of order would be too late now that the House is in the Committee of the Whole House on the State of the Union. Such a point of order should be made in the House before consideration of the bill.

After Debate on Measure Has Commenced

§ 24.6 The point of order that a bill was reported from a com-

2. For more details on the Chair's ruling, see § 25.2, infra.

3. 92 CONG. REC. 6955, 79th Cong. 2d Sess.

4. *Id.* at p. 6961.

mittee without a formal meeting and a quorum present is made too late if debate has started on the bill in the House.

On Feb. 24, 1947,[5] Speaker Joseph W. Martin, Jr., of Massachusetts, recognized Mr. Everett M. Dirksen, of Illinois, who, by direction of the Committee on the District of Columbia, called up a bill (H.R. 1700), to provide for daylight saving time in that city and asked for its immediate consideration. The Chair recognized Mr. Dirksen for one hour, and debate on the matter commenced.

After much discussion on the subject, the Chair recognized Mr. Daniel A. Reed, of New York,[6] for a point of order:

> I believe the Reorganization Act provides that no bill shall come to the floor unless it is reported out of committee when a quorum is present. As I understand the statement of the gentleman from Illinois, there was no meeting of the committee.
>
> THE SPEAKER: The point of order comes too late. It should have been made before debate started on the bill.

After Adoption of Measure

§ 24.7 After the adoption of a resolution by the House, it is too late to attack the validity of the action taken by the committee reporting the resolution on the ground that a quorum was not present when it was ordered reported.

On Feb. 28, 1968,[7] Mr. Samuel N. Friedel, of Maryland, by direction of the Committee on House Administration, submitted 12 privileged reports on assorted resolutions providing funds for investigations, studies, and various expenses of certain standing and select committees. Each of the accompanying resolutions was agreed to. Mr. Friedel then submitted and then called up[8] a privileged report (H. Rept. No. 1127), on a resolution (H. Res. 1042), authorizing the expenditure of funds for expenses of the Committee on Un-American Activities, but withdrew the resolution[9] after Mr. William F. Ryan, of New York, made the point of order that a quorum was not present when the Committee on House Administration considered the resolution.

Shortly thereafter, Speaker John W. McCormack, of Massachusetts, recognized Edwin E.

5. 93 CONG. REC. 1368, 80th Cong. 1st Sess.
6. *Id.* at p. 1374.
7. 114 CONG. REC. 4445–49, 90th Cong. 2d Sess.
8. *Id.* at p. 4449.
9. See § 25.3, infra, for further discussion.

Willis, of Louisiana, Chairman of the Committee on Un-American Activities, who initiated the following exchange:

> Mr. Speaker, the last resolution sought to be called up was a resolution relative to the House Committee on Un-American Activities, and it was withdrawn.
>
> Now, however, the gentleman from Maryland states, no, it is not so, that there was no more a quorum present for all the other resolutions than there was a quorum present to consider our resolution.
>
> I, therefore, ask unanimous consent that all the other resolutions be withdrawn also.
>
> THE SPEAKER: The Chair will state that if a quorum was not present—and the Chair is not saying that there was not a quorum present—but if a quorum was not present then the point of order should have been made by any Member at the time a particular resolution was called up.

Mr. Willis then obtained unanimous consent to address the House for one minute, and proceeded to examine the issue further:

> . . . I have asked for permission to proceed and ask these two questions; that is all.
>
> MR. FRIEDEL: We considered your resolution in the committee.
>
> MR. WILLIS: Was there a quorum present?
>
> MR. FRIEDEL: No quorum was present.
>
> MR. WILLIS: Was there a quorum present for any other committee appropriation?
>
> MR. FRIEDEL: That point was never raised.
>
> MR. WILLIS: Well I just want to clarify the record and show that probably no quorum was present in the House Administration Committee for any of the resolutions approved today.

Bill Considered Under Suspension of the Rules

§ 24.8 Where a bill is being considered under suspension of the rules, a point of order will not lie against the bill on the ground that a quorum was not present when the bill was reported from committee.

On Oct. 7, 1968,[10] the program for the day entailed a number of bills scheduled to be considered under a suspension of the rules.[11]

Prior to the bills' consideration, Speaker John W. McCormack, of

10. 114 CONG. REC. 29764, 90th Cong. 2d Sess.

11. The essential criteria to suspend the rules are set forth in the following clause [Rule XXVII clause 1, *House Rules and Manual* § 902 (1973)]: "No rule shall be suspended except by a vote of two-thirds of the Members voting, a quorum being present; nor shall the Speaker entertain a motion to suspend the rules except on the first and third Mondays of each month, and on the Tuesdays immediately following those days, and during the last six days of a session."

Massachusetts, recognized Mr. Durward G. Hall, of Missouri, who initiated the following exchange:

> Mr. Speaker . . . [t]here are four bills from the Committee on Post Office and Civil Service which, from evidence I have, were reported in violation of rule XI, clause [27(e)][12] which states:
>
> > (e) No measure or recommendation shall be reported from any committee unless a majority of the committee were actually present.
>
> The evidence I have is that H.R. 17954 and H.R. 7406 were ordered reported from the Committee on Post Office and Civil Service in executive session on August 2, 1968, without a quorum present.
>
> Additional evidence reveals that S. 1507 and S. 1190 were ordered reported from the Committee on Post Office and Civil Service in executive session on September 3, 1968, without a quorum present. I further cite from Jefferson's Manual, section 408:[13]
>
> > A bill improperly reported is not entitled to its place on the calendar; but the validity of a report may not be questioned after the House has voted to consider it, or after actual consideration has begun.
>
> Mr. Speaker, I submit that the bills S. 1507, S. 1190, H.R. 17954, and H.R. 7406 all were improperly reported. Mr. Speaker, my parliamentary inquiry is this: At what point in the proceedings would it be in order to raise the question against these bills as being in violation of rule XI, clause [27(e)] inasmuch as they are scheduled to be considered under suspension of the rules, which would obviously suspend the rule I have cited? . . .
>
> THE SPEAKER: The Chair will state that any point of order would have to be made when the bill is called up.
>
> The Chair might also advise or convey the suggestion to the gentleman from Missouri that the bills will be considered under suspension of the rules, and that means suspension of all rules.
>
> MR. HALL: Mr. Speaker, a further parliamentary inquiry. Would it not be in order, prior to the House going into the Consent Calendar or suspension of the rules, to lodge the point of order against the bills at this time?
>
> THE SPEAKER: The point of order could be directed against such consideration when the bills are called up under the general rules of the House. The rules we are operating under today as far as these bills are concerned concerns suspension of the rules, and that motion will suspend all rules.
>
> MR. HALL: Mr. Speaker, if I may inquire further, is it not true that, until such time as we go into that period of suspension of the rules, a point of order would logically lie against such bills which violate the prerogatives of the House and of the individual Members thereof, to say nothing of the committee rules? My belief that a point of order should be sustained is based on improper committee procedure and addresses itself to the fact that the bills are improperly scheduled, listed, or programed on the calendar, or rule of suspension, and so forth.

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

13. *House Rules and Manual* § 408 (1973).

THE SPEAKER: The Chair will state, as to points of order, at the time the Chair answered the specific inquiry of the gentleman from Missouri, a point of order would not lie until the bill is reached and brought up for construction.

At this juncture, Mr. Hall requested that the Speaker protect his rights by enabling him to raise the point of order at the appropriate time. The Speaker responded that "The Chair will always protect the rights of any Member," but noted that a suspension of the rules procedure "suspends all rules."

The Chair then recognized Mr. Leslie C. Arends, of Illinois, who clarified the issue in the following manner:

Do I correctly understand the ruling of the Chair that suspending all the rules pertains to more than just the House; it pertains to the rules of committee action likewise?

THE SPEAKER: The gentleman from Illinois is correct.

Parliamentarian's Note: Two of the bills which were allegedly reported in the absence of a quorum, H.R. 17954 and H.R. 7406, were scheduled for consideration on both the Consent Calendar and under suspension of the rules. The Speaker did not foreclose the making of a point of order against a bill on the Consent Calendar. However, the two bills which might have been vulnerable when called on the Consent Calendar were passed over without prejudice by unanimous consent.[14]

§ 25. —Effect

Questioning of Committee Chairman

§ 25.1 Where a report from a committee is challenged on the ground that a quorum of the committee was not present when the report was authorized, the Speaker interrogates the chairman of the committee concerned as to the facts in question.

On Sept. 30, 1966,[15] Omar T. Burleson, of Texas, Chairman of the Committee on House Administration, submitted a privileged report (H. Rept. No. 2158), to accompany a resolution (H. Res. 1028), providing funds for his committee and asked for its immediate consideration. At this juncture, Mr. Jonathan B. Bingham, of New York, rose to a point of order against the resolution on the ground that a quorum of the

14. 114 CONG. REC. 29765, 90th Cong. 2d Sess.

15. 112 CONG. REC. 24548, 89th Cong. 2d Sess.