MR. SENSENBRENNER: Mr. Speaker, how many Members are present now?

THE SPEAKER PRO TEMPORE: The Chair cannot respond to that as a parliamentary inquiry.

When Chair Must Entertain Point of No Quorum

§ 12.17 The Chairman of the Committee of the Whole must entertain a point of order that a quorum is not present during the five-minute rule over other requests for recognition, since Rule XXIII clause 2 gives the point of no quorum the highest pri-ority where a quorum has not been established in the Committee on that day.

The proceedings of June 30, 1993,[16] in Committee of the Whole, demonstrate the mandatory nature of a point of order of no quorum under certain conditions.

MRS. [NITA M.] LOWEY [of New York]: Mr. Chairman, I point out the absence of a quorum.

THE CHAIRMAN:[17] The gentlewoman from New York [Mrs. Lowey] makes this point of order that a quorum is not present.

MR. [HENRY J.] HYDE [of Illinois]: Mr. Chairman, Mr. Chairman.

MR. [ROBERT K.] DORNAN [of California]: Mr. Chairman, the gentleman from Illinois was on his feet first, clearly.

THE CHAIRMAN: A point of no quorum takes precedence over other motions and other requests for recognition.

The gentlewoman has made a point of order of no quorum.

The Chair will need to count for a quorum.

PARLIAMENTARY INQUIRY

MR. DORNAN: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. DORNAN: Could I please have a parliamentary reading on whether the Chairman sitting in the chair clearly ignored the gentleman from Illinois for minutes before he recognized the gentlewoman?

THE CHAIRMAN: The Chair may not ignore a point of no quorum, under rule XXIII where a quorum has not been previously established during the amendment stage.

Previously, the Chair recognized the distinguished gentleman from Illinois [Mr. Hyde], and the Chair will be pleased to do so again at the appropriate moment.

A Member has made the point that a quorum is not present. Therefore, the Chair must count for a quorum of 100 Members in the Committee of the Whole House.

Evidently a quorum is not present.

Members will record their presence by electronic device.

The call was taken by electronic device.

§ 13. Appeals

The right of appeal from decisions of the Speaker on questions

16. 139 CONG. REC. 14882, 103d Cong. 1st Sess.

17. Philip R. Sharp (Ind.).

of order is provided for by the House rules. In Rule I clause 4, it is provided:

> He [the Speaker] shall . . . decide all questions of order, subject to an appeal by any Member, on which appeal no Member shall speak more than once, unless by permission of the House.

Although amended in 1811, the portion of the rule pertaining to appeals of points of order dates from 1789.[18]

Although appeals from rulings of the Chair on points of order are permissible, such appeals have been infrequent. The only issue presented by an appeal is the propriety of the Chair's ruling under the rules and precedents, and not the merits of the proposition to which the ruling applies.[19] Certain determinations by the Chair are not subject to appeal, such as his discretion in exercising the power of recognition,[20] his count to determine whether a quorum is present,[1] or his count on whether a sufficient number of Members have risen to order the yeas and nays.[2] Members are not recognized to appeal from the Chair's response to a parliamentary inquiry.[3]

Decisions of the Chair on points of order raised in the Committee of the Whole may be appealed, although such are also rare. In such cases the decision of the Chairman is appealed to the Committee.[4] In the House an appeal is not voted on directly if the House agrees to a motion to table the appeal,[5] but the motion to table is not available in the Committee of the Whole.

In General

§ 13.1 The Chair suggested, in response to a parliamentary inquiry, that the question of the constitutionality of a provision in a pending bill was a matter for the House to determine by its vote on the merits of that language, rather than by voting on a possible appeal from the Chair's decision declining to rule upon that constitutional issue.

May 10, 1973,[6] in the Committee of the Whole, Chairman Jack Brooks, of Texas, declined to

18. Rule I clause 4, *House Rules and Manual* § 624 (1997).

19. See §§ 13.1, 13.2, infra.

20. See § 13.11, infra.

1. See § 3.12, infra.

2. See §§ 13.13, 13.14, infra.

3. See § 14.4, infra.

4. See §§ 13.3, 13.6–13.9, infra.

5. See §§ 13.15, 13.16, infra.

6. 119 CONG. REC. 15290, 15291, 93d Cong. 1st Sess. Under consideration was H.R. 7447, supplemental appropriations for fiscal 1973.

rule upon the constitutionality of certain language that Mr. Sidney R. Yates, of Illinois, found objectionable.

MR. YATES: Mr. Chairman, I have a point of order against the language beginning at page 6, line 10 through line 12.

THE CHAIRMAN: The gentleman will state his point of order.

MR. YATES: Mr. Chairman, I make a point of order against the language set forth in lines 10, 11, and 12, on page 6.

Article I, section 8, of the Constitution of the United States says:

> The Congress shall have the power to declare war. . . .

Congress has not declared war against Cambodia or Laos or against any other country in Southeast Asia for that matter. Congress has not given the President any authority to use the American Armed Forces in Cambodia and Laos. Nevertheless, on order of President Nixon, American military planes are bombing in both those countries. The appropriation contained in the transfer authority includes funds to continue the bombing of Cambodia and Laos. . . .

Mr. Chairman, under that rule it is not enough that there be ordinary legislative authority which is required for other appropriations. It is not enough that there be ordinary legislative authority upon which to base an appropriation for American Armed Forces to engage in war.

There must be constitutional authority for that appropriation as well, namely, there must be congressional approval for American forces to engage in a war. Both authorizations are essential for that kind of appropriation. . . .

I am asking the Chair for its ruling on two points. One, I ask the Chair to rule with respect to military appropriations which provide funds for American Armed Forces to engage in war under rule XXI, section 2, of the Rules of Procedure of the House of Representatives, which states there must be, as well as any other legislation authorizing such action, compliance with article I, section 8, of the U.S. Constitution, which requires the approval of the Congress for American Armed Forces to engage in that war; and, secondly, I am asking the Chair to rule that the requirements in article XI, section 8, cannot be waived by any rule of the Committee on Rules. . . .

THE CHAIRMAN: . . . The Chair is not in a position, nor is it proper for the Chair to rule on the constitutionality of the language, or on the constitutionality or other effect of the action of the House in adopting the resolution of the Committee on Rules. In the headnotes in the precedents of the House it very clearly states that it is not the duty of a chairman to construe the Constitution as it may affect proposed legislation, or to interpret the legality or effect of language; and the Chair therefore overrules the point of order raised by the gentleman from Illinois (Mr. Yates).

MR. YATES: Mr. Chairman, I want to make some comments on the ruling of the Chair with the thought that I may appeal from the ruling of the Chair.

THE CHAIRMAN: The Chair has ruled. The gentleman is perfectly within his right to move to strike the last word, and he may proceed.

MR. YATES: The point I make, Mr. Chairman, is that in the ruling that the Chair made on precedents, as I recall that ruling, it also says that while the Chair does not interpret the constitutionality of the provision, it leaves that for the House to decide. Is my memory correct on that?

THE CHAIRMAN: The Chair believes that is correct in that the committee may later vote on the provision.

MR. YATES: Mr. Chairman, while I believe the ruling to be not on the points I made I accept the ruling of the Chair. Let the House vote on the amendment which will be offered.

Purpose of Appeal; Validity of Chair's Ruling

§ 13.2 An appeal from a ruling of the Chair goes only to the propriety of the Chair's ruling—whether he has correctly applied the precedents and rules in making the decision—and the vote thereon should not be interpreted as reflecting the sentiments of the Members as to the merits of the underlying issue.

A decision of the Chair in response to a point of order may impact on an emotional or politically volatile issue, and may determine whether the issue can be debated or voted upon. Some Members have suggested, even attempted, to generate an appeal as a way of putting Members on record. One such occurrence almost surfaced during consideration of the Labor-HHS appropriation bill, fiscal 1992, on June 26, 1991.[7]

PARLIAMENTARY INQUIRY

MR. [WILLIAM E.] DANNEMEYER [of California]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN PRO TEMPORE:[8] The gentleman will state his parliamentary inquiry.

MR. DANNEMEYER: Mr. Chairman, if a point of order is raised against the Weber language on parental notification in this bill, and if the Chairman would sustain the point of order, would I be in order at that time to ask for a rollcall vote on that sustaining of that point of order, making parental notification not in order of this bill?

THE CHAIRMAN PRO TEMPORE: Any such ruling of the Chair is subject to an appeal, as the gentleman is aware.

MR. DANNEMEYER: The only way to get the rollcall vote is to appeal the ruling of the Chair?

THE CHAIRMAN PRO TEMPORE: That might depend on the effect of the Chair's ruling.

MR. DANNEMEYER: A further parliamentary inquiry: Is the appeal of a ruling of a Chair interpreted by some in this body as a procedural matter, as distinguished from a substantive matter?

THE CHAIRMAN PRO TEMPORE: An appeal of the Chair's ruling goes only to the propriety of the Chair's ruling under the rules.

MR. DANNEMEYER: Mr. Chairman, I interpret the Chair's remarks to mean

7. 137 CONG. REC. 16436, 102d Cong. 1st Sess.

8. Alan Wheat (Mo.).

it is procedural in nature rather than substantive.

THE CHAIRMAN PRO TEMPORE: It should not be interpreted as a vote on the merits of the issue at hand.

§ 13.3 In response to a parliamentary inquiry, the Chair stated that an appeal was a proper mechanism to contest the Chair's decision on a point of order.

On May 16, 1979,[9] an appeal was taken in the Committee of the Whole from a decision on the germaneness of an amendment made by Chairman E de la Garza, of Texas.

AMENDMENT OFFERED BY MR. KINDNESS

MR. [THOMAS N.] KINDNESS [of Ohio]: Mr. Chairman, I offer an amendment and ask unanimous consent for its immediate consideration.

The Clerk read as follows:

On page 2, following line 2, add the following new sections to the bill:

"SEC. 2. Subsection (c) of section 207 of title 18, United States Code, is hereby repealed.

"SEC. 3. Section 207 of title 18, United States Code is further amended—

(1) in subsection (d) by striking out "(c)" and inserting in lieu thereof "(b)(ii)";

(2) in subsection (e) by striking out "(c)" and inserting in lieu thereof "(b)(ii)";

(3) in subsection (f) by striking out "(a), (b), and (c)" and inserting in lieu thereof "(a) and (b)";

(4) in subsection (i) by striking out "(c)" and inserting in lieu thereof "(b)(ii)";

(5) in subsection (j) by striking out "(a), (b), or (c)" and by inserting in lieu thereof "(a) or (b)"; and

(6) by redesignating subsection (d) through (j) as subsections (c) through (i), respectively. . . .

MR. [GEORGE E.] DANIELSON [of California]: I make a point of order, Mr. Chairman.

THE CHAIRMAN: The gentleman from California makes a point of order?

Mr. DANIELSON: Yes, I do.

THE CHAIRMAN: Will the gentleman state his point of order. . . .

THE CHAIRMAN: The Chair will hear the gentleman from California on his point of order.

MR. DANIELSON: Mr. Chairman, the gentleman's amendment would repeal subsection (c) of title 207 of the United States Code. I respectfully submit that it is not germane inasmuch as the bill pending before the committee at this time refers only to subsection (b) of section 207 of the United States Code. It has nothing to do with subsection (c). Therefore, it is beyond the scope of the bill and is not germane.

MR. KINDNESS: Mr. Chairman.

THE CHAIRMAN: The gentleman from Ohio.

MR. KINDNESS: Mr. Chairman, I wish to be heard on the point of order.

THE CHAIRMAN: The gentleman is recognized for that purpose.

MR. KINDNESS: This railroad is running pretty fast. The chairman of the subcommittee has just shown a lack of confidence in this bill. So much so that all we can consider under a very narrowly drawn committee amendment is just a little bit of the section that is in-

9. 125 CONG. REC. 11470–72, 96th Cong. 1st Sess.

volved. The real controversy lies outside of subsection (b). . . .

The previous ruling of the Chair related to the establishment of some other section of law; but this is right in the same section and it is inappropriate to limit the application of this bill to just a portion of the section which is, indeed, a sentence. To limit it to only subsection (b) would not be to even consider the complete sentence.

MR. [CARLOS J.] MOORHEAD of California: Mr. Chairman, I wanted to speak to that point of order. The title of this bill is an act to amend section 207 of title 18, United States Code. That is exactly what this amendment does. It amends section 207 of title 18 of the United States Code. It should be relevant.

MR. KINDNESS: Mr. Chairman, on that point, in connection with the point raised by the gentleman from California (Mr. Moorhead), we must relate the ruling of the Chair on the point of order that has been raised to section 501 of title 18 of the United States Code. There can be no way to relate the ruling to section 501 of title 18 without it being in order and germane to consider everything within that section 501.

THE CHAIRMAN: Is there any other Member who wishes to be heard on the point of order?

The gentleman from Texas (Mr. Eckhardt) is recognized.

MR. [ROBERT C.] ECKHARDT [of Texas]: Mr. Chairman, I speak in opposition to the point of order. As has been said before, both the matter before the House and the amendment relate to section 207. Both address the same question, the precise question, that was addressed by the original bill. This amendment is both germane to the original bill and germane to the committee amendment. . . .

THE CHAIRMAN: Does the gentleman from Missouri (Mr. Volkmer) wish to be heard on the point of order?

MR. [HAROLD L.] VOLKMER [of Missouri]: Briefly, Mr. Chairman, in support of the point of order.

I would just like to note that even though the title itself refers to the full section, the body of the bill relates only to subsection (b) and subsection (d) as originally passed by the Senate and sent over to this body. It does not relate in any way to subsection (c), which is the subject of the amendment and, therefore, I believe the germaneness rule, which I will acknowledge is a narrow interpretation, should be followed here, and that only amendments to those two parts of section 207 would be in order.

MR. KINDNESS: Mr. Chairman, will the gentleman yield on the point of order?

THE CHAIRMAN: The Chair will recognize the gentleman from Ohio (Mr. Kindness).

MR. KINDNESS: Mr. Chairman, will the gentleman tell me where the sentence ends?

In fact, subsections (a), (b), and (c) are not subsections; they are part of one sentence.

THE CHAIRMAN: The Chair is ready to rule.

The Chair can only rule with respect to the legislation which appears before the Committee of the Whole in its present form, and that is S. 869.

By a previous amendment adopted in the committee, the reference to sub-

section (d)(3) has been stricken from the bill. The only other subsection that remains in the bill is subsection (b) of section 207 of title 18 addressing one category of employees. Any mention made of the title to the bill is not considered as a substantive part of the legislation and does not determine the germaneness of an amendment to the test.

Therefore, under the precedents as studied by the Chair, the Chair will sustain the point of order.

PARLIAMENTARY INQUIRY

MR. KINDNESS: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman from Ohio (Mr. Kindness) will state his parliamentary inquiry.

MR. KINDNESS: Mr. Chairman, in order to appeal the ruling of the Chair to the Committee of the Whole, is it in order at this point to move that the question be presented by way of a direct appeal of the ruling of the Chair?

THE CHAIRMAN: The gentleman has the right to appeal.

MR. KINDNESS: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the decision of the Chair be sustained?

The question was taken; and the Chairman being in doubt, the Committee divided, and there were, ayes 15, noes 6.

MR. KINDNESS: Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Members will record their presence by electronic device. . . .

THE CHAIRMAN: Three hundred and forty-nine Members have answered to their name, a quorum is present, and the Committee will resume its business.

Does the gentleman from Ohio (Mr. Kindness) insist upon his request for a recorded vote?

MR. KINDNESS: Mr. Chairman, I ask unanimous consent to withdraw the request for a recorded vote on appealing the ruling of the Chair.

THE CHAIRMAN: The gentleman can withdraw his request without unanimous consent.

The Chair Does Not Rule on Questions of Constitutionality

§ 13.4 The Chair does not rule on the constitutionality of the rules adopted by the House of Representatives.

Rule XV clause 6(e), which prohibits the Speaker from entertaining a point of no quorum unless the pending motion or proposition has been put to a vote, was included as part of H. Res. 5, which was considered and adopted on Jan. 4, 1977.[10] On several occasions during the first session of the 95th Congress, Members sought to challenge that new rule by various parliamentary means.

10. 123 CONG. REC. 53–70, 95th Cong. 1st Sess.

Two such challenges are shown in this and the following section. The first example is from the proceedings of Sept. 8, 1977.[11]

THE SPEAKER PRO TEMPORE:[12] The gentleman from Texas (Mr. Mahon) is recognized for 30 minutes, and the gentleman from Alabama (Mr. Edwards) is recognized for 30 minutes. . . .

The Clerk will report the next amendment in disagreement.

The Clerk read as follows:

> Senate amendment No. 41: Page 25, line 12, strike out "$7,417,705,–000" and insert "$6,111,600,000".

MR. [GEORGE H.] MAHON [of Texas]: Mr. Speaker, I offer a motion.

The Clerk read as follows:

> Mr. Mahon moves that the House recede from its disagreement to the amendment of the Senate numbered 41 and concur therein with an amendment, as follows: In lieu of the sum proposed by said amendment insert: "$7,693,400,000". . . .

MR. [JACK] EDWARDS of Alabama: Mr. Speaker, I yield myself such time as I may consume.

MR. [JOHN J.] FLYNT [Jr., of Georgia]: Mr. Speaker, I make the point of order a quorum is not present.

THE SPEAKER PRO TEMPORE: That point of order is not in order in the House at this time.

The gentleman from Alabama is recognized.

Mr. [ROBERT E.] BAUMAN [of Maryland]: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state it.

MR. BAUMAN: Mr. Speaker, the Constitution of the United States requires that a quorum be present at all times to conduct business in the House of Representatives. We are sitting in the House and at this time there is a pending motion on an appropriations conference report being debated, and I can count. Obviously there are not 218 Members present. We have no quorum. I make a point of order that under the Constitution, article I, section 5, the House cannot continue to conduct its business in this way without a quorum and I move a call of the House.

THE SPEAKER PRO TEMPORE: The Chair has discretion to entertain a motion for a call of the House but he cannot entertain a point of order at this time.

MR. BAUMAN: A parliamentary inquiry. Under what authority does the Chair not entertain a point of no quorum when a quorum is not present?

MR. [JOHN] BRADEMAS [of Indiana]: Mr. Chairman, I move a call of the House.

THE SPEAKER PRO TEMPORE: The gentleman from Indiana moves a call of the House.

Under rule XV clause 6(e) the Chair cannot entertain a point of no quorum at this time.

MR. BAUMAN: A parliamentary inquiry. Does rule XV allow discretion in the Chair whether or not a point of no quorum will be permitted? There is not a quorum present.

THE SPEAKER PRO TEMPORE: The only discretion the Chair would have under clause 6(e)(2) of rule XV is whether to entertain a motion for a

11. 123 CONG. REC. 28114, 28122–24, 95th Cong. 1st Sess.

12. George E. Brown, Jr. (Calif.).

call of the House. The Chair has entertained such a motion.

Without objection, a call of the House is ordered.

There was no objection.

The call was taken by electronic device, and the following Members failed to respond: . . .

THE SPEAKER PRO TEMPORE: On this rollcall 353 Members have recorded their presence by electronic device, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

The Chair wishes to clarify the point which was raised by the gentleman from Maryland (Mr. Bauman) prior to the quorum call, and since the gentleman is perhaps much more familiar with the rules than is the Chair, the Chair wishes to quote clause 6 of rule XV which deals with quorum calls in the House. The provision of the rules which the Chair wishes to cite is specifically clause 6(e)(1), which reads as follows:

> Except as provided by subparagraph (2), it shall not be in order to make or entertain a point of order that a quorum is not present unless the Speaker has put the pending motion or proposition to a vote.

In this instance the Speaker pro tempore had not put the pending motion or proposition to a vote to make it possible for a quorum call to qualify under the rules. It is, of course, imperative that the Chair follow the rules in a matter of this sort.

This point has been further stressed by Speaker O'Neill when the matter has been brought up on previous occasions.

MR. BAUMAN: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. BAUMAN: Mr. Speaker, not that I wish to belabor the point, but the Constitution of the United States, article I, section 5, requires that at all times a majority of the House be present for the conduct of business. The point that I made prior to the quorum call was that there was not a majority of the House present, and in the absence of a majority, any business that would be conducted would not be legally or constitutionally conducted, the rules of the House notwithstanding.

THE SPEAKER PRO TEMPORE: The gentleman from Maryland (Mr. Bauman) is perhaps more familiar with the Constitution than is the Chair, who is not in a position to rule upon the constitutionality of the rule, but the new rule does not anticipate, according to the understanding of the Chair, that the mere conduct of debate would constitute business in the sense as contemplated by the Constitution, and the rule does provide that a point of order is in order if a question has been put to a vote.

Appeal Does Not Lie

§ 13.5 The Speaker's refusal to entertain a point of order of no quorum when there is no pending question being put to a vote is not subject to an appeal, since Rule XV clause 6(e) states an absolute prohi-

bition against the Chair's entertaining such a point of order and to allow an appeal would permit a direct change in that rule.

The Speaker Pro Tempore, Ms. Barbara Jordan, of Texas, refused to entertain an appeal in this case since the rule involved leaves no discretionary interpretation to the Chair. The proceedings of Sept. 16, 1977,[13] are shown below.

MR. [J. WILLIAM] Stanton [of Ohio]: Madam Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. Wylie), a very distinguished and important member of our committee.

MR. [JOHN M.] ASHBROOK [of Ohio]: Madam Speaker, I make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman from Ohio (Mr. Ashbrook) that the point of order is not in order at this time under rule XV, clause 6(e).

MR. ASHBROOK: Madam Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The Chair will inform the gentleman that is not an appealable ruling. The rule contains an absolute prohibition against a Member making or the Chair entertaining such a point of order at this time, leaving no interpretive authority in the Chair and no authority to recognize for such a point of order. The rule itself, and not the ruling of the Chair, governs in this situation. To permit an appeal would be tantamount to permitting a direct change in the rule itself.

Appeal in Committee of the Whole—Chair Sustained

§ 13.6 The Chair's ruling on a point of order in the Committee of the Whole was sustained on appeal by division vote of the Committee.

On Mar. 31, 1937,[14] arguing that a point of order against his amendment had been raised too late, Mr. Ross A. Collins, of Mississippi, appealed a ruling of Chairman Scott W. Lucas, of Illinois. To Mr. Collins' proposed amendment, Mr. Lindsay C. Warren, of North Carolina, had raised a point of order that it was legislation in an appropriation bill and, hence, out of order. To this Mr. Collins responded that it was too late because he had already been recognized in debate, although it was disputed as whether he had actually said anything or not. Chairman Lucas ruled that Mr. Warren could raise his point of order because he had shown due diligence in seeking recognition. Further, the Chairman upheld the point of order against

13. 123 CONG. REC. 29594, 95th Cong. 1st Sess.

14. 81 CONG. REC. 2980, 2981, 75th Cong. 1st Sess. Under consideration was H.R. 5966, an appropriation bill for the legislative branch for fiscal 1938.

the amendment. Thereupon, Mr. Collins made the following unsuccessful appeal of the Chairman's ruling:

THE CHAIRMAN: The Chair is ready to rule on the point of order made by the gentleman from North Carolina. In the opinion of the Chair, there is no authorization under the law for the additional clerks as is proposed by the amendment offered by the gentleman from Mississippi [Mr. Collins]. Obviously, it is an attempt to pass legislation upon an appropriation bill. The Chair sustains the point of order made by the gentleman from North Carolina [Mr. Warren].

MR. COLLINS: Mr. Chairman, I appeal from the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the decision of the Chair stand as the judgment of the Committee?

The question was taken; and on a division (demanded by Mr. Snell) there were ayes 72 and noes 23.

So the decision of the Chair stood as the judgment of the Committee.

§ 13.7 On appeal, the Chair's ruling on a question of germaneness was upheld on a voice vote.

During consideration of the Justice System Improvement Act, 1979, an appeal was taken by Mr. John M. Ashbrook, of Ohio, from a decision by the Chair that Mr. Ashbrook's second degree amendment was not germane. The proceedings of Oct. 12, 1979,[15] were as follows:

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Volkmer: Page 164, lines 24 and 25, amend the bill by adding the following after the word "project," "including photographic equipment, and fingerprint equipment, for law enforcement purposes.".

MR. ASHBROOK: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Ashbrook to the amendment offered by Mr. Volkmer: Insert after the word "including" "bulletproof vests.".

THE CHAIRMAN:[16] Does the gentleman from New York insist on his point of order?

MR. [PETER A.] PEYSER [of New York]: Mr. Chairman, I do.

Mr. Chairman, I do this to my friend from Ohio because my concern is exactly the same as his, which is to guarantee that we do include in this bill the availability of bulletproof vests, because it is a whole different subject. I raise the point that it is not germane to this particular equipment that is being discussed at this time. When we previously discussed this with the Parliamentarian the point was made that it could not be amended on the other side by having the bulletproof vest amendment amended by adding cameras and other equipment. It is not a germane fact to this issue and the type of equipment we are dealing with and discussing, and for that reason it should be ruled out of order.

15. 125 CONG. REC. 28123, 28124, 96th Cong. 1st Sess.

16. Mike McCormack (Wash.).

I will say that it is my intention, to the gentleman from Ohio, to offer this amendment as I did the other day, offer the exact same amendment. I intend to offer it today as soon as this discussion is finished.

Does the gentleman from Ohio wish to be heard on the point of order?

MR. ASHBROOK: Mr. Chairman, I would merely say in response that I do not believe my colleague from New York has stated adequate grounds on the point of order. I think the proposition he propounded, the question placed to the Parliamentarian was on the Volkmer amendment when we were in an entirely different position the other day and we have already opened up two categories. It seems to me this comes within the general description of the type of police gear, type of police paraphernalia, electronic devices that could be used, and I would think the point of order should be overruled.

THE CHAIRMAN: Does the gentleman from Missouri wish to speak on the point of order?

MR. VOLKMER: Yes, Mr. Chairman, I would like to speak on the point of order. As to the question of germaneness, as I understand it my amendment says, "including photographic equipment, fingerprint equipment," and then the words "for law enforcement purposes."

Therefore, in my opinion anything that would be in there for law enforcement purposes would be germane. In other words, if somebody would offer an amendment for pistols, or offer an amendment for bullets, or offer an amendment for police caps or cars or anything else for law enforcement purposes, it is germane. This is not restricted just to a certain type of equipment. We have photographic equipment and fingerprint equipment. They are not related at all. Bulletproof vests are for law enforcement purposes.

THE CHAIRMAN: The Chair is prepared to rule.

The question really comes down to how to define and segregate categories of law enforcement equipment. The Chair is persuaded that the term, "photographic equipment and fingerprint equipment" is a generic category that deals with information rather than protection of law enforcement officers.

Bulletproof vests are within the different category of equipment for the protection of law enforcement officers. The Chair recognizes that this is a fine line, but rules that under the precedents the amendment is not germane to the pending amendment and the point of order is sustained.

MR. ASHBROOK: Mr. Chairman, is the point of order upheld?

THE CHAIRMAN: Yes.

MR. ASHBROOK: Mr. Chairman, I appeal the ruling of the Chair.

THE CHAIRMAN: The question is, Shall the Chair's ruling stand as the judgment of the Committee?

The question was taken; and the Chairman announced that the ayes appeared to have it.

MR. ASHBROOK: MR. CHAIRMAN, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

THE CHAIRMAN: Evidently a quorum is not present.

Pursuant to the provisions of clause 2 of rule XXIII, the Chair announces

that he will reduce to a minimum of 5 minutes the period of time within which a vote by electronic device, if ordered, will be taken on the pending question following the quorum call. Members will record their presence by electronic device.

The call was taken by electronic device.

THE CHAIRMAN: Three hundred and twelve Members have answered to their names, a quorum is present, and the Committee will resume its business.

The pending business is the demand of the gentleman from Ohio (Mr. Ashbrook) for a recorded vote appealing the decision of the Chair.

Does the gentleman from Ohio (Mr. Ashbrook) insist upon his demand for a recorded vote?

MR. ASHBROOK: I do not, Mr. Chairman.

Appeal in Committee of the Whole—Chair Overruled

§ 13.8 Where a ruling on a point of order by the Chairman of the Committee of the Whole was appealed and voted upon, the Chair's ruling was overturned.

In a rare instance in which a ruling by the Chairman was appealed, on Feb. 1, 1938,[17] the Committee of the Whole voted to overrule the decision of the Chairman, William J. Driver, of Arkansas. The situation occurred following the offering of an amendment by Mr. Ross A. Collins, of Mississippi, to which Mr. Jack Nichols, of Oklahoma, raised a point of order after Mr. Collins had spoken only a few words on the amendment. Mr. Collins then made the point of order, which the Chair sustained, that the point of order raised by Mr. Nichols came too late, as Mr. Collins had already begun his remarks.

MR. COLLINS: Mr. Chairman, the language that is incorporated in the amendment—

MR. NICHOLS: MR. CHAIRMAN, I MAKE A POINT OF ORDER AGAINST THE AMENDMENT.

MR. COLLINS: Eliminates the language against which the gentleman made the point of order.

Mr. Chairman, I make the point of order that the gentleman's point of order comes too late.

It was disputed whether Mr. Collins had been recognized at the time he commenced his remarks, although the Chair maintained that he had been recognized. In any event, those supporting Mr. Nichols' position argued that he had had no opportunity to make his point of order. The following then took place:

MR. NICHOLS: If the Chair has made a final ruling, I would, in the most re-

17. 83 CONG. REC. 1372, 1373, 75th Cong. 3d Sess. Under consideration was H.R. 9181, a District of Columbia appropriation bill for 1939.

spectful manner I know, request an appeal from the decision of the Chair.

THE CHAIRMAN: The gentleman from Oklahoma appeals from the decision of the Chair on the ruling of the Chair on the point of order, as stated.

The question before the Committee is, Shall the ruling of the Chair stand as the judgment of the Committee?

The question was taken, and the Chair announced that the noes had it.

So the decision of the Chair does not stand as the judgment of the Committee.

Form of Question When Decision Is Appealed

§ 13.9 Where a decision of the Chair ruling an amendment out of order is appealed, the question is put: "Shall the decision of the Chair stand as the judgment of the Committee" and if the Chair's ruling is not sustained, the amendment would be debated under the five-minute rule.

On Aug. 1, 1989,[18] when an appeal was taken from a ruling of the Chairman of the Committee of the Whole, Mr. George E. Brown, Jr., of California, the Majority Leader directed several inquiries to the Chair to inform Members of the consequences of such an appeal.

AMENDMENT OFFERED BY MR. RIDGE

MR. [THOMAS J.] RIDGE [of Penn-sylvania]: Mr. Chairman, I offer an amendment.

The Clerk read as follows:

> Amendment offered by Mr. Ridge: Page 20, after line 3, insert the following:
>
> SEC. 604. No part of any appropriation contained in title I shall knowingly be used to enumerate any undocumented alien in the 1990 decennial census.

MR. [NEAL] SMITH of Iowa: Mr. Chairman, I make a point of order on the amendment. . . .

THE CHAIRMAN: . . . The gentleman from Iowa (Mr. Smith) makes a point of order that the amendment violates clause 2 of rule XXI by legislating on a general appropriations bill. The amendment offered by the gentleman from Pennsylvania (Mr. Ridge) is in the form of a limitation on funds in the bill and, by its use of the modifier, "knowingly," refrains from requiring any affirmative investigation or determination on the part of government officials.

However, the amendment requires the exclusion from the census of population persons having a certain known status who under current law are not required to be excluded. Article I, section 2 of the Constitution and the 14th amendment require a decennial census of the whole number of persons in each State, excluding Indians not taxed.

To fulfill the constitutional mandate, section 141(a) of title 13 of the United States Code directs the Secretary of

18. 135 CONG. REC. 17154–56, 101st Cong. 1st Sess.

Commerce to make a census of the population. The statute authorizes the Secretary to determine the form and content of the census. Although subject to judicial review, the Secretary's sole discretion under the statute has been described by the court as broad.

The amendment would impinge upon the discretion of the Secretary of Commerce by requiring him to exclude from the census of population persons having a certain status should he know that status. Under the statute, however, the Secretary's discretion is not so bounded. He is not required to exclude persons having that status. An amendment to a general appropriation bill that subjects the discretion of a government official to a limit not contained in existing law is legislation in violation of clause 2 of rule XXI.

In volume 8 of Deschler's precedents, at section 64, the following test is set forth as one of the fundamental tests of the propriety of a proposed limitation; and I quote:

> Does the limitation curtail or extend, modify or alter, existing powers or duties, or terminate old or confirm new ones? If it does, then it must be conceded that legislation is involved, for without legislation these results could not be accomplished.

It is the opinion of the Chair that the amendment in this case must involve legislation, and, accordingly, the Chair sustains the point of order.

MR. RIDGE: Mr. Chairman, I respectfully appeal the ruling of the Chair and ask for a recorded vote.

PARLIAMENTARY INQUIRY

MR. [RICHARD A.] GEPHARDT [of Missouri]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GEPHARDT: Would the Chair state for us the effect of the appealing and ruling of the Chair?

THE CHAIRMAN: The Chair was about to state the question.

The question is: Shall the decision of the Chair stand as the judgment of the Committee? An aye vote would support the Chair's ruling. A no vote would not.

MR. [WILLIAM H.] GRAY [III, of Pennsylvania]: Mr. Chairman, I have a parliamentary inquiry.

THE CHAIRMAN: The gentleman will state it.

MR. GRAY: The question that I have, Mr. Chairman, is, if the Chair's ruling is not sustained, what would be the parliamentary situation at that time?

THE CHAIRMAN: At that point, if the decision of the Chair is not sustained, the amendment would be debatable on the merits under the 5-minute rule in the normal course of procedure.

The Chair then put the question and, on a recorded vote, the decision of the Chair was sustained.

Withdrawal of an Appeal

§ 13.10 An appeal was taken from a decision of the Speaker and then withdrawn, before the question was put on a motion to lay the appeal on the table.

In recent years appeals from rulings of the Chair on points of order have been tabled in the House more often than they have

been voted upon. Thus, Nov. 28, 1967,[19] Mr. Paul C. Jones, of Missouri, opposed a Senate amendment to a House bill, stating:

> As the other body has done so many times in the past, they have taken a bill of no great merit and of interest probably to only one Member of Congress, and have attached to that bill an amendment which would affect practically every Member of Congress and each one of the 200 million inhabitants of the United States. They have tried by subterfuge to obtain the passage of a bill in the form of an amendment which they cannot pass directly.[20]

Mr. Jones raised a point of order against the amendment "to restore comity and equality" between the Houses:

> THE SPEAKER PRO TEMPORE:[1] The Chair will recognize the gentleman to make his point of order.
>
> MR. JONES of Missouri: I will make the point of order now.
>
> THE SPEAKER PRO TEMPORE: The gentleman will state his point of order. . . .
>
> MR. JONES of Missouri: I am making the point of order on the basis of the rule of equity. I am making the point of order on the basis of what the distinguished Speaker of the House of Representatives has said on many occasions, that these two bodies are equal. I am making the point of order to restore comity and equality. As everyone in the House knows, if I were a lawyer, I would not be up here trying to make this point today.

After Speaker John W. McCormack, of Massachusetts, overruled the point of order, Mr. Jones appealed the ruling, but when Mr. Price moved to table the appeal, Mr. Jones withdrew it:

> THE SPEAKER: The Chair is prepared to rule. The Chair has given serious consideration to the point of order raised by the gentleman from Missouri. The Committee on Rules has reported out a special rule. It is within the authority of the rules, and a reporting out by the Rules Committee is consistent with the rules of the House. Therefore, the Chair overrules the point of order.
>
> MR. JONES of Missouri: Mr. Speaker, I know this has never been done, but I am going to appeal from the rule of the Chair and ask for a rollcall.
>
> MR. PRICE of Illinois: Mr. Speaker, I move to lay on the table the appeal of the gentleman.
>
> MR. JONES of Missouri: Mr. Speaker, I withdraw my request, but it is still within my heart.
>
> THE SPEAKER: The gentleman from Missouri withdraws his request.

Where Appeal Is Not Entertained

§ 13.11 Under clause 2 of Rule XIV, recognition is wholly

---

19. 113 CONG. REC. 34032, 90th Cong. 1st Sess. Under consideration was H. Res. 985, providing for concurring in Senate amendments to H.R. 2275, an act to provide for the relief of Dr. R. V. Samala, with Senate amendments relating to congressional redistricting.

20. *Id.* at p. 34033.

1. Charles M. Price (Ill.).

within the discretion of the Chair, who may decline to recognize a Member to propound a unanimous-consent request relating to an order of business, and such a decision of the Chair on recognition is not subject to appeal.

On Feb. 27, 1992,[2] Speaker Pro Tempore Michael R. McNulty, of New York, had recognized the chairman of the Committee on Rules to discuss the agenda of that committee and the floor schedule which might result from actions taken by the committee. Mr. James A. Traficant, Jr., of Ohio, attempted to propound a unanimous-consent request to alter the House schedule. The proceedings which followed are carried here.

MR. [JOE] MOAKLEY [of Massachusetts]: I rise to notify members about the Rules Committee's plans for two measures: The budget resolution for fiscal year 1993 and H.R. 3732, the Budget Process Reform Act of 1991. . . .

I take this opportunity to advise Members who wish to offer an amendment to either the budget resolution or to H.R. 3732, the Budget Process Reform Act. . . .

I have just been informed that the budget will be available at the committee offices tomorrow.

MR. TRAFICANT: Mr. Speaker, will the chairman yield to me?

MR. MOAKLEY: I am glad to yield to the gentleman from Ohio.

MR. TRAFICANT: Mr. Speaker, I want to rise in support of what was just stated on the floor. I think that every Member of this body should have at least 7 days to read thoroughly and to understand the budget of our country.

I think this. I do not know if it is in order, but I would like to ask unanimous consent that there be at least 1 week's availability for all Members of this House to read the budget before action for amendments or pending rules be considered.

Mr. Speaker, I put that in the form of a unanimous-consent request.

THE SPEAKER PRO TEMPORE: The gentleman's request is not in order. . . .

REQUEST THAT MEMBERS BE GIVEN 1 WEEK TO READ BUDGET PROPOSAL

THE SPEAKER PRO TEMPORE: For what reason does the gentleman from Ohio rise?

MR. TRAFICANT: Mr. Speaker, I rise for the purpose of offering a unanimous-consent request to the Congress.

Mr. Speaker, I ask unanimous consent that all Members be given 1 week to read next year's budget proposal from the Budget Committee and that no rule be recommended or considered until that 1-week reading opportunity is granted to all Members of the House.

MR. [JAMES H.] BILBRAY [of Nevada]: Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: The Chair has the power of recognition and the Chair declines to recognize the

2. 138 CONG. REC. 3655, 3656, 102d Cong. 2d Sess.

gentleman for that purpose and the gentleman cannot challenge that denial.

POINT OF ORDER

MR. TRAFICANT: Mr. Speaker, a point of order.

THE SPEAKER PRO TEMPORE: The gentleman will state his point of order.

MR. TRAFICANT: Mr. Speaker, I would like to know under what rule of the House such action by the Chair is taken.

THE SPEAKER PRO TEMPORE: Clause 2, rule XIV.

§ 13.12 An appeal does not lie to the Chair's count determining that a quorum is present.

Where a vote first taken by a division is objected to on the ground that a quorum is not present, and the Chair counts the House and announces that a quorum is in fact present, that count is not subject to challenge by appeal. A demand for the yeas and nays, if supported by one-fifth of those present, would produce an accurate vote and count of those present. The events of Aug. 3, 1977,[3] preceding and during consideration in the House of a conference report on the Foreign Relations Authorization Act of 1978, where the Chair was faced with a parliamentary inquiry, illustrate the point of the headnote.

MR. [WILLIAM A.] STEIGER [of Wisconsin]: Mr. Speaker, I offer a preferential motion.

The Clerk read as follows:

> Mr. Steiger moves, pursuant to section 152(d)(3) of the Trade Act of 1974, to postpone indefinitely the motion that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of House Resolution 653.

THE SPEAKER PRO TEMPORE:[4] The question is on the preferential motion offered by the gentleman from Wisconsin (Mr. Steiger).

The question was taken; and on a division (demanded by Mr. Ashbrook) there were—ayes 149, noes 33.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: The Chair will count.

Two hundred and twenty-four Members are present, a quorum.

MR. ASHBROOK: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were refused.

So the preferential motion was agreed to.

A motion to reconsider was laid on the table. . . .

CONFERENCE REPORT ON H.R. 6689, FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1978

MR. [DANTE B.] FASCELL [of Florida]: Mr. Speaker, I call up the conference

3. 123 CONG. REC. 26528, 26532, 95th Cong. 1st Sess.

4. Dan Rostenkowski (Ill.).

report on the bill (H.R. 6689) to authorize fiscal year 1978 appropriations for the Department of State, the U.S. Information Agency, and the Board for International Broadcasting, to make certain changes in the Foreign Service personnel system, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Florida?

MR. ASHBROOK: Reserving the right to object, I believe the 224 Members who are present want to hear this.

Mr. Speaker, I object.

THE SPEAKER PRO TEMPORE: Objection is heard.

The Clerk will read the conference report.

(The Clerk commenced reading the conference report).

MR. [JOHN] BUCHANAN [of Alabama] (during the reading): Mr. Speaker, I ask unanimous consent that further reading of the conference report be dispensed with.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from Alabama?

MR. ASHBROOK: Mr. Speaker, reserving the right to object, I would like to propound a parliamentary inquiry of the Chair. It is my understanding under the rules there is no appealing a ruling of the Chair that can be made as to those present. Am I correct?

THE SPEAKER PRO TEMPORE: The gentleman is asking about an appeal to the count of the Chair?

MR. ASHBROOK: An appeal to the count of the Chair cannot be taken?

THE SPEAKER PRO TEMPORE: That is correct.

MR. ASHBROOK: Further reserving the right, then, to object, all that the Members can rely on for the count of the Chair is the integrity of the Chair and the capacity of the Chair to make a correct count.

THE SPEAKER PRO TEMPORE: The gentleman can ask for the yeas and nays.

MR. ASHBROOK: I would like to do that later if I could be assured we probably could get that count.

But having made that point, I withdraw my reservation of objection.

MR. BUCHANAN: I thank the gentleman.

§ 13.13 The Speaker's count of the House to determine whether one-fifth of those present have seconded a demand for the yeas and nays is not subject to appeal.

On Sept. 12, 1978,[5] the Speaker Pro Tempore put the question on a motion to suspend the rules and pass the Miscellaneous Revenue Act of 1978 (H.R. 12578). On a voice vote, the Chair announced that two-thirds had voted in favor of the motion. The yeas and nays were then requested. Proceedings were as indicated.

THE SPEAKER PRO TEMPORE:[6] The question is on the motion offered by

5. 124 CONG. REC. 28949, 28950, 95th Cong. 2d Sess.

6. B. F. Sisk (Calif.).

the gentleman from Oregon (Mr. Ullman) that the House suspend the rules and pass the bill H.R. 12578, as amended.

The question was taken.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, two-thirds have voted in the affirmative.

MR. [HAROLD L.] VOLKMER [of Missouri]: Mr. Speaker, on that I demand the yeas and nays.

THE SPEAKER PRO TEMPORE: The gentleman from Missouri (Mr. Volkmer) demands the yeas and nays. All those in favor of taking this vote by the yeas and nays will rise and remain standing until counted.

Not a sufficient number have risen.

MR. VOLKMER: Mr. Speaker, I have a parliamentary inquiry.

Is the requirement one-fifth of the Members present?

THE SPEAKER PRO TEMPORE: Yes. The Chair will state that the requirement is that one-fifth of the Members present be standing for the yeas and nays, and there is not one-fifth of the Members standing.

MR. VOLKMER: Mr. Speaker, I count four Members standing.

THE SPEAKER PRO TEMPORE: In the opinion of the Chair, an insufficient number have arisen.

The Chair will be glad to count, if the gentleman desires.

MR. VOLKMER: Would the Chair count, please? I believe there are only 25 Members here.

THE SPEAKER PRO TEMPORE: The Chair will count. Thirty Members are present.

Two-thirds having voted in the affirmative, the rules are suspended and the bill, as amended, is passed, and without objection, a motion to reconsider is laid on the table.

There was no objection.

MR. [JOHN F.] SEIBERLING [of Ohio]: Mr. Speaker, is it in order to appeal the ruling of the Chair on the last vote?

THE SPEAKER PRO TEMPORE: The Chair will state to the gentleman that no appeal lies on the count of the Chair.

§ 13.14 No appeal lies against the count of the Chair of the number of Members supporting or seconding a procedural request.

During the 95th through the 102d Congresses, standing committees of the House were not permitted to sit when the House was reading a bill under the five-minute rule unless they were granted permission to do so by the House. Such permission was considered granted when the permission was sought on the floor unless ten or more Members indicated objection. The Chair would state the permission sought and ask "Is there objection?". If ten or more Members then stood, permission of the House was denied.

The following proceedings of Sept. 12, 1978,[7] demonstrate the practice.

---

7. 124 CONG. REC. 28983, 28984, 95th Cong. 2d Sess.

PERMISSION FOR COMMITTEE ON THE JUDICIARY TO MEET TOMORROW AND THURSDAY DURING FIVE-MINUTE RULE

MR. GEORGE E.] DANIELSON [of California]: Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary may meet tomorrow and Thursday, September 13 and 14, 1978, notwithstanding the 5-minute rule.

THE SPEAKER PRO TEMPORE: Is there objection to the request of the gentleman from California? . . .

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, further reserving the right to object, it is my understanding that the civil service reform bill will be up tomorrow morning. That was the order of the business as I understood it at about midnight last night when we left here on Monday. I have the greatest admiration for my hardworking friend and colleague, the gentleman from Illinois (Mr. McClory), but if that bill is going to come up tomorrow, I am constrained to object and I do object.

THE SPEAKER PRO TEMPORE: The Chair will state that it takes 10 Members to object, and the objectors will have to remain standing until counted.

An insufficient number have arisen.

Therefore, the request is granted.

MR. ASHBROOK: Mr. Speaker, I appeal the ruling of the Chair.

THE SPEAKER PRO TEMPORE: The Chair will state that no appeal is in order in a matter of this kind.

Appeal Tabled

§ 13.15 An appeal was taken from the decision of the Chair and that appeal, on motion, was laid on the table.

On July 7, 1971,[8] Ms. Bella Abzug, of New York, moved to discharge a resolution of inquiry from the Committee on Armed Services. A point of order was raised against the motion on the ground that the resolution of inquiry called for opinions, not factual information, relative to the Vietnam war and was therefore not privileged under Rule XXII clause 5. The Speaker's ruling that the motion was not in order was appealed by Ms. Abzug.[9]

MR. [F. EDWARD] HÉBERT [of Louisiana]: Mr. Speaker, I make the point of order that the resolution is not privileged under the rules.

THE SPEAKER:[10] Does the gentleman insist on his point of order?

MR. HÉBERT: Mr. Speaker, I reserve the point of order in order to give the gentlewoman from New York an opportunity to speak to the point of order.

THE SPEAKER: The gentleman from Louisiana reserves the point of order.

Does the gentlewoman from New York desire to be heard?

MS. ABZUG: Yes, Mr. Speaker. . . .

After hearing arguments on the points of order in support of the

8. 117 CONG. REC. 23810, 23811, 92d Cong. 1st Sess. Under consideration was H. Res. 491, directing the Secretaries of State and Defense and the Director of the CIA to furnish a report on U.S. military involvement in Southeast Asia.

9. For further discussion of resolutions of inquiry, see Ch. 13, supra.

10. Carl Albert (Okla.).

respective positions, Speaker Albert ruled.

THE SPEAKER: The Chair is prepared to rule.

The gentlewoman from New York has moved to discharge the Committee on Armed Services from further consideration of the resolution, House Resolution 491. The gentlewoman has furnished the Chair a copy of the resolution, and the Chair appreciates that fact, since it gives an opportunity to the Chair to examine the resolution prior to ruling on the point of order.

The resolution under consideration has not been reported by the committee to which it has been referred.

Clause 5 of Rule XXII provides that:

> All resolutions of inquiry addressed to the heads of executive departments shall be reported to the House within one week after presentation.

The gentleman from Louisiana makes a point of order against the motion to discharge on the ground that the resolution is not privileged under the rule because it calls for opinions in addition to factual information.

It has been consistently held that to retain the privilege under the rule, resolutions of inquiry must call for facts rather than opinions—Cannon's Precedents, volume VI page 413 and pages 418 to 432. Speaker Longworth, on February 11, 1926, held that a resolution inquiring for such facts as would inevitably require the statement of an opinion to answer such inquiry was not privileged—Record, page 3805.

Among other requests, House Resolution 491 calls for the furnishing of one, the "rationale" for U.S. involvement in South Vietnam since the completion of the study; two, the nature and "capacity" of the Government of the Republic of Vietnam, including "analyses" of their military "capabilities"; their capacity for self-sufficiency which would include analyses of the Government's political base, the scope of malfunction and corruption, the depth of popular support; and three, analyses of U.S. involvement in 1971 elections in South Vietnam.

In at least these particulars, executive officials are called upon—not for facts—but to furnish conclusions, which must be, essentially, statements of opinion.

The Chair therefore holds that House Resolution 491 is not a privileged resolution within the meaning of clause 5, rule XXII, and that the motion to discharge the Committee on Armed Services from its further consideration is not in order.

MS. ABZUG: Mr. Speaker, I appeal from the ruling of the Chair.

MR. [HALE] BOGGS [of Louisiana]: Mr. Speaker, I move to lay that appeal on the table.

THE SPEAKER: The question is on the motion offered by the gentleman from Louisiana.

The question was taken; and the Speaker announced that the ayes had it.

So the decision of the Chair stands.

Motion To Reconsider Tabling of Appeal

§ 13.16 The House has tabled a motion to reconsider the vote whereby an appeal from a decision of the Chair was laid on the table.

On Oct. 8, 1968,[11] the reading of the Journal was interrupted by numerous points of order of no quorum. A motion was made by Mr. Brock Adams, of Washington, and adopted by the House, that absent Members be sent for and thereafter detained until the disposition of the pending business of the day. This motion provoked some Members to express concern about their personal liberty and rights. In this context, Mr. Robert Taft, Jr., of Ohio, attempted to interrupt the reading of the Journal with what he contended was a question of privilege, but which Speaker John W. McCormack, of Massachusetts, determined not to properly raise a question of privilege of the House in the form and manner argued, and consequently not in order at that time. From this ruling, Mr. Taft appealed. Mr. Carl Albert, of Oklahoma, moved the appeal be laid on the table which motion was successful. Mr. Craig Hosmer, of California, then moved to reconsider the vote on the motion to table.

MR. HOSMER: Mr. Speaker, I move to reconsider the vote on the motion to lay the appeal from the Chair on the table.

MR. ALBERT: Mr. Speaker, I move that the motion be laid on the table.

THE SPEAKER: The gentleman from California moves to reconsider the vote on the motion to lay the appeal from the decision of the Chair on the table, and the gentleman from Oklahoma moves that that motion be laid on the table.

MR. HOSMER: Mr. Speaker, I make a point of order against the motion of the gentleman from Oklahoma to lay my motion on the table because that motion does not lie.

THE SPEAKER: The Chair will state that a motion to lay on the table, on a motion to reconsider, is a recognized motion.

The question is on the motion to lay on the table.

MR. HOSMER: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered. . . .

So the motion to lay on the table was agreed to.

§ 14. In General

Parliamentary inquiries are in the nature of procedural questions of the Chair, relating to the pending order of business. Compared to points of order, the raising of a parliamentary inquiry is a relatively informal procedure. In contrast to points of order, no appeal will lie from the Chair's response to a parliamentary inquiry.[1] It is

11. 114 CONG. REC. 30214–16, 90th Cong. 2d Sess. [Calendar Day of Oct. 9, 1968].

1. See § 14.4, infra. See also 5 Hinds' Precedents §§ 6955, 8 Cannon's Precdents §§ 3457.