

chair of the Committee of the Whole who reports a bill does not become entitled to prior recognition for debate in the House (II, 1453); but on an adverse report an opponent is recognized to offer a motion for disposition of the bill (IV, 4897; VIII, 2430), or for debate (VII, 2629). The recommendation of the committee being before the House, the motion to carry out the recommendation is usually considered as pending without being offered from the floor (IV, 4896), but when a bill was reported with a recommendation that it lie on the table, a question was raised as to whether or not this motion, which prevents debate, should be considered as pending (IV, 4897). The House considers an amendment reported from the Committee of the Whole to the preamble of a Senate joint resolution following disposition of amendments to the text and pending third reading (May 25, 1993, pp. 11036, 11037).

A motion to discharge the Committee of the Whole from the consideration of a matter committed to it is not privileged as against a demand for the regular order (IV, 4917). When the committee is discharged from consideration of a bill the House, in lieu of the report of the chair, accepts the minutes of the Clerk as evidence of amendments agreed to (IV, 4922).

§ 339. Discharge of the Committee of the Whole.

§ 340. Application of House rules in Committee of the Whole.

In other things the rules or proceedings are to be the same as in the House. *Scob.*, 39.

The House provides by rule (clause 12 of rule XVIII) that the rules of proceeding in the House shall apply in Committee of the Whole so far as they may be applicable.

SEC. XIII—EXAMINATION OF WITNESSES

Common fame is a good ground for the House to proceed by inquiry, and even to accusation. *Resolution House of Commons, 1 Car., 1, 1625; Rush, L. Parl., 115; Grey, 16–22, 92; 8 Grey, 21, 23, 27, 45.*

In the House common fame has been held sufficient to justify procedure for inquiry (III, 2701), as in a case wherein it was stated on the authority of common rumor that a Member had been menaced (III, 2678). The House also has voted to investigate with a view to impeachment on the basis of common fame, as in the cases of Judges Chase (III, 2342), Humphreys (III, 2385), and Durell (III, 2506).

§ 342. The production of witnesses at an inquiry.

Witnesses are not to be produced but where the House has previously instituted an inquiry, *2 Hats., 102, nor then are orders for their attendance given blank. 3 Grey, 51.*

In the House witnesses are summoned in pursuance and by virtue of the authority conferred on a committee by the House to send for persons and papers (III, 1750). Even in cases wherein the rules give to certain committees the authority to investigate without securing special permission, authority must be obtained before the production of testimony may be compelled (IV, 4316). The rules require that subpoenas issued by order of the House be signed by the Speaker (clause 4 of rule I) and attested and sealed by the Clerk (clause 2 of rule II). However, in clause 2(m) of rule XI the House has authorized any committee or subcommittee to issue a subpoena when authorized by a majority of the members of the committee or subcommittee voting, a majority being present. A committee may also delegate the authority to issue subpoenas to the chair of a full committee. Authorized subpoenas are signed by the chair of the committee or by any other member designated by the committee. Sometimes the House authorizes issue of subpoenas during a recess of Congress and empowers the Speaker to sign them (III, 1806), and in one case the two Houses, by concurrent resolution, empowered the Vice President and Speaker to sign during a recess (III, 1763). See *McGrain v. Daugherty*, 273 U.S. 135 (1927); *Barry v. U.S. ex. rel. Cunningham*, 279 U.S. 597 (1929); *Sinclair v. United States*, 279 U.S. 263 (1929). Under section 2954 of title 5, United States Code, an executive agency, if so requested by the Committee on Government Operations (now Oversight and Government Reform), or any seven members thereof, shall submit any information requested of it relating to any matter within the jurisdiction of the committee.

§ 343. Examination of witnesses in the House and in committee.

When any person is examined before a committee or at the bar of the House, any Member wishing to ask the person a question must address it to the Speaker or chairman, who repeats the question to the person, or says to him, "You hear the question—answer it." But if the propriety of the question be objected to, the Speaker directs the witness, counsel, and parties to withdraw; for no question can be moved or put or debated while

they are there. 2 *Hats.*, 108. Sometimes the questions are previously settled in writing before the witness enters. *Ib.*, 106, 107; 8 *Grey*, 64. The questions asked must be entered in the Journal. 3 *Grey*, 81. But the testimony given in answer before the House is never written down; but before a committee, it must be, for the information of the House, who are not present to hear it. 7 *Grey*, 52, 334.

The Committee of the Whole of the House was charged with an investigation in 1792, but the procedure was wholly exceptional (III, 1804), although a statute still empowers the chair of the Committee of the Whole, as well as the Speaker, chairs of select or standing committees, and Members to administer oaths to witnesses (2 U.S.C. 191; III, 1769). Most inquiries, in the modern practice, are conducted by select or standing committees, and these in each case determine how they will conduct examinations (III, 1773, 1775). Clause 2(k) of rule XI, contains provisions governing certain procedures at hearings by committees (§ 803, *infra*). In one case a committee permitted a Member of the House not of the committee to examine a witness (III, 2403). Usually these investigations are reported stenographically, thus making the questions and answers of record for report to the House. To sustain a conviction of perjury, a quorum of a committee must be in attendance when the testimony is given. *Christoffel v. United States*, 338 U.S. 84 (1949). Certain criminal statutes make it a felony to give perjurious testimony before a congressional committee (18 U.S.C. 1621), to intimidate witnesses before committees (18 U.S.C. 1505), or to make false statements in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States (18 U.S.C. 1001).

Another provision of the Federal criminal code (18 U.S.C. 6005) provides for “use” immunity for certain witnesses before either House or committees thereof.

The House, in its earlier years, arraigned and tried at its bar persons, not Members, charged with violation of its privileges, as in the cases of Randall, Whitney (II, 1599–1603), Anderson (II, 1606), and Houston (II, 1616); but in the case of Woods, charged with breach of privilege in 1870 (II, 1626–1628), the respondent was arraigned before the House, but was heard in his defense by counsel and witnesses before a standing committee. At the conclusion of that investigation the respondent was brought to the bar of the House while the House voted his punishment (II, 1628). The House also has arraigned at its bar contumacious

§ 344. Earlier and later practice as to inquiries at the bar of the House.

witnesses before taking steps to punish by its own action or through the courts (III, 1685). In examinations at its bar the House has adopted forms of procedure as to questions (II, 1633, 1768), providing that they be asked through the Speaker (II, 1602, 1606) or by a committee (II, 1617; III, 1668). And the questions to be asked have been drawn up by a committee, even when put by the Speaker (II, 1633). In the earlier practice the answer of a witness at the bar was not written down (IV, 2874); but in the later practice the answers appear in the journal (III, 1668). The person at the bar withdraws while the House passes on an incidental question (II, 1633; III, 1768). See *McGrain v. Dougherty*, 273 U.S. 135 (1927); *Barry v. U.S. ex. rel. Cunningham*, 279 U.S. 597 (1929); *Jurney v. MacCracken*, 294 U.S. 125 (1935).

§ 345. Procuring attendance of a witness in custody of the other House. If either House have occasion for the presence of a person in custody of the other, they ask the other their leave that he may be brought up to them in custody. *3 Hats.*, 52.

§ 346. Members as witnesses. A Member, in his place, gives information to the House of what he knows of any matter under hearing at the bar. *Jour. H. of C., Jan. 22, 1744-5.*

At an examination at the bar of the House in 1795 both the written information given by Members and their verbal testimony were required to be under oath (II, 1602). In a case not of actual examination at the bar, but wherein the House was deliberating on a proposition to order investigation, it demanded by resolution that certain Members produce papers and information (III, 1726, 1811). Members often give testimony before committees of investigation, and in at least one case the Speaker has thus appeared (III, 1776). But in a case wherein a committee summoned a Member to testify as to a statement made by him in debate he protested that it was an invasion of his constitutional privilege (III, 1777, 1778; see also H. Rept. 67-1372, and Jan. 25, 1923, pp. 2415-23). In one instance the chair of an investigating committee administered the oath to himself and testified (III, 1821). The House, in an inquiry preliminary to an impeachment trial, gave leave to its managers to examine Members, and leave to its Members to attend for the purpose (III, 2033).

§ 347. Method of obtaining testimony of a Member of the other House. Either House may request, but not command, the attendance of a Member of the other. They are to make the request by message of the other House, and

to express clearly the purpose of attendance, that no improper subject of examination may be tendered to him. The House then gives leave to the Member to attend, if he choose it; waiting first to know from the Member himself whether he chooses to attend, till which they do not take the message into consideration. But when the peers are sitting as a court of criminal judicature, they may order attendance, unless where it be a case of impeachment by the Commons. There it is to be a request. *3 Hats.*, 17; *9 Grey*, 306, 406; *10 Grey*, 133.

The House and the Senate have observed this rule; but it does not appear that they have always made public ascertainment of the willingness of the Member to attend (III, 1790, 1791). In one case the Senate laid aside pending business in order to comply with the request of the House (III, 1791). In several instances House committees, after their invitations to Senators to appear and testify had been disregarded, have issued subpoenas. In such cases the Senators have either disregarded the subpoenas, refused to obey them, or have appeared under protest (III, 1792, 1793). In one case, after a Senator had neglected to respond either to an invitation or a subpoena the House requested of the Senate his attendance and the Senate disregarded the request (III, 1794). Where Senators have responded to invitations of House committees, their testimony has been taken without obtaining consent of the Senate (III, 1793, 1795, footnote).

Counsel are to be heard only on private, not on public, bills and on such points of law only as the House shall direct. *10 Grey*, 61.

§ 348. Admission of counsel.

In 1804 the House admitted the counsel of certain corporations to address the House on pending matters of legislation (V, 7298), and in 1806 voted that a claimant might be heard at the bar (V, 7299); but in 1808, after consideration, the House by a large majority declined to follow again the precedent of 1804 (V, 7300). In early years counsel in election cases were heard at the bar at the discretion of the House (I, 657, 709, 757, 765); but in 1836, after full discussion, the practice was abandoned (I, 660), and, with one exception in 1841 (I, 659), has not been revived, even for the case of a contestant who could not speak the English language (I, 661). Counsel appear before committees in election cases, however. Where wit-

nesses and others have been arraigned at the bar of the House for contempt, the House has usually permitted counsel (II, 1601, 1616; III, 1667), sometimes under conditions (II, 1604, 1616); but in a few cases has declined the request (II, 1608; III, 1666, footnote). In investigations before committees counsel usually have been admitted (III, 1741, 1846, 1847), sometimes even to assist a witness (III, 1772), and clause 2(k)(3) of rule XI now provides that witnesses at hearings may be accompanied by their own counsel for the purpose of advising them concerning their constitutional rights (§ 803, *infra*). In examinations preliminary to impeachment counsel usually have been admitted (III, 1736, 2470, 2516) unless in cases wherein such proceedings were *ex parte*. During impeachment investigations against President Nixon and President Clinton, the Committee on the Judiciary admitted counsel to the President to be present, to make presentations and to examine witnesses during investigatory hearings (H. Rept. 93–1305, Aug. 20, 1974, p. 29219; H. Rept. 105–830, Dec. 16, 1998, p. 27819).

At one time the House required all counsel or agents representing persons or corporations before committees to be registered with the Clerk (III, 1771). The Lobbying Disclosure Act of 1995 requires all lobbyists to register with the Clerk of the House and the Secretary of the Senate (2 U.S.C. 1603).

SEC. XIV—ARRANGEMENT OF BUSINESS

The Speaker is not precisely bound to any rules as to what bills or other matter shall be first taken up; but it is left to his own discretion, unless the House on a question decide to take up a particular subject. *Hakew.*, 136.

A settled order of business is, however, necessary for the government of the presiding person, and to restrain individual Members from calling up favorite measures, or matters under their special patronage, out of their just turn. It is useful also for directing the discretion of the House, when they are moved to take up a particular matter, to the prejudice of others, having

§ 349. Advantages of an order of business.