

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.

priority of right to their attention in the general order of business.

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In this way we do not waste our time in debating what shall be taken up. We do one thing at a time; follow up a subject while it is fresh, and till it is done with; clear the House of business gradatim as it is brought on, and prevent, to a certain degree, its immense accumulation toward the close of the session.

Jefferson gave as a part of his comment on the law of Parliament the order of business in the Senate in his time. Both in the House and Senate the order of business has been changed to meet the needs of the times. The order of business now followed in the House is established by rule XIV; and this rule, with the rules supplemental thereto, take away to a very large extent the discretion exercised by the Speaker under the parliamentary law.

In the House before committees are appointed it is in order to offer a bill or resolution for consideration not previously considered by a committee (VII, 2103). In the 73d Congress, the House-passed before the adoption of rules and election of committees a bill of major importance (H.R. 1491, providing relief in the existing national emergency in banking), following a message from President Roosevelt recommending its immediate passage (Mar. 9, 1933, pp. 75–84). After committees are appointed, bills and resolutions not otherwise in order must be referred (VII, 2104).

Arrangement, however, can only take hold of matters in possession of the House. New matter may be moved at any time when no question is before the House. Such are original motions and reports on bills. Such are bills from the other House, which are received at all times, and receive their first reading as soon as the question then before the House is disposed of; and bills brought in on leave, which are read first whenever presented. So messages from the other House respecting

§350. Conditions of the old and the modern orders of business.

amendments to bills are taken up as soon as the House is clear of a question, unless they require to be printed, for better consideration. Orders of the day may be called for, even when another question is before the House.

In Jefferson's time the principles of this comment would have applied to both House and Senate; but in the House the pressure of business has become so great that the order of business may be interrupted at the will of the majority only by certain specified matters (see annotations following rule XIV). For matters not thus specified, interruption of the order takes place only by unanimous consent. For a discussion of the Speaker's policy of conferring recognition for such unanimous-consent requests, see § 956, *infra*.

SEC. XV—ORDER

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In Parliament, "instances make order," per Speaker Onslow. *2 Hats.*, 141. But what is done only by one Parliament, cannot be called custom of Parliament, by Prynne. *1 Grey*, 52.

§ 351. Precedent in Parliament and the House.

In the House the Clerk is required to note all questions of order and the decisions thereon and print the record thereof as an appendix to the Journal (clause 2 of rule II). The Parliamentarian has the responsibility for compiling and updating the precedents (2 U.S.C. 28). The Committee Reform Amendments of 1974 gave the Speaker the responsibility to prepare an updated compilation of such precedents every two years (H. Res. 988, 93d Cong., Oct. 8, 1974, p. 34470). The Speaker feels constrained in his rulings to give precedent its proper influence (II, 1317), since the advantage of such a course is undeniable (IV, 4045). But decisions of the Speakers on questions of order are not like judgments of courts that conclude the rights of parties, but may be reexamined and reversed (IV, 4637), except on discretionary matters of recognition (II, 1425). It is rare, however, that such a reversal occurs.