

SEC. XVI—ORDER RESPECTING PAPERS

The Clerk is to let no journals, records, ac-
§ 352. Safekeeping of papers and integrity of bills. counts, or papers be taken from the table or out of his custody. *2 Hats., 193, 194.*

Mr. Prynne, having at a Committee of the Whole amended a mistake in a bill without order or knowledge of the committee, was reprimanded. *1 Chand., 77.*

A bill being missing, the House resolved that a protestation should be made and subscribed by the members “before Almighty God, and this honorable House, that neither myself, nor any other to my knowledge, have taken away, or do at this present conceal a bill entitled,” &c. *5 Grey, 202.*

After a bill is engrossed, it is put into the Speaker's hands, and he is not to let any one have it to look into. *Town, col. 209.*

In the House an alleged improper alteration of a bill was presented as a question of privilege and examined by a select committee. It being ascertained that the alteration was made to correct a clerical error, the committee reported that it was “highly censurable in any Member or officer of the House to make any change, even the most unimportant, in any bill or resolution which has received the sanction of this body” (III, 2598). Engrossed bills do not go into the Speaker's hands. Enrolled bills go to him for signature.

SEC. XVII—ORDER IN DEBATE

§ 353. Decorum of Members as to sitting in their places. When the Speaker is seated in his chair, every member is to sit in his place. *Scob., 6; Grey, 403.*

In the House the decorum of Members is regulated by the various provisions of rule XVII; and this provision of the parliamentary law is practically obsolete.

When any Member means to speak, he is to stand up in his place, uncovered, and to address himself, not to the House, or any particular Member, but to the Speaker, who calls him by his name, that the House may take notice who it is that speaks. *Scob.*, 6; *D'Ewes*, 487, col. 1; 2 *Hats.*, 77; 4 *Grey*, 66; 8 *Grey*, 108. But Members who are indisposed may be indulged to speak sitting. 2 *Hats.*, 75, 77; 1 *Grey*, 143.

§ 354. Procedure of the Member in seeking recognition.

In the House a Member seeking recognition is governed by clause 1 of rule XVII, which differs materially from this provision of the parliamentary law. The Speaker, moreover, calls the Member, not by name, but as "the gentleman (or gentlewoman) from ——," naming the State. As long ago as 1832, at least, a Member was not required to rise from his own particular seat since seats are no longer assigned (V, 4979, footnote).

When a Member stands up to speak, no question is to be put, but he is to be heard unless the House overrule him. 4 *Grey*, 390; 5 *Grey*, 6, 143.

§ 355. Conditions under which a Member's right to the floor is subjected to the will of the House.

In the House no question is put as to the right of a Member to the floor, unless he be called to order and dealt with by the House under clause 4 of rule XVII.

If two or more rise to speak nearly together, the Speaker determines who was first up, and calls him by name, whereupon he proceeds, unless he voluntarily sits down and gives way to the other. But sometimes the House does not acquiesce in the Speaker's decision, in which case the question is put, "which Member was first up?" 2 *Hats.*, 76; *Scob.*, 7; *D'Ewes*, 434, col. 1, 2.

§ 356. The parliamentary law as to recognition by the Speaker.

In the Senate of the United States the President's decision is without appeal.

In the House recognition by the Chair is governed by clause 2 of rule XVII and the practice thereunder. There has been no appeal from a decision by the Speaker on a question of recognition since 1881, on which occasion Speaker Randall stated that the power of recognition is "just as absolute in the Chair as the judgment of the Supreme Court of the United States is absolute as to the interpretation of the law" (II, 1425–1428), and in the later practice no appeal is permitted (VIII, 2429, 2646, 2762).

No man may speak more than once on the same bill on the same day; or even on another day, if the debate be adjourned. But if it be read more than once in the same day, he may speak once at every reading. *Co.*, 12, 115; *Hakew.*, 148; *Scob.*, 58; 2 *Hats.*, 75. Even a change of opinion does not give a right to be heard a second time. *Smyth's Comw. L.*, 2, c. 3; *Arcan, Parl.*, 17.

§ 357. Right of the Member to be heard a second time.

But he may be permitted to speak again to clear a matter of fact, 3 *Grey*, 357, 416; or merely to explain himself, 2 *Hats.*, 73, in some material part of his speech, *Ib.*, 75; or to the manner or words of the question, keeping himself to that only, and not traveling into the merits of it, *Memorials in Hakew.*, 29; or to the orders of the House, if they be transgressed, keeping within that line, and not falling into the matter itself. *Mem. Hakew.*, 30, 31.

The House has modified the parliamentary law as to a Member's right to speak a second time by clause 3 of rule XVII and by permitting a Member controlling time in debate to yield to another more than once (Apr. 5, 2000, p. —). In ordinary practice rule XVII is not rigidly enforced, and Members find little difficulty in making such explanations as are contemplated by the parliamentary law.

But if the Speaker rise to speak, the Member standing up ought to sit down, that he may be first heard. *Town., col. 205; Hale Parl., 133; Mem. in Hakew., 30, 31.* Nevertheless, though the Speaker may of right speak to matters of order, and be first heard, he is restrained from speaking on any other subject, except where the House have occasion for facts within his knowledge; then he may, with their leave, state the matter of fact. 3 *Grey, 38.*

§ 358. Participation of the Speaker in debate.

This provision is usually observed in the practice of the House only with regard to the conduct of the Speaker when he is in the chair. In several instances the Speaker has been permitted by the House to make a statement from the chair, as in a case wherein his past conduct had been criticized (II, 1369), and in a case wherein there had been unusual occurrences in the joint session to count the electoral vote (II, 1372), and in a matter relating to a contest for the seat of the Speaker as a Member (II, 1360). In rare instances the Speaker has made brief explanations from the chair without asking the assent of the House (II, 1373, 1374). Speakers have called others to the chair and participated in debate, usually without asking consent of the House (II, 1360, 1367, footnote, 1368, 1371; III, 1950), and in one case a Speaker on the floor debated a point of order which the Speaker pro tempore was to decide (V, 6097). In rare instances Speakers have left the chair to make motions on the floor (II, 1367, footnote). Speakers may participate in debate in Committee of the Whole, although the privilege was rarely exercised in early practice (II, 1367, footnote).

During the House's consideration of several measures relating to the use of military force in the Persian Gulf, the Speaker took the floor not only to debate the pending question but also to commend the House on the quality of its recent debates on matters of war and peace and to explain his decision to vote on measures relating thereto even though not required to do so (Jan. 12, 1991, p. 1085).

No one is to speak impertinently or beside the question, superfluous, or tediously. *Scob., 31, 33; 2 Hats., 166, 168; Hale Parl., 133.*

§ 359. Impertinent, superfluous, or tedious speaking.

The House, by clause 1 of rule XVII, provides that the Member shall address himself to the question under debate, but neither by rule nor prac-

tice has the House suppressed superfluous or tedious speaking, its hour rule (clause 2 of rule XVII) being a sufficient safeguard in this respect.

No person is to use indecent language against the proceedings of the House; no prior determination of which is to be reflected on by any Member, unless he means to conclude with a motion to rescind it. *2 Hats., 169, 170; Rushw., p. 3, v. 1, fol. 42.* But while a proposition under consideration is still *in fieri*, though it has even been reported by a committee, reflections on it are no reflections on the House. *9 Grey, 508.*

§ 360. Language reflecting on the House.

In the practice of the House it has been held out of order in debate to cast reflections on either the House or its membership or its decisions, whether present or past (V, 5132-5138). A Member who had used offensive words against the character of the House, and who declined to explain, was censured (II, 1247). Words impeaching the loyalty of a portion of the membership have also been ruled out (V, 5139). Where a Member reiterated on the floor certain published charges against the House, action was taken, although other business had intervened, the question being considered one of privilege (III, 2637). It has been held inappropriate and not in order in debate to refer to the proceedings of a committee except such as have been formally reported to the House (V, 5080-5083; VIII, 2269, 2485-2493; June 24, 1958, pp. 12120, 12122), but this rule does not apply to the proceedings of a committee of a previous Congress (Feb. 2, 1914, p. 2782), and the rationale for this limitation on debate is in part obsolete under the modern practice of the House insofar as the doctrine is applied to open committee meetings and hearings.

No person, in speaking, is to mention a Member then present by his name, but to describe him by his seat in the House, or who spoke last, or on the other side of the question, &c., *Mem. in Hakew., 3; Smyth's Comw., L. 2, c. 3;* nor to digress from the matter to fall upon the person, *Scob., 31; Hale Parl., 133; 2 Hats., 166,* by speaking reviling, nipping,

§ 361. Personalities in debate forbidden.

or unmannerly words against a particular Member. *Smyth's Comw., L. 2, c. 3.* * * *

In the practice of the House, a Member is not permitted to refer to another Member by name (V, 5144; VIII, 2526, 2529, 2536), or to address him in the second person (V, 5140–5143; VI, 600; VIII, 2529). The proper reference to another Member is “the gentleman (or gentlewoman) from ———,” naming the Member’s State (June 14, 1978, p. 17615; July 21, 1982, p. 17314).

By rule of the House (clause 1 of rule XVII), as well as by parliamentary law, personalities are forbidden (V, 4979, 5145, 5163, 5169), whether against the Member in the Member’s capacity as Representative or otherwise (V, 5152, 5153), even if the references may be relevant to the pending question (Sept. 28, 1996, p. 25778). The House has censured a Member for gross personalities (II, 1251). The Chair may intervene to prevent improper references where it is evident that a particular Member is being described (Nov. 3, 1989, p. 27077).

The Chair does not rule on the veracity of a statement made by a Member in debate (Apr. 9, 1997, p. —). While accusing another Member of deceit engages in personality, merely accusing another Member of making a mistake does not (Oct. 26, 2000, p. —).

Clause 1 of rule XVII has been held to proscribe: (1) referring to an identifiable group of sitting Members as having committed a crime (*e.g.*, “stealing” an election or obstructing justice) (Feb. 27, 1985, p. 3898; Speaker Wright, Mar. 21, 1989, p. 5016; May 19, 1998, p. —); (2) referring in a personally critical manner to the political tactics of the Speaker or other Members (June 25, 1981, p. 14056); (3) referring to a particular Member of the House in a derogatory fashion (Nov. 3, 1989, p. 27077); (4) characterizing a Member as “the most impolite Member” (June 27, 1996, p. 15915); (5) questioning the integrity of a Member (July 25, 1996, p. 19170); and (6) denouncing the spirit in which a Member had spoken (V, 6981).

A distinction has been drawn between general language, which characterizes a measure or the political motivations behind a measure, and personalities (V, 5153, 5163, 5169). Although remarks in debate may not include personal attacks against a Member or an identifiable group of Members, they may address political motivations for legislative positions (Jan. 24, 1995, p. 2214; Mar. 8, 1995, pp. 7307, 7308; Nov. 17, 1995, p. 33832; June 13, 1996, p. 14043). For example, references to “down-in-the-dirt gutter politics” and “you people are going to pay” were held not to be personal references (Nov. 14, 1995, p. 32388). Similarly, characterizing a pending measure as a “patently petty political terrorist tactic” was held in order as a reference to the pending measure rather than to the motive or character of the measure’s proponent (Nov. 9, 1995, p. 31413). The Chair has also held in order a general reference that “big donors” receive “access to leadership power and decisions” because the reference did not identify

a specific Member as engaging in an improper quid pro quo (Apr. 9, 1997, p. —).

A Member should refrain from references in debate to the official conduct of a Member where such conduct is not the subject then pending before the House by way of either a report of the Committee on Standards of Official Conduct or another question of the privileges of the House (see, *e.g.*, July 24, 1990, p. 18917; Mar. 19, 1992, p. 6078; May 25, 1995, pp. 14434–37; Sept. 19, 1995, pp. 25454, 25455). This stricture also precludes a Member from reciting news articles discussing a Member's conduct (Sept. 24, 1996, p. 24318), reciting the content of a previously tabled resolution raising a question of the privileges of the House (Nov. 17, 1995, p. 33853; Sept. 19, 1996, p. 23855), or even referring to a Member's conduct by mere insinuation (Sept. 12, 1996, p. 22899). Notice of an intention to offer a resolution as a question of the privileges of the House under rule IX does not render a resolution "pending" and thereby permit references to conduct of a Member proposed to be addressed therein (Sept. 19, 1996, p. 23811).

The stricture against references to a Member's conduct not then pending before the House applies to the conduct of all sitting Members (Apr. 1, 1992, p. 7899), including conduct that has previously been resolved by the Committee on Standards of Official Conduct or the House (Sept. 20, 1995, pp. 25825, 25826; Sept. 24, 1996, pp. 24483, 24485; Apr. 17, 1997, p. —). This stricture does not apply to the conduct of a former Member, provided the reference is not made in an attempt to compare the conduct of a former Member with the conduct of a sitting Member (Sept. 12, 1996, pp. 22900, 22901).

Debate on a pending privileged resolution recommending disciplinary action against a Member may necessarily involve personalities. However, clause 1 of rule XVII still prohibits the use of language that is personally abusive (see, *e.g.*, July 31, 1979, p. 21584; Jan. 7, 1997, p. —). Furthermore, during the actual pendency of such a resolution, a Member may discuss a prior case reported to the House by the Committee on Standards of Official Conduct for the purpose of comparing the severity of the sanction recommended in that case with the severity of the sanction recommended in the pending case, provided that the Member does not identify, or discuss the details of the past conduct of, a sitting Member (Dec. 18, 1987, p. 36271).

In addition to the prohibition against addressing a Member's conduct when it is not actually pending before the House, the Speaker has advised that Members should refrain from references in debate (1) to the motivations of a Member who filed a complaint before the Committee on Standards of Official Conduct (June 15, 1988, p. 14623; July 6, 1988, p. 16630; Mar. 22, 1989, p. 5130; May 2, 1989, p. 7735; Nov. 3, 1989, p. 27077); (2) to personal criticism of a member of the Committee on Standards of Official Conduct (Apr. 1, 1992, p. 7899; Mar. 3, 1995, p. 6715; Sept. 19, 1996, p. 23812; Sept. 24, 1996, p. 24317); and (3) to an investigation undertaken by the Committee on Standards of Official Conduct, including sug-

gestion of a course of action (Mar. 3, 1995, p. 6715; Sept. 24, 1996, p. 24317; Sept. 28, 1996, p. 25778) or advocacy of an interim status report by the Committee (Sept. 12, 1996, p. 22900; Sept. 28, 1996, p. 25778).

A Member may not read in debate extraneous material critical of another Member, which would be improper if spoken in the Member's own words (May 25, 1995, pp. 14436, 14437; Sept. 12, 1996, p. 22898). Thus, words in a telegram read in debate which repudiated the "lies and half-truths" of a House committee report were ruled out of order as reflecting on the integrity of committee members (June 16, 1947, p. 7065), and unparliamentary references in debate to newspaper accounts used in support of a Member's personal criticism of another Member were similarly ruled out of order (Feb. 25, 1985, p. 3346).

Complaint of the conduct of the Speaker should be presented directly for the action of the House and not by way of debate on other matters (V, 5188). In a case wherein a Member used words insulting to the Speaker the House on a subsequent day, and after other business had intervened, censured the offender (II, 1248). In such a case the Speaker would ordinarily leave the chair while action should be taken by the House (II, 1366; V, 5188; VI, 565). In the 104th Congress the Chair reaffirmed that it is not in order to speak disrespectfully of the Speaker, and that under the precedents the sanctions for such violations transcend the ordinary requirements for timeliness of challenges (II, 1248; Jan. 4, 1995, p. 552; Jan. 19, 1995, p. 1599). It is not in order to arraign the personal conduct of the Speaker (Jan. 18, 1995, p. 1441; Jan. 19, 1995, p. 1601). For example, it is not in order to charge dishonesty or disregard of the rules (July 11, 1985, p. 18550), to reflect on his patriotism by accusing him of "kowtowing" to persons who would desecrate the flag (June 20, 1990, p. 14877), to refer to him as a "crybaby" (Nov. 16, 1995, p. 33394), or to refer to official conduct of the Speaker that has previously been resolved by the Committee on Standards of Official Conduct or the House (Apr. 17, 1997, p. —). The Chair may take the initiative to admonish Members for references in debate that disparage the Speaker (June 25, 1981, p. 14056; Mar. 22, 1996, p. 6077). Debate on a resolution authorizing the Speaker to entertain motions to suspend the rules may not engage in personality by discussing the official conduct of the Speaker, even if possibly relevant to the question of empowerment of the Speaker (Sept. 24, 1996, p. 24485).

* * * The consequences of a measure may be reprobated in strong terms; but to arraign the motives of those who propose to advocate it is a personality, and against order. *Qui digreditur a mate-*

§ 363. Motives of Members not to be arraigned.

ria ad personam, Mr. Speaker ought to suppress.
Ord. Com., 1604, Apr. 19.

The arraignment of the motives of Members is not permitted (V, 5147–51; Dec. 13, 1973, p. 41270), and the Speakers have intervened to prevent it, in the earlier practice preventing even mildest imputations (V, 5161, 5162). However, remarks in debate may address political, but not personal, motivations for legislative positions (Jan. 24, 1995, p. 2214; Mar. 8, 1995, pp. 7307, 7308; Nov. 17, 1995, p. 33832; June 13, 1996, p. 14043) or for committee membership (July 10, 1995, pp. 18257–59). Accusing another Member of hypocrisy has been held not in order (July 24, 1979, p. 20380; Mar. 29, 1995, p. 9675), and characterizing the motivation of a Member in offering an amendment as deceptive and hypocritical was ruled out of order (June 12, 1979, p. 11461). A statement in debate that an amendment could only be demagogic or racist because only demagoguery or racism impelled such an amendment was ruled out of order as impugning the motives of the Member offering the amendment (Dec. 3, 1973, pp. 41270, 41271). However, debate characterizing a pending measure as a “patently petty political terrorist tactic” was held in order as directed at the pending measure rather than the motive or the character of its proponent (Nov. 9, 1995, p. 31413). While in debate the assertion of one Member may be declared untrue by another, yet in so doing an intentional misrepresentation must not be implied (V, 5157–5160), and if stated or implied is censurable (II, 1305) and presents a question of privilege (III, 2717; VI, 607). A Member in debate having declared the words of another “a base lie,” censure was inflicted by the House on the offender (II, 1249).

No one is to disturb another in his speech by hissing, coughing, spitting, 6 *Grey*, 322; *Scob.*, 8; *D'Ewes*, 332, col. 1, 640, col. 2, speaking or whispering to another, *Scob.*, 6; *D'Ewes*, 487, col. 1; nor stand up to interrupt him, *Town*, col. 205; *Mem. in Hakew.*, 31; nor to pass between the Speaker and the speaking Member, nor to go across the House, *Scob.*, 6, or to walk up and down it, or to take books or papers from the table, or write there, 2 *Hats.*, 171, p. 170.

The House has, by clause 5 of rule XVII, prescribed certain rules of decorum differing somewhat from this provision of the parliamentary law, but supplemental to it rather than antagonistic. In one respect, however, the practice of the House differs from the apparent intent of the parliamen-

tary law. In the House a Member may interrupt by addressing the Chair for permission of the Member speaking (V, 5006; VIII, 2465); but it is entirely within the discretion of the Member occupying the floor to determine when and by whom he shall be interrupted (V, 5007, 5008; VIII, 2463, 2465). There is no rule of the House requiring a Member having the floor to yield to another Member to whom he has referred during debate (Aug. 2, 1984, p. 22241). A Member may ask another to yield from any microphone in the Chamber, including those in the well, so long as not crossing between the Member having the floor and the Chair (June 5, 1998, p. —). The Chair may take the initiative in preserving order when a Member declining to yield in debate continues to be interrupted by another Member, may order that the interrupting Member's remarks not appear in the Record (July 26, 1984, p. 21247), and may admonish Members not to converse with a Member attempting to address the House (Feb. 21, 1984, p. 2758), as it is not in order to engage in disruption while another is delivering remarks in debate (June 27, 1996, p. 15915). On the opening day of the 103d Congress, during the customary announcement of policies with respect to particular aspects of the legislative process, the Chair elaborated on the rules of order in debate with a general statement concerning decorum in the House (Jan. 5, 1993, p. 105). Under this provision, the Chair may require a line of Members waiting to sign a discharge petition to proceed to the rostrum from the far right-hand aisle and require the line not to stand between the Chair and Members engaging in debate (Oct. 24, 1997, p. —). Hissing and jeering is not proper decorum in the House (May 21, 1998, p. —). For further discussion of interruptions in debate, see § 946, *infra*.

Nevertheless, if a Member finds that it is not the inclination of the House to hear him, and that by conversation or any other noise they endeavor to drown his voice, it is his most prudent way to submit to the pleasure of the House, and sit down; for it scarcely ever happens that they are guilty of this piece of ill manners without sufficient reason, or inattention to a Member who says anything worth their hearing. 2 *Hats.*, 77, 78.

§ 365. Parliamentary method of silencing a tedious Member.

In the House, where the previous question and hour rule of debate have been used for many years, the parliamentary method of suppressing a tedious Member has never been imported into the practice (V, 5445).

If repeated calls do not produce order, the Speaker may call by his name any Member obstinately persisting in irregularity; whereupon the House may require the Member to withdraw. He is then to be heard in exculpation, and to withdraw. Then the Speaker states the offense committed; and the House considers the degree of punishment they will inflict. *2 Hats., 167, 7, 8, 172.*

§ 366. The parliamentary law as to naming a disorderly Member.

This provision of parliamentary law should be in conjunction with clause 4 of rule XVII, §§ 960–961, *infra*, particularly as this provision relates to the ultimate authority of the House to determine whether a Member ignoring repeated calls to order should be permitted to proceed in order.

For instances of assaults and affrays in the House of Commons, and the proceedings thereon, see *1 Pet. Misc., 82; 3 Grey, 128; 4 Grey, 328; 5 Grey, 382; 6 Grey, 254; 10 Grey, 8*. Whenever warm words or an assault have passed between Members, the House, for the protection of their Members, requires them to declare in their places not to prosecute any quarrel, *3 Grey, 128, 293; 5 Grey, 280*; or orders them to attend the Speaker, who is to accommodate their differences, and report to the House, *3 Grey, 419*; and they are put under restraint if they refuse, or until they do. *9 Grey, 234, 312.*

§ 367. Proceedings in cases of assaults and affrays.

In several instances assaults and affrays have occurred on the floor of the House. Sometimes the House has allowed these affairs to pass without notice, the Members concerned making apologies either personally or through other Members (II, 1658–1662). In other cases the House has exacted apologies (II, 1646–1651, 1657), or required the offending Members to pledge themselves before the House to keep the peace (II, 1643). In case of an aggravated assault by one Member on another on the portico

of the Capitol for words spoken in debate, the House censured the assailant and three other Members who had been present, armed, to prevent interference (II, 1655, 1656). Assaults or affrays in the Committee of the Whole are dealt with by the House (II, 1648–1651).

Disorderly words are not to be noticed till the Member has finished his speech. § 368. Parliamentary law as to taking down disorderly words. *5 Grey, 356; 6 Grey, 60.* Then the person objecting to them, and desiring them to be taken down by the Clerk at the table, must repeat them. The Speaker then may direct the Clerk to take them down in his minutes; but if he thinks them not disorderly, he delays the direction. If the call becomes pretty general, he orders the Clerk to take them down, as stated by the objecting Member. They are then a part of his minutes, and when read to the offending Member, he may deny they were his words, and the House must then decide by a question whether they are his words or not. Then the Member may justify them, or explain the sense in which he used them, or apologize. If the House is satisfied, no further proceeding is necessary. But if two Members still insist to take the sense of the House, the Member must withdraw before that question is stated, and then the sense of the House is to be taken. *2 Hats., 199; 4 Grey, 170; 6 Grey, 59.* When any Member has spoken, or other business intervened, after offensive words spoken, they can not be taken notice of for censure. And this is for the common security of all, and to prevent mistakes which must happen if words are not taken down immediately. Formerly they might be taken down at

any time the same day. *2 Hats., 196; Mem. in Hakew., 71; 3 Grey, 48; 9 Grey, 514.*

The House has, by clause 4 of rule XVII, provided a method of procedure in cases of disorderly words. The House permits and requires them to be noticed as soon as uttered, and has not insisted that the offending Member withdraw while the House is deciding as to its course of action.

Disorderly words spoken in a committee must be written down as in the House; but the committee can only report them to the House for animadversion. *6 Grey, 46.*

§ 369. Disorderly words taken down and reported from Committee of the Whole.

This provision of the parliamentary law has been applied to the Committee of the Whole, rather than to select or standing committees, which are separately empowered to enforce rules of decorum (clause 1(a) of rule XI, which incorporates the provisions of rule XVII where applicable). The House has censured a Member for disorderly words spoken in Committee of the Whole and reported therefrom (II, 1259).

In Parliament, to speak irreverently or seditiously against the King is against order. *Smyth's Comw., L. 2, c. 3; 2 Hats., 170.*

§ 370. References in debate to the Executive.

This provision of the parliamentary law is manifestly inapplicable to the House (V, 5086); and it has been held in order in debate to refer to the President of the United States or his opinions, either with approval or criticism, provided that such reference be relevant to the subject under discussion and otherwise conformable to the Rules of the House (V, 5087–5091; VIII, 2500). Under this standard the following references are in order: (1) a reference to the probable action of the President (V, 5092); (2) an adjuration to the President to keep his word (although an improper form of address) (Dec. 19, 1995, p. 37601); and (3) an accusation that the President “frivolously vetoed” a bill (Nov. 8, 1995, p. 31785). Although wide latitude is permitted in debate on a proposition to impeach the President (V, 5093), Members must abstain from language personally offensive (V, 5094; Dec. 18, 1998, p. —); and Members must abstain from comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. —). Furthermore, Members may not refer to evidence of alleged impeachable offenses by the President contained in a communication from an independent counsel pending before a House committee (Sept. 14, 1998, p. —; Sept. 17, 1998, p. —), although they may refer to the communication, itself, within the confines of proper decorum in debate

(Oct. 6, 1998, p. —). Personal abuse, innuendo, or ridicule of the President is not permitted (VIII, 2497; Aug. 12, 1986, p. 21078; Oct. 21, 1987, p. 8857; Sept. 21, 1994, p. 25147). Under this standard the following references are not in order: (1) calling the President a “liar” or accusing him of “lying” (June 26, 1985, p. 17394; Sept. 24, 1992, pp. 27345, 27346; Nov. 15, 1995, p. 32587; June 6, 1996, pp. 13228, 13229; Mar. 18, 1998, p. —), or suggesting mendacity (such as suggesting the President misrepresented the truth, attempted to obstruct justice, and encouraged others to perjure themselves (Feb. 25, 1998, p. —), questioning his credibility (Feb. 25, 1998, p. —), charging him with intent to be intellectually dishonest (May 9, 1990, p. 9828), or stating that many were convinced he had “not been honest” (Mar. 5, 1998, p. —); (2) attributing to him “hypocrisy” (Sept. 25, 1992, p. 27674); (3) accusing him of giving “aid and comfort to the enemy” (Jan. 25, 1995, p. 2352); (4) accusing him of “demagoguery” (Jan. 23, 1996, p. 1144; Jan. 24, 1996, pp. 1220, 1221; May 30, 1996, pp. 12646, 12647); (5) calling him a “draft-dodger” or accusing him of “raping the truth” (Apr. 24, 1996, pp. 8807, 8808; Sept. 30, 1996, p. —); (6) describing his action as “cowardly” (Oct. 25, 1989, p. 25817); (7) referring to him as “a little bugger” (Nov. 18, 1995, p. 33974); (8) alluding to alleged sexual misconduct on his part (May 10, 1994, p. 9697; Feb. 25, 1998, p. —; Mar. 5, 1998, p. —; May 18, 1998, p. —); (9) alluding to a propensity for unethical behavior on his part (June 20, 1996, p. 14829); (10) discussing “charges” leveled at the President or under investigation (Mar. 19, 1998, p. —; June 11, 1998, p. —), including alluding to “fund-raising abuses” (Mar. 14, 2000, p. —) or speculating that the Vice President might someday pardon the President for certain charges (Apr. 12, 2000, p. —); or discussing alleged criminal conduct (Sept. 10, 1998, p. —); and (11) discussing personal conduct even as a point of reference or comparison (July 16, 1998, p. —; Sept. 9, 1998, p. —). The Chair may admonish Members transgressing this stricture even after other debate has intervened (Jan. 23, 1996, p. 1144).

A Member may not read in debate extraneous material personally abusive of the President, which would be improper if spoken in the Member's own words (July 12, 1996, pp. 17109, 17110; July 26, 1996, p. 19458; Feb. 26, 1998, p. —; Mar. 3, 1993, p. 3958; Nov. 15, 1995, p. 32587; May 2, 1996, p. 10010; Mar. 17, 1998, p. —). This prohibition includes the recitation of another Member's criticism of the President made off the floor (even if recited as a rebuttal to such criticism) (Dec. 17, 1998, p. —).

The Chair has advised that the protections afforded by Jefferson's Manual and the precedents against unparliamentary references to the President, himself, do not necessarily obtain for members of his family (July 12, 1990, p. 17206). In the 102d Congress, the Speaker enunciated a minimal standard of propriety for all debate concerning nominated candidates for the Presidency, based on the traditional proscription against personally offensive references to the President even in his capacity as a candidate (Speaker Foley, Sept. 24, 1992, p. 27344).

For discussion of the stricture against addressing remarks in debate to the President, as in the second person, see § 945, *infra*.

On January 27, 1909 (VIII, 2497), the House adopted a report of a committee appointed to investigate the question, which report in part stated:

“The freedom of speech in debate in the House should never be denied or abridged, but freedom of speech in debate does not mean license to indulge in personal abuses or ridicule. The right of Members of the two Houses of Congress to criticize the official acts of the President and other executive officers is beyond question, but this right is subject to proper rules requiring decorum in debate. Such right of criticism is inherent upon legislative authority. The right to legislate involves the right to consider conditions as they are and to contrast present conditions with those of the past or those desired in the future. The right to correct abuses by legislation carries the right to consider and discuss abuses which exist or which are feared.

“It is, however, the duty of the House to require its Members in speech or debate to preserve that proper restraint which will permit the House to conduct its business in an orderly manner and without unnecessarily and unduly exciting animosity among its Members or antagonism from those other branches of the Government with which the House is correlated.”

It is a breach of order in debate to notice what has been said on the same subject in the other House, or the particular votes or majorities on it there; because the opinion of each House should be left to its own independency, not to be influenced by the proceedings of the other; and the quoting them might beget reflections leading to a misunderstanding between the two Houses. 8 *Grey*, 22.

§ 371. The other House and its Members not to be criticized in debate.

Until former clause 1 of rule XIV (current clause 1 of rule XVII) was amended by adoption of the rules in the 100th Congress (H. Res. 5, Jan. 6, 1987, p. 6) and again in the 101st Congress (H. Res. 5, Jan. 3, 1989, p. 72), this principle of comity and the parliamentary law as described by Jefferson governed debate in the House to the full extent of its provisions (see generally, V, 5095–5130; VIII, 2501–21; July 31, 1984, p. 21670; Deschler-Brown Precedents, vol. 13, ch. 29, sec. 44). Clause 1 of rule XVII governs debate concerning the Senate and permits some factual references that are a matter of public record and that are relevant to the making of legislative history on the pending measure. It is the duty of the Speaker to call to order a Member who criticizes the actions of the Senate (see § 374, *infra*),

and the Speaker may admonish a Member even after intervening recognition (Oct. 12, 1999, p. —). The House has, by unanimous consent, permitted tributes to a retiring Senator (Sept. 18, 2000, p. —).

It is not in order in debate to mention the name of a Senator (except as the sponsor of a measure or in quotations from Senate proceedings for the purpose of making legislative history). This rule has been applied when a Member in debate: (1) either criticizes (V, 5121, 5122; VIII, 2518, 2521; July 10, 1990, p. 17205) or compliments (VIII, 2509; Apr. 21, 1993, p. 8013; Nov. 18, 1999, p. —); (2) refers to a Senator's vote on a proposition (Deschler-Brown Precedents, vol. 13, ch. 29, secs. 44.38–44.44; (3) characterizes the position of a Senator on a legislative issue (Deschler-Brown Precedents, vol. 13, ch. 29, secs. 44.17, 44.19; Oct. 11, 1984, p. 32153; July 12, 1990, p. 17205); (4) publicizes the telephone number of a Senator in an attempt to influence his future vote (Oct. 25, 1990, p. 34083); or (5) speculates as to the intent or motives of a Senator (Oct. 11, 1984, pp. 32221–23; Oct. 21, 1997, p. —). The prohibition against such references to Senators includes a reference not explicitly naming the Senator (VIII, 2512; Feb. 23, 1994, p. 2658; June 30, 1995, p. 18153; Feb. 27, 1997, p. —) and references to statements or actions of Senators occurring outside the Senate Chamber (VIII, 2515; Deschler-Brown Precedents, vol. 13, ch. 29, secs. 44.31–44.37; Apr. 11, 2000, p. —). The prohibition also extends to the reading of a paper making criticisms of a Senator (V, 5127) and references to another person's criticism of a Senator (Aug. 4, 1983, p. 23145). Remarks in debate during the pendency of an impeachment resolution may not include comparisons to the personal conduct of sitting Members of the House or Senate (Dec. 18, 1998, p. —).

With respect to references to Members of the Senate acting in another capacity, references to former Members of the House who are presently Senators are only permissible if they merely address prior House service and are not implicitly critical of Senate service (May 8, 1984, p. 11428). A Member of the House has been permitted to refer to a speech made in the Senate by one no longer a Member of that body (V, 5112), although references to Senate proceedings on legislation in the current Congress other than those expressly permitted to establish legislative history should be avoided. In the 104th Congress the Chair held that the precise standard in clause 1 of former rule XIV (current rule XVII) for references to "individual Members of the Senate" does not apply to references to former Senators or to the Vice President in his former capacity as a Senator (Dec. 14, 1995, p. 36968). It has even been held out of order to criticize words spoken in the Senate by one not a Member of that body in the course of an impeachment trial (V, 5106).

References in debate to the Vice President (as President of the Senate) are governed by the standards of reference permitted toward the President rather than the more stringent prohibitions under clause 1 of former rule XIV (current rule XVII) against references to sitting Senators. Therefore, a Member may criticize in debate the policies, or candidacy, of the Vice

President but may not engage in personality (Dec. 14, 1995, p. 36968; July 14, 1998, p. —; Sept. 20, 2000, p. —). As such, it is not in order to allude to “wrongdoings [including] fund-raising telephone calls by the Vice President” (Mar. 14, 2000, p. —); to speculate that he might someday “pardon” the President (Apr. 12, 2000, p. —); to accuse him of lying (Sept. 20, 2000, p. —; Sept. 21, 2000, p. —); or to suggest “he has a problem with the truth” (Oct. 5, 2000, p. —). References to the Vice President contained in extraneous material read in debate are held to the same standard as words spoken in debate (Sept. 19, 2000, p. —).

References to Members of the Senate in their capacities as candidates for the Presidency or other office are not prohibited; where a Senator is a candidate for President or Vice President his official policies, actions, and opinions as a candidate may be criticized in terms not personally offensive (Speaker Wright, Sept. 29, 1988, p. 26683), but references attacking the character or integrity of a Senator even in that context are not in order (Oct. 30, 1979, p. 30150).

It is not in order to characterize the position of the Senate (Oct. 5, 1984, p. 30326) or speculate as to the intent of the Senate on legislation (Oct. 11, 1984, pp. 32221–23). Also, it is not in order to characterize Senate action or inaction (see, *e.g.*, Apr. 29, 1986, p. 8856; July 31, 1986, p. 18253; Aug. 4, 1987, p. 22288; Oct. 28, 1993, p. 26538; Jan. 3, 1996, p. 61). For example, the rule prohibits: (1) characterization of the action of a Senate committee on a Presidential nominee (July 9, 1992, p. 18342), including advocating that it take a certain action with respect thereto (Feb. 7, 1984, p. 1979; Oct. 8, 1991, p. 25754; May 24, 1995, p. 14304; Oct. 30, 1997, p. —); (2) any criticism of Senate action (V, 5114–5120; Dec. 10, 1980, p. 33205; Apr. 27, 1993, p. 8271), including a characterization of Senate action as a “further injustice” (Oct. 6, 1999, p. —); (3) questions with respect to the courage or resolve of its Members to take an action (Aug. 4, 1989, p. 19315); and (4) an accusation that the Senate majority leadership failed to schedule a bill (Oct. 5, 1998, p. —) or that the Senate minority held a bill “hostage” (Oct. 5, 1999, p. —). Furthermore, it is not in order in debate to specifically urge that the Senate take certain action, such as suggesting that the President urge Senate conferees to meet with House conferees on specific legislation (Aug. 2, 1984, p. 22270), or urge Members of the House to “lobby” Senators on an issue (Apr. 4, 2000, p. —).

A Member may not read or quote from the record of speeches or proceedings in the Senate, or insert such material in the Record (V, 5107–5111; VIII, 2501–2506; June 25, 1986, p. 15576; Deschler-Brown Precedents, vol. 13, ch. 29, secs. 44.23–44.25; Apr. 11, 2000, p. —) except to make legislative history on a measure then under debate, and the prohibition extends to quoting accounts of Senate debates printed elsewhere, such as in reprints or in the press (VIII, 2053). After examination by a committee, a speech reflecting on the character of the Senate was ordered to be stricken from the Record, on the ground that it tended to create

“unfriendly conditions between the two bodies * * * obstructive of wise legislation and little short of a public calamity” (V, 5129).

Even prior to the 100th Congress (as indicated in Procedure, ch. 29, sec. 14.1) it has been permissible to refer to proceedings in the other House, provided the reference does not contravene the principles stated by Jefferson. A Member must be permitted to refer to the existence of the Senate and its functions in a general and neutral way. For example, a Member may oppose a sine die adjournment resolution on the grounds that Congress should stay in session to complete action on specified legislation then pending in the Senate (V, 5115). It is appropriate to state whether or not the Senate has acted on House-passed legislation as long as criticism is neither stated nor implied (Oct. 4, 1984, p. 30047). If references to the Senate are appropriate, the Member delivering them is not required to use the term “the other body,” and the use of the term “Senate” is not a per se violation of the rule of comity (Oct. 4, 1984, p. 30047). It is in order in debate, while discussing a question involving conference committee procedure, to state what actually occurred in a conference committee session, without referring to or criticizing a named Member of the Senate (July 29, 1935, p. 12011). Where a Member has been assailed in the Senate, he has been permitted to explain his own conduct and motives, without bringing the whole controversy into discussion or assailing the Senator (V, 5123–5126). Propositions relating to breaches of these principles have been entertained as of privilege (V, 5129, 6980).

On one occasion before the rule was changed in the 101st Congress to permit certain quotations from Senate proceedings for the purpose of making legislative history, the Speaker entertained a unanimous-consent request that a Member be permitted to refer in debate to Senate proceedings (to quote a statement by the Senate Majority Leader as to probable Senate action on the measure then pending in the House), but the Speaker first ascertained in what manner the reference would be made, in order to assure that remarks critical of the Senate, its Members or proceedings would not be made (Speaker O'Neill, June 4, 1980, p. 13212). But the Chair will not entertain such a request where the references would necessarily imply criticism of the Senate, such as to respond to remarks in the Senate which were critical of Members of the House (VIII, 2519). The House has, by unanimous consent, permitted tributes to a retiring Senator (Sept. 18, 2000, p. —).

Neither House can exercise any authority over a Member or officer of the other, but should complain to the House of which he is, and leave the punishment to them.

§ 373. Complaint by one House of conduct of a Member of the other.

In a notable instance, wherein a Member of the House had assaulted a Senator in the Senate Chamber for words spoken in debate, the Senate

examined the breach of privilege and transmitted its report to the House, which punished the Member (II, 1622). A Senator having assailed a House Member in debate, the House messaged to the Senate a resolution declaring the language a breach of privilege and requested the Senate to take appropriate action (Sept. 27, 1951, p. 12270). The Senator subsequently asked unanimous consent to correct his remarks in the permanent Congressional Record, but objection was raised (Sept. 28, 1951, p. 12383). But where certain Members of the House, in a published letter, sought to influence the vote of a Senator in an impeachment trial, the House declined to consider the matter as a breach of privilege (III, 2657). While on one occasion it was held that a resolution offered in the House requesting the Senate to expunge from the Record statements in criticism of a Member of the House did not constitute a question of privilege, being in violation of the rule prohibiting references to the Senate in debate (VIII, 2519), a properly drafted resolution referring to language published in the record on a designated page of Senate proceedings as constituting a breach of privilege and requesting the Senate to take appropriate action concerning the subject has been held to present a question of the privileges of the House (VIII, 2516).

* * * Where the complaint is of words dis-
 § 374. Duty of the Speaker to prevent expressions offensive to the other House. respectfully spoken by a Member of another House, it is difficult to obtain punishment, because of the rules supposed necessary to be observed (as to the immediate noting down of words) for the security of Members. Therefore it is the duty of the House, and more particularly of the Speaker, to interfere immediately, and not to permit expressions to go unnoticed which may give a ground of complaint to the other House, and introduce proceedings and mutual accusations between the two Houses, which can hardly be terminated without difficulty and disorder. *3 Hats., 51.*

In the House this rule of parliamentary law is considered as binding on the Chair (V, 5130; VIII, 2465), and it is the duty of the Speaker to call to order a Member who criticizes the actions of the Senate, its Members or committees in debate or through an insertion in the Record (Speaker Albert, Apr. 17, 1975, p. 10458; Oct. 7, 1975, p. 32055). The Chair has

distinguished between engaging in personality toward another Member of the House, as to which the Chair normally awaits a point of order from the floor, and improper references to Members of the Senate, which violate comity between the Houses whether or not engaging in personality, as to which the Chair normally takes initiative (Feb. 27, 1997, p. —). The Chair may admonish Members to avoid unparliamentary references to the Senate even after intervening recognition (Oct. 12, 1999, p. —). Pending consideration of a measure relating to the Senate, the Speaker announced his intention to strictly enforce this provision of Jefferson's Manual prohibiting improper references to the Senate, and to deny recognition to Members violating the prohibition, subject to permission of the House to proceed in order (Speaker O'Neill, June 16, 1982, p. 13843). While the Chair should take the initiative to prevent improper references to the Senate in debate, the Chair will not respond to hypothetical questions as to the propriety of possible characterizations of Senate actions prior to their use in debate (Oct. 24, 1985, p. 28819). For a further discussion of the Speaker's duties regarding unparliamentary debate, see §§ 960–961, *infra*.

No Member may be present when a bill or any business concerning himself is debating; nor is any Member to speak to the merits of it till he withdraws.

§ 375. Course of the Member when business concerning himself is debating.

2 Hats., 219. The rule is that if a charge against a Member arise out of a report of a committee, or examination of witnesses in the House, as the Member knows from that to what points he is to direct his exculpation, he may be heard to those points before any question is moved or stated against him. He is then to be heard, and withdraw before any question is moved. But if the question itself is the charge, as for breach of order or matter arising in the debate, then the charge must be stated (that is, the question must be moved), himself heard, and then to withdraw. *2 Hats., 121, 122.*

In 1832, during proceedings for the censure of a Member, the Speaker informed the Member that he should retire (II, 1366); but this seems to be an exceptional instance of the enforcement of the law of Parliament. In other cases, after the proposition for censure or expulsion has been proposed, Members have been heard in debate, either as a matter of right

(II, 1286), as a matter of course (II, 1246, 1253), by express provision (II, 1273), and in writing (II, 1273), or by unanimous consent (II, 1275). A Member against whom a resolution of censure was pending was asked by the Speaker if he desired to be heard (VI, 236). But a Member was not permitted to depute another Member to speak in his behalf (II, 1273). In modern practice the Member has been permitted to speak in his own behalf, both in censure (June 10, 1980, pp. 13802–11) and expulsion proceedings (Oct. 2, 1980, pp. 28953–78). A Member-elect has been permitted to participate in debate on a resolution relating to his right to take the oath (Jan. 10, 1967, p. 23).

Where the private interests of a Member are concerned in a bill or question he is to withdraw. And where such an interest has appeared, his voice has been disallowed, even after a division. In a case so contrary, not only to the laws of decency, but to the fundamental principle of the social compact, which denies to any man to be a judge in his own cause, it is for the honor of the House that this rule of immemorial observance should be strictly adhered to. *2 Hats., 119, 121; 6 Grey, 368.*

In the House it has not been usual for the Member to withdraw when his private interests are concerned in a pending measure, but the House has provided by clause 1 of rule III that the Member shall not vote in such a contingency. In one instance the Senate disallowed a vote given by a Senator on a question relating to his own right to a seat; but the House has never had occasion to proceed so far (V, 5959).

No Member is to come into the House with his head covered, nor to remove from one place to another with his hat on, nor is to put on his hat in coming in or removing, until he be set down in his place. *Scob., 6.*

In 1837 the parliamentary practice of wearing hats during the session was abolished by adoption of current clause 5 of rule XVII. See § 962, *infra*.

§ 378. Adjournment of questions of order. A question of order may be adjourned to give time to look into precedents. *2 Hats., 118.*

The Speaker has declined, on a difficult question of order, to rule until he had taken time for examination (III, 2725; VI, 432; VII, 2106; VIII, 2174, 2396, 3475), and may take a parliamentary inquiry under advisement, especially where not related to the pending proceedings (VIII, 2174; Apr. 7, 1992, p. 8274), but it is conceivable that a case might arise wherein this privilege of the Chair would require approval of the majority of the House, to prevent arbitrary obstruction of the pending business by the Chair. On occasion, the Chair has reversed as erroneous a decision previously made (VI, 639; VII, 849; VIII, 2794, 3435). The law of Parliament evidently contemplates that the adjournment of a question of order shall be controlled by the House.

§ 379. House's control over question of the Speaker. In Parliament, all decisions of the Speaker may be controlled by the House. *3 Grey, 319.*

The Speaker's decision on a decision of order is subject to appeal by any Member (clause 5 of rule I).

SEC. XVIII—ORDERS OF THE HOUSE

Of right, the door of the House ought not to be shut, but to be kept by porters, or Sergeants-at-Arms, assigned for that purpose. *Mod ten. Parl., 23.*

§ 380. Keeping of the doors of the House.

The only case where a Member has a right to insist on anything, is where he calls for the execution of a subsisting order of the House. Here there having been already a resolution, any person has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution; and no debate or delay can be had on it.

§ 381. Right of the Member to demand execution of the subsisting order.

As a request for unanimous consent to consider a bill is in effect a request to suspend the order of business temporarily, a Member has the right at any time to demand the "regular order" (IV, 3058). Where the regular order is demanded pending a request for unanimous consent, further res-