

# Chapter 42

## Questions of Privilege

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*Manual* §§ 287–309, 698–713**I. Introductory****§ 1. In General****Definitions and Distinctions**

The term “privilege” arises frequently in the rules governing the procedures of the House. It may refer to questions of the privileges of the House, to questions of personal privilege, to the privilege of Members from arrest, or to the privilege of certain motions. This chapter focuses on questions of the privileges of the House and on questions of personal privilege.

Questions of privilege are to be distinguished from privileged questions. The latter relate merely to the order or priority of business under the rules of the House, and the former pertain to the safety and dignity of the House or the integrity of its proceedings or to the rights or reputation of its Members (3 Hinds §§ 2654, 2718). Privileged questions, see ORDER OF BUSINESS; PRIVILEGED BUSINESS; *Manual* §§ 853–857.

Questions of privilege are classified by rule IX as (1) those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings, and (2) the rights, reputation, and conduct of Members, individually, in their representative capacity only. This rule, adopted in 1880, was based on procedures that had been followed in the House as a matter of longstanding custom. 3 Hinds § 2521. The rule was amended in the 103d Congress to permit the Speaker to postpone consideration of certain questions of privilege for up to two legislative days and to designate a time for consideration within that period. See § 14, *infra*.

Questions of the privileges of the House are brought before it in the form of a resolution. § 14, *infra*. Questions of personal privilege are raised by a Member from the floor when recognized for debate for that purpose. § 19, *infra*.

**Privilege of Members From Arrest**

Under the Constitution, Senators and Representatives are privileged from arrest, except for “treason, felony, and breach of the peace,” during attendance at a session and in going to and returning therefrom. U.S. Const. art. I, § 6. This privilege may be invoked in cases not covered by the excep-

tions, as where there has been an arrest for fraud and delinquency in connection with a civil proceeding. 3 Hinds § 2676. The exception has been construed to mean all indictable crimes. 3 Hinds § 2673. The privilege does not protect a Member from arrest in any criminal case. *Manual* § 91. Thus, a Member may be arrested and prosecuted for a felony specified in a timber protection statute; and the fact that Congress was in recess at the time of his arrest is no defense. *Williamson v. United States*, 207 U.S. 425 (1908). An investigation by committee of a Member's arrest to determine whether it was in violation of the privilege may be initiated by resolution. 3 Hinds § 2673. For more detailed analysis of this privilege, see Deschler Ch 7 § 18.

### **Privilege of Speech and Debate**

Article I, section 6, clause 1 of the Constitution provides that Members or Senators “shall not be questioned in any other place” for “any speech or debate in either House.” This clause precludes judicial inquiry into the motivation, preparation, and content of a Member's speech. *Manual* § 93. All speech, debate, and remarks on the floor are privileged, as is material inserted in the *Congressional Record* by a Member with the consent of the House. Deschler Ch 7 § 16. However, the Supreme Court has circumscribed the protection provided under the clause by upholding a grand jury inquiry into the possession and nonlegislative use of classified documents by a Member. *Gravel v. United States*, 408 U.S. 606 (1972). The Court has also sustained the validity of an indictment of a Member for accepting an illegal bribe to perform legislative acts. *United States v. Brewster*, 408 U.S. 501 (1972). This clause does not prevent the House from applying rules relating to “proper debate” and from adopting procedures to deal with transgressions of those rules. *Manual* § 303.

### **§ 2. Precedence of Questions of Privilege**

Under rule IX, a question of privilege has been held to take precedence over all questions except the motion to adjourn. This precedence is given to both questions of the privileges of the House and to questions of personal privilege. “The rights and privileges of the Members of the House, in the discharge of their functions, are sacred,” said Speaker Reed in 1890, “and the House can undertake no higher duty than the conservation of all those rights and privileges intact. Even if the case arises under dubious circumstances, it is proper for the House to pause and give suitable heed to any question which any Member raises with regard to his rights and privileges as a Member.” 3 Hinds § 2524. Under rule IX clause 2, the right to bring a question of privilege before the House without notice is restricted.

*Manual* §§ 699, 713. Only the Majority and Minority Leaders can now raise such a question “at any time.” See § 14, *infra*.

Under rule IX questions of privilege have been held to take precedence over other business. *Manual* § 709; 3 Hinds § 2523. For example:

- Reading of messages from the President (which are received but do not displace the question of privilege). 5 Hinds §§ 6640–6642.
- District of Columbia business under rule XV clause 4. Deschler Ch 11 § 5.8.
- Calendar Wednesday business under rule XV clause 7. 7 Cannon §§ 908–910; Deschler Ch 11 § 5.7.
- Special orders for the consideration of business. 3 Hinds §§ 2524, 2525, 2554.
- Reports from the Committee on Rules. 8 Cannon § 3491.
- Motions to resolve into Committee of the Whole. 8 Cannon § 3461.
- Motions to reconsider. 5 Hinds §§ 5673–5676.
- Motions to suspend the rules. 3 Hinds § 2553; 6 Cannon §§ 553, 565.
- Scheduled special-order speeches. Deschler-Brown Ch 29 § 10.75.
- Senate amendments undisposed of after rejection of a conference report. 3 Hinds § 2531.

In general, one question of privilege may not take precedence over another. 3 Hinds §§ 2534, 2552, 2581. The Chair’s power of recognition (and his scheduling prerogative under rule IX) determine which of two matters of equal privilege is considered first. *Manual* § 709.

Because only one question of privilege may be pending at a time, another Member will not be recognized during such time to present another question of privilege. This stricture includes questions of personal privilege. *Manual* § 711; 3 Hinds § 2533; Deschler Ch 11 § 5.4.

A question of privilege loses its privilege when connected with or amended by a proposition not privileged. 3 Hinds § 2551; 5 Hinds § 5890.

### **Precedence Over the Previous Question**

The question of privilege takes precedence over the consideration of a motion for the previous question. Deschler Ch 11 § 5.9. It supersedes the consideration of a proposition and must be disposed of first, even where the previous question has been ordered on such proposition, unless the previous question has been ordered to final passage under a special rule prohibiting any intervening motions. 3 Hinds §§ 2522, 2532; 6 Cannon § 561; Deschler Ch 11 § 5.3.

### **Interruptions**

By rising to a question of privilege, a Member may not deprive another Member of the floor. 5 Hinds § 5002; 8 Cannon §§ 2458, 2528; Deschler

Ch 11 § 23.2. However, the latter may yield him time for preliminary debate on the question. Deschler Ch 11 § 23.3. Such a question may not interrupt a roll call or yea-and-nay vote. 5 Hinds §§ 6051, 6052, 6058; 6 Cannon §§ 554, 564.

A question of privilege may interrupt the consideration of a bill under a special order. 3 Hinds §§ 2524, 2525. It has precedence at a time set apart by special order for other business. 6 Cannon § 560. A question of the privileges of the House may interrupt the reading of the Journal (Deschler Ch 11 § 5.6), whereas a question of personal privilege may not (Deschler Ch 11 § 23.1).

A Member's announcement of intent to offer a resolution as a question of privilege may take precedence over a special order reported from the Committee on Rules. However, where a special order is pending, such announcements are counted against debate on the resolution absent unanimous consent to the contrary. *Manual* § 709.

#### **As Unfinished Business**

A question of privilege pending at the time of adjournment becomes unfinished business on the next day. Deschler Ch 11 § 5.5. It takes precedence over unfinished business that is privileged under rule XIV (order of business). *Manual* § 709.

## **II. Privilege of the House**

### **A. Basis of Privilege**

#### **§ 3. Introductory; What Constitutes a Question of Privilege**

##### **Elements Generally**

Under rule IX questions of the privileges of the House are those that affect its rights collectively, "its safety, dignity, and the integrity of its proceedings. . . ." *Manual* § 698. A question asserted to involve the privileges of the House must involve one or more of the elements specified by rule IX. Deschler-Brown Ch 31 § 1.53. A Member may not by raising a question of the privileges of the House attach privilege to a question not otherwise in order under the rules of the House. Deschler-Brown Ch 29 § 9.58.

##### **Organization of the House and Seating of Members**

Questions relating to the organization of the House (1 Hinds §§ 22–24) and the right of Members to their seats (3 Hinds §§ 2579–2587), as well as various questions incidental thereto (1 Hinds § 322; 2 Hinds § 1207; 3

Hinds § 2588), have been held to give rise to questions of the privileges of the House (*Manual* § 701). The same is true of a proposition declaring the Office of the Speaker vacant (6 Cannon § 35) and the resignation of a Member from a select or standing committee (*Manual* § 704). A resolution electing a House officer is presented as a question of privilege. *Manual* § 701.

### **Safety and Dignity; Comfort and Convenience**

A resolution directing an investigation into the safety of Members in light of alleged structural deficiencies in the Capitol gives rise to a question of the privileges of the House, as does a resolution directing the appointment of a select committee to inquire into fire safety of the environs of the House. *Manual* § 705.

Questions relating to the comfort and convenience of Members and employees have been held to give rise to a question of the privileges of the House. 3 Hinds §§ 2629–2633. For example, a resolution expressing the sense of the House as to the proper attire for Members during sessions of the House and a resolution relating to a sanitary environment for House employees were held to raise a question of privilege. *Manual* § 705; 3 Hinds §§ 2632, 2633. However, certain subjects relating purely to the convenience of Members are not necessarily entertained as privileged. For example, a resolution authorizing an additional attendant for the Members' bathroom and a resolution authorizing a new lunchroom for Members were held not to raise a question of privilege. 3 Hinds §§ 2635, 2636.

### **Integrity of the Legislative Process**

Among the subjects giving rise to a question of the privileges of the House are questions relating to the integrity of its proceedings. *Manual* § 704; 3 Hinds §§ 2597–2601, 2614. For example:

- The presence on the floor of unauthorized persons. 3 Hinds §§ 2624–2626.
- The conduct of those in the press gallery. 3 Hinds § 2627.
- The integrity of the Journal. 2 Hinds § 1363; 3 Hinds § 2620.
- The protection of House records and files. 3 Hinds § 2659.
- The accuracy of House documents and messages. 3 Hinds § 2613.
- The integrity of the *Congressional Record*. *Manual* § 704.
- The integrity of uninterrupted audio broadcast coverage of certain House proceedings. Deschler-Brown Ch 29 § 40.10.
- An unreasonable delay in transmitting an enrolled bill to the President. *Manual* § 704.
- The fraudulent introduction of a bill. 4 Hinds § 3388.
- The attempted bribery or corruption of Members. 2 Hinds § 1599; 6 Cannon § 580.
- An assault on a committee clerk. 2 Hinds § 1629.

- Use of an allegedly forged document at a committee hearing. *Manual* § 704.
- The public release of transcripts and other relevant documents relating to an investigation by a committee’s task force of the operation and management of the Office of the Postmaster. *Manual* § 704.
- Unilateral release by a committee chairman of committee records in contravention of its rules (adopted “protocol”). *Manual* § 704.
- Investigation and report on the impact of a test involving television coverage of House proceedings. *Manual* § 684.
- Indecorous behavior of a former Member on the floor of the House and rooms leading thereto. *Manual* § 680.

A resolution directing a committee to investigate the circumstances surrounding the publication in a newspaper of a select committee report, which the House had ordered not to be released, gave rise to a question of the privileges of the House, because it related to the integrity of House proceedings and the sanctity of its records. Deschler-Brown Ch 29 § 18.12.

#### **Effecting Changes in House Rules or Orders**

A question of the privileges of the House may not be raised to effect a change in the rules of the House or their interpretation or to collaterally attack a rule or order properly adopted by the House at a previous time, the proper method of reopening the matter being by motion to reconsider. *Manual* § 706; Deschler Ch 11 § 3.2. Thus, a resolution collaterally challenging an adopted rule of the House by delaying its implementation was held not to give rise to a question of the privileges of the House. *Manual* § 706.

Similarly, it has been held that a question of the privileges of the House may not be raised to:

- Collaterally challenge a standing order establishing a joint meeting for a foreign head of state by withdrawing a pending invitation and prohibiting future invitations. *Manual* § 706.
- Direct the Speaker to follow certain customs in allowing one-minute speeches at the beginning of a session. Deschler-Brown Ch 29 § 10.58.
- Permit petitioners seeking redress of grievances to have access to the House floor. Deschler Ch 24 § 10.2.
- Broaden the rule relating to access by Members to committee records. 95–1, Dec. 6, 1977, p 38470.
- Direct that the party ratios of all standing committees, subcommittees, and staffs thereof be changed within a time certain to reflect overall party ratios in the House. Deschler-Brown Ch 31 § 1.51.
- Direct a committee to consider certain business, a motion to that effect not being in order under the rules. *Manual* § 706.
- Declare a recess to receive a petition. Deschler Ch 11 § 3.1.

- Effect a change in conference procedures. Deschler Ch 11 § 3.3.
- Direct a standing committee to release executive session material referred to it. *Manual* § 706.

A question of the privileges of the House may not be invoked to prescribe a special order of business for the House, because otherwise any Member would be able to attach privilege to a legislative measure merely by alleging impact on the dignity of the House based upon House action or inaction. For example, the following resolutions were held not to give rise to a question of the privileges of the House, but rather were held to be legislative matters to be considered under ordinary rules relating to priority of business:

- Alleging that the inability of the House to enact certain legislation constituted an impairment of the dignity of the House, the integrity of its proceedings, and its place in public esteem, and resolving that the House be considered to have passed such legislation.
- Precluding an adjournment of the House until a specified legislative measure is considered.
- Expressing Congressional sentiment that the President take specified action to achieve a desired public policy even though involving executive action under a treaty (which it was the prerogative of the Senate to ratify).
- Directing that the reprogramming process established in law for legislative branch appropriations be subjected to third-party review for conformity with external standards of accounting but alleging no deviation from duly constituted procedure.

*Manual* § 706; see also *Manual* § 702 for a discussion of legislative propositions purporting to present questions of the privileges of the House.

The constitutional validity of an existing rule of the House may not be challenged under the guise of a question of privilege, whether that existing rule was adopted by separate vote of the House or, instead, by its vote on the adoption of all of its rules. *Manual* § 706.

#### **§ 4. Charges of Illegality or Impropriety**

##### **Specific Charges and General Criticism Distinguished**

General criticism of the Congress, or the Members of the House, does not give rise to a question of the privileges of the House. Deschler Ch 11 §§ 8.1, 8.2. Allegations that are merely critical of the legislative process, such as charges of inactivity in regard to a subject reported from committee, are also insufficient. 93–2, June 24, 1974, pp 21596–98. Similarly, an allegation of unconstitutional abrogation of a treaty by the President was held insufficient. *Manual* § 706. However, an allegation of criminal conduct by the Congress has been presented as a question of the privileges of the



House, as have charges that the House was being influenced by mobs or that a committee of the House was engaged in subversive activities. Deschler Ch 11 §§ 8.3, 8.4; 80–2, Mar. 10, 1948, p 2476.

### **Charges Involving Members**

Charges against Members often have been made the basis of a question of personal privilege. §§ 17, 18, *infra*. Such charges may also give rise to a question of the privileges of the House where they involve elements of illegality or criminality so as to impugn the honor and dignity of the House itself. Thus, charges against Members of graft (7 Cannon § 911), of abusing the franking privilege (3 Hinds § 2705), of using “ghost” employees (*Manual* § 703), of improperly attempting to influence a vote (Deschler Ch 11 § 9.1), of giving away atomic secrets (Deschler Ch 11 § 9.2), and of illegally soliciting political contributions in a House office building (99–1, July 10, 1985, p 18397) have given rise to the privileges of the House. However, a mere allegation that a Member distributed an unauthorized questionnaire was held insufficient to give rise to a question of the privileges of the House. Deschler Ch 11 § 9.3.

A question of the privileges of the House may be based on charges against Members, even though they are not identified by name. 3 Hinds § 2705.

In 1992, resolutions relating to the operation of the “bank” in the Office of the Sergeant-at-Arms were presented as questions of the privileges of the House, including a resolution instructing the Committee on Standards of Official Conduct to disclose the names and pertinent account information of Members and former Members found to have abused the privileges of the “bank.” *Manual* § 703.

### **Charges Involving House Officers or Employees**

Charges that an officer or employee of the House acted illegally or improperly may give rise to a question of the privileges of the House. 3 Hinds §§ 2628, 2645–2647; 6 Cannon § 35; Deschler Ch 11 § 10.3. Thus, a charge that an officer of the House conspired to influence legislation gives rise to a question of the privileges of the House. 3 Hinds § 2628. The same is true of an allegation that an officer of the House made secret motions in certain litigation without the knowledge of the House (Deschler-Brown Ch 29 § 30.4) or that an employee appeared in court without authorization as special counsel for a committee (Deschler Ch 11 § 10.3). Allegations of improper representation by counsel of the legal position of Members in a brief and allegations of unauthorized intervention by a committee employee in judicial proceedings also have given rise to questions of the privileges of the

House. *Manual* § 703. On the other hand, merely alleging favoritism by the Speaker in making appointments or rudeness by the Doorkeeper in removing an occupant of the gallery has been held not to give rise to a question of the privileges of the House. Deschler Ch 11 §§ 10.1, 10.2.

In the 102d Congress, numerous resolutions relating to the financial operation of the Office of the Sergeant-at-Arms and the management of the Office of the Postmaster were presented as questions of the privileges of the House. Among them were resolutions terminating all bank and check-cashing operations in the Office of the Sergeant-at-Arms, directing the Committee on House Administration to conduct an investigation of the operation and management of the Office of the Postmaster, and directing the Committee on Standards of Official Conduct to investigate alleged violations of confidentiality by certain staff members. *Manual* § 703.

### § 5. House Jurisdiction, Powers, and Prerogatives

Issues relating to the jurisdiction of the House or its prerogatives under the Constitution may give rise to a question of the privileges of the House. 2 Hinds §§ 1480–1537; 6 Cannon § 315; Deschler Ch 11 § 13. Matters that may be raised under this rule include jurisdictional questions relating to the prerogative of the House to originate revenue-raising legislation. 2 Hinds §§ 1480–1501; 6 Cannon § 315; Deschler Ch 11 § 13.1; generally, see *Manual* § 102. Other similar matters that have given rise to a question of the privileges of the House include:

- The issuance of a court order restraining the publication of a committee report. Deschler Ch 11 § 13.3.
- The disclosure of House records in response to process issued by a Federal court. *Manual* § 291a.
- Intervention in judicial proceedings concerning the constitutionality of the one-House veto or other legislative review provision. 95–1, H. Res. 884, Nov. 2, 1977, p 366.
- The prerogative of the House when a bill has been “pocket vetoed.” *Manual* § 702.
- The affirmative vote necessary to extend the time period for State ratification of a constitutional amendment. Deschler-Brown Ch 30 § 1.5.
- The constitutional authority of the House with respect to impeachment propositions. 3 Hinds §§ 2045–2048.

However, rule IX is concerned not with the privileges of the Congress as a legislative branch but only with the privileges of the House itself. Thus, neither the enumeration of legislative powers in article I, section 8 of the Constitution nor the prohibition in article I, section 9 against any withdrawal from the Treasury except by enactment of an appropriation renders a meas-

ure purporting to exercise or limit those powers a question of the privileges of the House. *Manual* § 702.

The revenue-raising prerogative of the House may be raised only when the House is in possession of the original papers. It may be raised with respect to a revenue provision that originated in conference. *Manual* § 702. The issue may not be raised after the House has adopted a conference report containing an additional revenue matter not in either the House or the Senate version. *Manual* § 702; Deschler Ch 13 § 14.2.

A resolution alleging that the President unconstitutionally abrogated a treaty (which is the prerogative of the Senate to ratify), and calling on the President to seek the approval of Congress prior to such abrogation, was held not to give rise to a question of the privileges of the House. *Manual* § 702.

#### **Contempt Proceedings; Enforcement of Orders and Subpoenas**

The power of the House to punish for contempt may be invoked as a basis for raising a question of the privileges of the House. That question has been held to arise where contemptuous conduct has been charged against a Member (2 Hinds § 1641), where a witness has refused to respond to an order to give testimony (*Manual* § 299; 3 Hinds § 1666; Deschler Ch 11 § 12), and where a person has been charged with an offense against the House, such as attempted bribery (2 Hinds §§ 1597, 1599). Committee reports relating to the refusal of a witness to be sworn or respond to a subpoena duces tecum in violation of section 192 of title 2, United States Code, likewise give rise to a question of the privileges of the House when called up by the reporting committee. Deschler Ch 11 §§ 12.2, 12.3.

#### **§ 6. Intervention in Judicial Proceedings**

The House sometimes authorizes special appearances on its own behalf in judicial proceedings relating to the powers and prerogatives of the House, and resolutions granting the authority to intervene in such cases may be called up as a question of privilege. The authority to intervene in judicial proceedings has been granted in cases involving the constitutionality of the one-House veto (or other legislative review provision) and the validity and effect of subpoenas issued by House committees or subcommittees. *Manual* § 291b; 94–2, July 1, 1976. p 21852.

As discussed in section 4, *supra*, charges of improper intervention in a judicial proceeding by an officer or employee of the House may give rise to a question of the privileges of the House. As such, the following resolutions have been held to constitute questions of the privileges of the House: (1) a resolution alleging unauthorized actions by a committee employee in

intervening in judicial proceedings; (2) a resolution directing the Clerk to notify interested parties that the House regretted the use of official resources to present to the Supreme Court of Florida a legal brief arguing the unconstitutionality of congressional term limits, and that the House had no position on that question; and (3) a resolution alleging a chronology of litigation relating to the immunity of a Member from civil liability for bona fide official acts and expressing the views of the House thereon. *Manual* § 703.

The General Counsel of the House has the duty under rule II clause 8 to provide legal assistance and representation to the House. *Manual* § 670. The General Counsel is authorized by law to appear in any proceeding before a State or Federal court (except the United States Supreme Court) without compliance with admission requirements of such court. 2 USC § 130f(a). Furthermore, the law requires the Attorney General to notify the General Counsel of a determination not to appeal a court decision affecting the constitutionality of an Act. 2 USC § 130f(b).

The House may authorize the Speaker to take any steps he considers necessary, including intervention as a party or submission of briefs *amicus curiae*, in order to protect the interests of the House. The House has adopted resolutions authorizing standing or select committees to make applications to courts in connection with their investigations. *Manual* § 291b. The House also has authorized the chairman of a subcommittee to intervene in a pending action on behalf of the subcommittee to obtain information in the possession of a Federal agency (the FTC). 94–1, Dec. 18, 1975, p 41707.

### **§ 7. Correcting the Congressional Record; Expungement**

The accuracy and propriety of reports in the *Congressional Record* may give rise to a question of the privileges of the House. *Manual* § 704; 5 Hinds §§ 7005–7023; 8 Cannon §§ 3461, 3463, 3464; Deschler Ch 11 § 11. Accordingly, a resolution to request the Senate to expunge from the *Congressional Record* certain debate reflecting on the integrity of the House or that is offensive or otherwise improper may give rise to a question of the privileges of the House, as may resolutions to expunge from the *Record* matter improperly inserted under leave to print. Deschler Ch 11 § 11. However, neither a question of personal privilege nor a question of the privileges of the House arises during debate in which offensive language is used, the remedy being to demand that the objectionable words be taken down when spoken, pursuant to rule XVII clause 4. Deschler Ch 11 § 27.1. For further discussion of the procedure for taking down words, see CONSIDERATION AND DEBATE.

A resolution to correct inaccuracies in the *Congressional Record* is presented as a question of the privileges of the House. 5 Hinds § 7019; 8 Cannon § 3461; Deschler Ch 11 § 11.9. However, a resolution to restore to the *Record* remarks previously deleted by House order does not present a question of the privileges of the House, the proper method of reopening the matter being by motion to reconsider. Deschler Ch 11 § 11.10.

## § 8. Service of Process

### Generally

The service of judicial process on a Member, Delegate, Resident Commissioner, officer, or employee of the House has long been perceived as a matter relating to the integrity of House proceedings and as constituting a basis for raising a question of the privileges of the House. 7 Cannon § 2164; Deschler Ch 11 §§ 14.1–14.10. Rule VIII governs the procedure for House response to a judicial or administrative subpoena served on a Member, Delegate, Resident Commissioner, officer, or employee of the House. *Manual* § 697; § 9, *infra*.

The privileges of the House are invoked whether the recipient was served with a summons as a defendant or a subpoena as a witness and whether service of process was issued by a State or Federal court. Deschler Ch 11 § 14. For example, the privileges of the House have been held to apply to service of process as follows:

- Civil actions, criminal proceedings, or courts martial. Deschler Ch 11 §§ 16.7, 16.9, 16.12, 16.17.
- Grand jury proceedings. Deschler Ch 11 § 15.
- Orders to appear and show cause for the failure to comply with a prior subpoena. Deschler Ch 11 § 14.9.
- Orders to appear for depositions or to answer interrogatories. Deschler Ch 11 §§ 14.10, 16.18.
- Preliminary proceedings in criminal cases. Deschler Ch 11 § 14.5.
- Administrative proceedings before Federal agencies. *Manual* § 697.

Under rule VIII clause 6(b), minutes or transcripts of executive sessions, or evidence received during such sessions, may not be disclosed or copied in response to a subpoena. A subpoena duces tecum requesting production of executive session records of a committee from a prior Congress may be laid before the House pending a determination as to its propriety. 97–1, Apr. 28, 1981, p 7603.

### Service of Process on Officers or Employees

Examples of service of process on officers include those on the Speaker, the Clerk, and the Sergeant-at-Arms. Deschler Ch 11 §§ 16.2–16.4, 16.7–

16.9, 16.11. Examples of service of process on employees include those on current and former employees of a committee, an employee of the House Republican Conference, and a former employee of a former House select committee who was subpoenaed to give a deposition about his recollection of certain executive session transactions. 93–2, Sept. 30, 1974, p 33020; 94–1, Sept. 23, 1975, p 29824; 97–1, Jan. 22, 1981, pp 694, 695.

### **§ 9. Procedure in Complying with Process under Rule VIII**

Rule VIII provides general authority to a Member, Delegate, Resident Commissioner, officer, and employee of the House to comply with a judicial or administrative subpoena or judicial order directing appearance as a witness, or the disclosure of documents, relating to the official functions of the House. Such compliance must be consistent with the rights and privileges of the House. Accordingly, the Speaker is promptly notified upon service of a subpoena or judicial order, and the Speaker lays the notification before the House. Rule VIII does not require the text of the subpoena to be printed in the *Congressional Record. Manual* § 697.

Rule VIII was added initially in the 97th Congress. Until the 95th Congress, the House would authorize a response to a subpoena by adopting a resolution raised as a question of the privileges of the House. This case-by-case approach was changed in the 95th and 96th Congresses, when general authority was granted to respond to subpoenas and a procedure was established for automatic compliance without the necessity of a House vote. This standing authority formed the basis for the present rule. *Manual* § 697.

### **§ 10. — Resolutions Authorizing or Precluding Response**

Although rule VIII establishes a procedure for automatic compliance with subpoenas without the necessity of a House vote, a question of the privileges of the House still may be raised to address the response of the House to a subpoena in any particular case. *Manual* § 697. For example, in the 102d Congress, the House considered as questions of the privileges of the House resolutions responding to a subpoena for certain records of the House, and to a contemporaneous request for such records from a special counsel. The resolutions authorized an officer of the House to release certain documents in response to the requests from the special counsel. *Manual* § 703.

#### **Duration of Authorization**

Resolutions authorizing a response to a subpoena or other judicial order are effective only during the Congress in which they are adopted. If the ju-

dicial proceedings in question extend into the next Congress, it may be necessary to seek another authorizing resolution, which may be offered as a question of privilege. Deschler Ch 11 §§ 18.1, 18.2.

### § 11. — Conditions or Limitations on Response

Prior to the adoption of rule VIII, when the House authorized a response to a subpoena by resolution on an ad hoc basis, the House occasionally imposed various conditions or limitations, such as:

- Permitting copies, but not original documents, to be produced. *Manual* § 291a; Deschler Ch 11 § 18.
- Limiting disclosure to certified copies of relevant documents. *Manual* § 291a.
- Prohibiting disclosure of information acquired in one's official capacity. Deschler Ch 11 § 17.6.
- Prohibiting disclosure of information not previously made public. Deschler Ch 11 § 17.10.
- Limiting disclosure to certain files and specified documents and only for inspection and copying. Deschler Ch 11 § 17.9.
- Permitting disclosure only on a determination of relevancy. 94–2, Mar. 31, 1976, p 8885.
- Permitting disclosure of certain documents but barring personal appearances. Deschler Ch 14 § 15.14.
- Permitting personal appearances but barring production of certain records. Deschler Ch 11 § 18.
- Permitting production of original documents for laboratory examination but providing for their return. *Manual* § 291a.
- Permitting a Member to respond only when the House is not in session. 94–1, Dec. 1, 1975, p 37888.

### § 12. Disclosure of Executive-Session Materials

The House traditionally has required that executive-session materials be released only when specifically permitted by authorizing resolution. Deschler Ch 11 § 18.4. This practice is continued under rule VIII clause 6(b), which states that under no circumstances shall any minutes or transcripts of executive sessions, or any evidence of witnesses in respect thereto, be disclosed or copied. *Manual* § 697. Before the adoption of rule VIII, the House by resolution asserted the privileges of the House against the release of executive-session materials or permitted the disclosure only after a judicial finding of relevancy. *Manual* § 291a.

### § 13. Providing for Legal Counsel

#### Statutory Authorization

Legal counsel, through the Department of Justice, is available to an officer of the House (but not its Members) to defend the officer against actions brought against him while he was discharging his official duty or executing an order of the House. The district attorney for the district where the action is brought is directed on request to enter an appearance on behalf of the officer. 2 USC § 118. This procedure has been followed in actions involving the House, the Speaker, the chairman of the Committee on Rules, the Clerk, and the Sergeant-at-Arms. *Manual* § 291b; Deschler Ch 11 § 16.

#### Authorization by Resolution

Occasionally, the House has authorized by resolution the appointment of special counsel to represent an officer or Member or employee who has been served with process. Such a resolution ordinarily is presented as a question of the privileges of the House. Deschler Ch 11 §§ 19.1, 19.3. Pursuant to such a resolution, the House has authorized:

- The Speaker to appoint or retain counsel to represent the House and its employees. Deschler Ch 11 § 19.1.
- The chairman of a committee, with the approval of the Speaker, to retain special counsel. *Manual* § 291b.
- The Sergeant-at-Arms, with the approval of the Speaker and the chairman of the Committee on House Administration, to retain special counsel. *Manual* § 291b.
- The retention of special counsel to represent the interests of a subcommittee. *Manual* § 291b.
- The retention of special counsel to represent members of a committee and its employees. Deschler Ch 11 § 19.2.

#### Representation by General Counsel

Rule II clause 8 provides for an Office of General Counsel to provide legal assistance and representation to the House. The office assists and provides representation to Members, committees, officers, and employees in complying with legal process under rule VIII.



## B. Consideration

### § 14. Raising and Presenting the Question

#### In the House; Use of Resolutions

Questions of the privileges of the House are brought before the House in the form of a resolution. 3 Hinds § 2546; 8 Cannon § 3464; Deschler Ch 11 § 4.2. Under rule IX such a resolution is privileged when called up by any Member. 3 Hinds § 2536; § 2, *supra*. However, its privilege is subject to a two-day notice requirement, which must include an announcement of the form of the resolution. Such announcement may be dispensed with by unanimous consent. *Manual* § 698. The Speaker designates the time for consideration within two legislative days after the announcement, which may include immediate consideration. Under rule IX the Majority and Minority Leaders are excluded from the notice requirement. They may offer the resolution at any time, yielding only to the motion to adjourn. *Manual* § 699. The form of the announcement follows:

#### Form

MEMBER (OTHER THAN MAJORITY OR MINORITY LEADER): Mr. Speaker, pursuant to clause 2(a)(1) of rule IX, I rise to give notice of my intent to raise a question of the privileges of the House. The form of the resolution is as follows: [*Note*: The Member may read the resolution in full or may ask unanimous consent to dispense with the reading.]

SPEAKER: Under rule IX, a resolution offered from the floor by a Member other than the Majority Leader or the Minority Leader as a question of the privileges of the House has immediate precedence only at a time designated by the Chair within two legislative days after the resolution is properly noticed. Pending that designation, the form of the resolution noticed by the gentle \_\_\_\_ from \_\_\_\_\_ will appear in the *Record* at this point. The Chair will not at this point determine whether the resolution constitutes a question of privilege. That determination will be made at the time designated for consideration of the resolution and the gentle \_\_\_\_ will be notified.

The form of calling up the resolution follows:

#### Form

MEMBER: Mr. Speaker, I rise to a question of the privileges of the House, and offer a resolution announced on \_\_\_\_\_.

SPEAKER: The gentleman submits a resolution relating to the privileges of the House, which the Clerk will report. [Clerk reports the resolution in full. *Manual* § 700.]

OPPONENT: Mr. Speaker, I make a point of order that the gentleman does not present a question of privilege.

## § 15

### HOUSE PRACTICE

**SPEAKER:** The gentleman presents a question of privilege, and is recognized. [*Or*] The Chair will entertain argument as to whether the resolution constitutes a question of privilege.

Under rule IX, a question of the privileges of the House having been raised, the Speaker initially decides whether the question presented constitutes a question of the privileges of the House, and rules as to the validity of the question raised. *Manual* § 713; Deschler Ch 11 §§ 6.1, 6.2. He makes this decision at the time the question of privilege is called up, not at the time notice is given. *Manual* § 713. Appeal may be taken from the Chair's ruling, however, because the final determination as to the validity of the question rests with the House. Deschler Ch 11 § 6.3.

The question having been properly raised on the floor by a Member, the Speaker must entertain the question and rule on its admissibility. 2 Hinds § 1501; 3 Hinds §§ 2648–2650; Deschler Ch 11 § 1. If the matter is not admissible as a question of the privileges of the House, he may refuse recognition. Deschler Ch 11 § 6.1.

The resolution must show a *prima facie* breach of the privileges of the House. The mere statement that the privileges of the House have been violated does not present a question of privilege. Deschler Ch 11 § 4.1.

A question of privilege may not be presented during a call of the House in the absence of a quorum unless it relates to the immediate proceedings. 3 Hinds § 2545. A Member's announcement of intent to offer a resolution as a question of privilege may take precedence over a special order reported from the Committee on Rules. However, where a special order is pending, such announcements are counted against debate on the resolution absent unanimous consent to the contrary. *Manual* § 709.

#### **In Committee of the Whole**

A question of the privileges of the House may not be raised in the Committee of the Whole. Deschler Ch 11 § 4.3. A breach of the privilege in the Committee of the Whole relates to the dignity of the House and, if such breach is raised, the Committee rises and reports to the House. 2 Hinds § 1657. Without the Committee's report to the House, the question of privilege cannot be raised in the House. 4 Hinds § 4912.

#### **§ 15. Debate; Disposition**

A resolution offered under rule IX is read in full. *Manual* § 700. A Member offering the resolution is recognized under the hour rule. Deschler Ch 11 § 7.1. Such Member must confine remarks in debate to the question raised. Deschler Ch 11 § 7.2.

Under rule IX clause 2(a), the hour allotted for debate on a resolution offered *from the floor* as a question of the privileges of the House must be equally divided between the proponent of the resolution and the Majority Leader or the Minority Leader or a designee, as determined by the Speaker. *Manual* § 699.

A question of the privileges of the House is subject to disposition by the ordinary motions permitted under rule XVI clause 4 (*Manual* § 709), including:

- The motion to lay on the table. 5 Hinds § 5438; 6 Cannon § 560.
- The motion for the previous question. 5 Hinds § 5460; 8 Cannon § 2672; Deschler Ch 11 § 7.3.
- The motion to postpone. 3 Hinds § 2536.
- The motion to refer (or to commit) to committee. *Manual* § 713; 8 Cannon § 3461; Deschler Ch 11 § 7.4.

Tabling a resolution raising a question of the privileges of the House is considered a final adverse disposition of that resolution, although the question may be rephrased and presented anew or reoffered on a subsequent day. 5 Hinds § 5438. Any appeal from a decision by the Speaker disposing of the question is likewise subject to the motion to lay on the table. Deschler Ch 11 § 6.3.

A committee report that is submitted as a matter involving the privileges of the House may be considered on the same day reported, notwithstanding the three-day availability rule under rule XIII clause 4(a). Deschler Ch 11 § 5.10. A proposition to discharge a committee from a question of privilege is itself privileged. 3 Hinds § 2709.

A resolution that presents a proper question of the privileges of the House (alteration of subcommittee hearing transcripts) may propose the creation of a select investigatory committee with subpoena authority to report back to the House by a date certain. *Manual* § 704.

### III. Personal Privilege

#### A. Basis of Privilege

##### § 16. In General

Under rule IX clause 1, questions of personal privilege are defined as those that affect the “rights, reputation, and conduct” of individual Members in their representative capacity. Under this rule, a Member may rise to a question of personal privilege from the floor to respond to criticism of his integrity in his representative capacity. *Manual* §§ 708, 711. A state-

ment challenging the integrity of an official transcript of a committee hearing, thus impugning the integrity of those Members responsible for its preparation, has given rise to a question of personal privilege. Deschler Ch 11 § 25.2. However, charges that do not involve the Member in his representative capacity, such as charges relating to conduct before becoming a Member, do not give rise to a question of personal privilege. 3 Hinds §§ 2691, 2723, 2725.

To give rise to a question of personal privilege, the criticism must reflect directly on the Member's integrity or reputation. Deschler Ch 11 § 24.1. Mere statements of opinion about or general criticism of his actions as a Member, or his voting record or views, do not constitute grounds for a question of personal privilege. 3 Hinds §§ 2712–2714; Deschler Ch 11 §§ 24.2, 24.3. Thus, a charge that a Member's actions amount to a "public scandal," even when made by the President (6 Cannon § 525), or that a Member distributed certain improper questionnaires (Deschler Ch 11 § 24.1), or that he filed a minority report that had been written by employees of a political party (Deschler Ch 11 § 24.4), does not give rise to a question of personal privilege.

Published charges relating to the House or the Members generally or to "persons advocating" a certain measure, with no Member being named or otherwise identified, do not give rise to a question of personal privilege. Deschler Ch 11 §§ 33.1–33.3.

A question of privilege may not be used to collaterally attack the rules or orders of the House. A refusal by those in charge of the time for general debate on a bill to allot time to a Member does not give that Member grounds for a question of personal privilege. Deschler Ch 11 § 24.

## **§ 17. Charges by a Fellow Member; Words Used in Debate**

### **Generally**

Statements off the floor by a Member accusing another Member of lying or intentionally making a false statement may give rise to a question of personal privilege. Similarly, statements by a Member impugning another Member's motives or veracity, accusing another Member of traitorous acts, of gross political interference with a government contract, of an abuse of personal power, or of sponsoring a smear campaign may give rise to a question of personal privilege. 3 Hinds § 2717; Deschler Ch 11 §§ 26.2–26.8. It is not necessary that the Member be identified by name if it is clear from other sources that the reference was to a particular Member. 3 Hinds § 2709; 6 Cannon §§ 616, 617; Deschler Ch 11 § 26.1.

### Words Uttered in Debate or Inserted in the Congressional Record

A question of personal privilege may not be based on language uttered on the floor of the House in debate or conveyed by an exhibit used in debate, the remedy being a timely demand that the objectionable words be taken down when spoken. *Manual* § 708; 8 Cannon § 2537; Deschler Ch 11 § 27.1. Generally, see CONSIDERATION AND DEBATE. However, a Member may base such a question on objectionable remarks inserted under leave to revise and extend remarks. 8 Cannon § 2537; Deschler Ch 11 §§ 27.2–27.5. A Member may also base such a question on press accounts of remarks uttered on or off the floor impugning his character or personal motives. *Manual* § 708. Charges reflecting on a Member's integrity or reputation, inserted in the *Congressional Record* by a Senator, also may give rise to a question of personal privilege. Deschler Ch 11 §§ 27.6–27.9.

### § 18. Charges in the Press

#### Generally

Criticism of a Member in the press may give rise to a question of personal privilege where the criticism reflects on his integrity or conduct in his representative capacity. Deschler-Brown Ch 29 § 10.75. However, vague charges in newspaper articles (6 Cannon § 570), criticisms (3 Hinds §§ 2712–2714), or even misrepresentations of the Member's speeches or acts or responses in an interview have been held insufficient grounds (*Manual* § 708; 3 Hinds §§ 2707, 2708). The mere allegation that there has been a violation of the rules of the House, such as that votes have been improperly paired or that a bill has been placed on the incorrect calendar, does not give rise to a question of personal privilege. 3 Hinds § 2616; 8 Cannon § 3094. However, where the allegation impugns a Member's character or motives or reflects on his reputation or integrity, a question of personal privilege may arise. Deschler-Brown Ch 29 § 60.27. For example, language in a newspaper asserting that a Member would divide the Nation and that he was a spokesman for the forces of betrayal was held to involve a question of personal privilege. Deschler Ch 11 § 31.3. Charges that a Member is a fascist sympathizer or that he has engaged in conduct inimical to the national security also have given rise to questions of personal privilege. Deschler Ch 11 §§ 31.4–31.18. Other charges in the press that have given rise to a question of personal privilege include allegations of:

- Misuse of public funds. Deschler Ch 11 § 30.1.
- Conflict of interest. Deschler Ch 11 §§ 30.6, 30.7.
- Deceptive or disgraceful conduct reflecting on the House. Deschler Ch 11 §§ 30.2, 30.15, 30.16.

- Dereliction of duties. Deschler Ch 11 § 30.3.
- Confiscation of evidence. Deschler Ch 11 § 30.4.
- Unworthy motives in taking certain legislative action. 6 Cannon § 576; 8 Cannon § 2216.
- Improper conduct in agency dealings. Deschler Ch 11 § 30.17.
- Abuse of the franking privilege. Deschler Ch 11 § 30.18.
- Engagement in improper lobbying activities. Deschler Ch 11 § 30.6.
- Introduction of legislation in which the Member had a personal interest. Deschler Ch 11 § 30.7.
- Wrongful claim of “out of pocket” expenses in a fund-raising activity. 94–2, Feb. 23, 1976, p 4062.

### **Criticism of Committee Activities**

Criticism impugning the motives or actions of a chairman or member of a committee may give rise to a question of personal privilege. Deschler Ch 11 § 30.11. Thus, a Member has been recognized to rise to a question of personal privilege to respond to the following press charges:

- Allegation of improper disposition of classified documents from committee files. 94–2, Mar. 9, 1976, p 5825.
- Allegations of abuse of power or improper action in carrying out committee responsibilities. Deschler Ch 11 §§ 30.8–30.14.
- Allegation of improper hire of staff who did no work for the committee. 94–2, May 25, 1976, p 15344.
- Denigration of Member in televised committee proceedings. *Manual* § 708.
- Allegation that a committee chairman had been buying votes. *Manual* § 708.

Normally, however, a question concerning charges as to the propriety of committee procedure, as distinct from charges against the Member’s conduct in his representative capacity, should be raised as a question of the privileges of the House, assuming that the dignity and integrity of the House proceedings are at issue.

### **Charges of Illegality**

Charges in the press that a Member did something illegal in his representative capacity give rise to a question of personal privilege. 3 Hinds § 1829; Deschler Ch 11 §§ 29.1, 29.3. Such a question has arisen on publication of charges that a Member committed the following acts:

- Treason or sedition. Deschler Ch 11 § 29.6.
- Forgery. Deschler Ch 11 § 29.2.
- Corruption and bribery. 3 Hinds § 1830.
- Criminal conspiracy or perjury. Deschler Ch 11 § 29.5.
- Tax evasion and irregularities. Deschler Ch 11 §§ 29.4, 29.5.
- Violation of the securities laws. 95–2, June 2, 1978, p 16056.

Speaker Wright rose to a question of personal privilege to respond to a “statement of alleged violations” pending in the Committee on Standards of Official Conduct; and, pending the committee’s disposition of his motion to dismiss, announced his intention to resign as Speaker and as a Member. Speaker Gingrich rose to a question of personal privilege to discuss his own official conduct previously resolved by the House. A committee chairman rose to a question of personal privilege to discuss his own official conduct, which question was based on a letter of reproof reported by the Committee on Standards of Official Conduct. *Manual* § 708.

### **Charges of Impropriety**

A charge of vote-selling in a conflict-of-interest case or involvement with an organization being investigated by a Senate committee or of conduct characterized as reprehensible has given rise to a question of personal privilege. Deschler Ch 11 §§ 28.1–28.3. Speaker Hastert rose to a question of personal privilege to respond to charges of impropriety in his selection of a Chaplain. *Manual* § 708.

The publication of vague charges accusing Members of impropriety, however, does not give rise to a question of personal privilege. 8 Cannon § 2711. No question of personal privilege was held to arise from the publication of remarks attributed to a Member who denied making them. 8 Cannon § 2708.

### **Charges Impugning Veracity**

Published charges that a Member made a false statement may give rise to a question of personal privilege. 3 Hinds § 2718; Deschler Ch 11 §§ 32.1, 32.2. For such a charge to give rise to this question of privilege, however, it must be alleged that the Member made a false statement knowingly, with intent to deceive. 3 Hinds § 2721. A mere difference of opinion over a factual matter, where there is no intent to deceive, does not give rise to a question of personal privilege. 3 Hinds §§ 2720, 2721.

## **B. Consideration**

### **§ 19. Raising the Question; Procedure**

Unlike questions of the privileges of the House, which must be raised by resolution, questions of personal privilege are ordinarily raised orally. Deschler Ch 11 § 20.

The Member, before proceeding with debate on a question of personal privilege, must state to the Speaker the grounds on which the question is

based. Deschler Ch 11 § 21.1. In ruling on the question, the Speaker may insist that the offending material, if published, be submitted to him for his examination. Compare Deschler Ch 11 § 21.2 with § 21.3.

MEMBER: Mr. Speaker, I rise to a question of personal privilege.

SPEAKER: The gentleman will state his question of privilege. . . .

SPEAKER: The Chair has examined the press accounts that have been submitted, and it qualifies as a question of personal privilege under rule IX.

### **In Committee of the Whole**

Questions of personal privilege are raised in the House, not in the Committee of the Whole. Deschler Ch 11 § 21.4. Early precedents suggest, however, that a question of personal privilege may be raised in the Committee of the Whole if the matter in issue arose during the Committee proceedings. 3 Hinds §§ 2540–2544. A question of personal privilege alleged to have arisen in the Committee of the Whole cannot be raised in the House unless the matter was reported to it by the Committee. *Manual* § 711; 4 Hinds § 4912; see also § 17, *supra*, for a discussion that words spoken in debate do not give rise to a question of personal privilege.

### **§ 20. Debate on the Question**

Debate on a question of personal privilege is ordinarily under the hour rule. 5 Hinds § 4990; 8 Cannon § 2443; Deschler Ch 11 § 22.1. The Member recognized on the question controls the hour. *Manual* § 713. A Member wishing to respond to another Member's debate on a question of personal privilege may do so in a special-order speech. Deschler Ch 11 § 22.2.

In rising to a question of personal privilege, the Member should confine his remarks to the statements or issues giving rise to the question. *Manual* § 713; 5 Hinds §§ 5075, 5076. However, the Member is entitled to discuss related matters necessary to challenge the charge that has been made against him. Deschler Ch 11 § 22.5. He should limit his remarks to the matter concerning himself personally, and should not use his debate time to level charges against other Members. 5 Hinds § 5078; 8 Cannon §§ 2481–2483. His remarks should be kept within limits consistent with the spirit of the rule, and he may not use the privilege as a vehicle for discussions not otherwise in order. 8 Cannon § 2448.

In lieu of raising a question of personal privilege, a Member may use a one-minute or special-order speech to respond to the charge or allegation. Deschler Ch 11 § 22.4. Another option available to the Member is merely to insert his remarks in the *Congressional Record*, without using debate time. 94–2, Feb. 23, 1976, p 4062.