

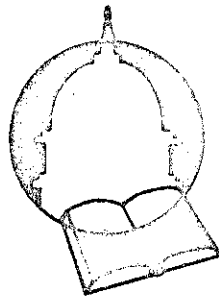
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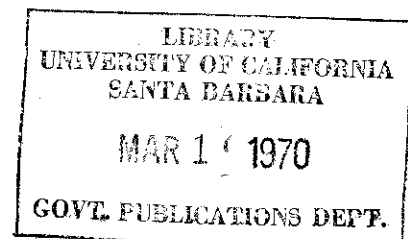
PRECEDENTS OF THE HOUSE OF REPRESENTATIVES IN RESPECT  
TO PROCEDURE FOR CENSURE OR EXPULSION, 1966.



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Washington D.C.



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PRECEDENTS OF THE HOUSE OF REPRESENTATIVES IN RESPECT  
TO PROCEDURE FOR CENSURE OR EXPULSION

A. Censure of Members by the House

Attached hereto as Appendix I is a list of instances of censure of Members by the House.

Authority to censure stems from Article I, section 5, clause 2, of the Constitution which provides: "Each House may determine the Rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two thirds, expel a Member".

The House itself must order the censure. The Speaker cannot, of his own authority, censure a Member (Hinds; Precedents of the House of Representatives, Vol. II, §§1344, 1345; Cannon's Precedents of the House of Representatives, Vol. VI, §237).

The underlying concept governing the possibility of consideration of ordering censure by the House against a Member is that of breach of the rights and privileges of the House. The maintenance of the privileges of the House is generally at the base of censure considerations (sec. Hinds; supra, Vol. II, §1644).

There are two classes of privilege, first, affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and second, affecting the rights, reputation, and conduct

of Members, individually, in their representative capacity only (Cannon's Procedure In the House of Representatives, House Doc. No. 610, 87th Cong., p. 284; and see House Rule IX). Breach of either class might eventuate in censure proceedings.

Censure has been ordered for disorderly or unparliamentary language, or other conduct during proceedings (both in the House and in Committee of the Whole), against the Speaker; for physical assault against another Member for words spoken in debate; for treasonable words uttered in the course of proceedings; for insults to the House through the introduction of resolutions deemed offensive to it; and, for corrupt acts.

Censure has been ordered against Members as Members, and, censure resolutions have been adopted subsequent to the resignation of Members (for instances of the latter see Hinds; supra, Vol. II, §§1239, 1273, 1275, 1656).

## II. Proceedings to Censure - Resolutions

Since censure can only be imposed by a majority vote of Members present and voting, a quorum being present, and since the House can only act through consideration of a measure or motion (with certain exceptions not relevant to this subject) censure is ordered through adoption of a resolution to that effect by a majority vote.

Resolutions of two general types may be offered.

The first type calls for direct and immediate action by the House. It usually contains precise and unrefuted charges of misconduct,

as, for example, that the Member introduced a resolution (described explicitly) offensive to the House, and requests the House to vote on the adoption thereof. Examples of such types of resolutions may be found in Hinds', supra, Vol. II, §§1246-1251, 1254-1258; Cannon's supra, Vol. VI, §§236, 239.

The second type of resolution sets forth certain allegations of misconduct and recommends that a committee be appointed to investigate and report to the House or, it recommends that a committee be appointed to investigate and instructs it to report such resolutions in reference thereto as may in the judgment of the Committee be proper and necessary for the vindication of the character of the House.

Examples of the former type of resolution may be found in, Hinds', supra, Vol. II, §§1649, 1650, 1651.

Examples of the latter type of resolution may be found in, Hinds', Vol. II, §§1621, 1655-1656, Vol. III, §2653; Cannon's, supra, Vol. VI, §400.

However, while precedents, as noted (and see, Jefferson's Manual and Rules of the House of Representatives, House Doc. No. 374, 83th Cong. §§321,322) are to the effect that the House should instruct a committee, charged with investigating an incident, to report resolutions, (that is, to "try" the Member) there have been instances where committees have so reported resolutions without previous instruction, (see, for instance, Hinds', supra, Vol. II, §1275; Vol. III, §§1831,1844, (select committees); Hinds', supra, Vol. II, §§1273,1274 (standing committee).

### III. Type of Committee to Investigate and Report

When a resolution provides for the creation of a committee to investigate and report on an incident, the usual practice has been to authorize the Speaker to appoint a select committee composed of a specific Number of Members (generally an odd number such as five) (see, for instance, Hinds', supra, Vol. II, §§1621, 1656; Vol. III, supra, §§1831, 1844, 2653; Cannon's, supra, Vol. VI, §400).

However, the House has, on occasion, authorized a standing committee to investigate and report. This occurred in the Forty-first Congress when the Committee on Military Affairs was instructed to investigate into the alleged sale of appointments to the Military and Naval Academies by Members of Congress (see, Congressional Globe, Forty-first Congress, Second Session, p. 1041, February 4, 1870; and see, Hinds', supra, Vol. II, §§1273, 1274).

The resolution provided: "Resolved, that the Committee on Military Affairs be authorized to inquire as to whether any Member of this House has ever sold or offered for sale his influence as a Member in securing appointments to either the Military or the Naval Academy, and whether any Member ever received or expressed a willingness to receive any valuable consideration for using his influence in connection with such appointment; and that the Committee be empowered to send for persons and papers".

On other occasions, other standing committees have been instructed (e.g., Hinds', supra, Vol. III, §2652 - Committee on Judiciary regarding a charge that a Member had been holding intercourse with the

foes of the Government; supra, §2653; Committee on Elections, regarding alleged treasonable conduct on the part of a Member).

IV. Resulting From Application of House Rule XIV §4. Calling A Member to Order

One procedure under which the House may arrive at a decision to order censure of a Member can evolve from the application of House Rule XIV, §4, respecting calling a Member to order who transgresses the rules of the House in debate. Rule XIV, section 4, provides that if a Member, in speaking or otherwise, transgresses the rules of the House, the Speaker shall, or a Member may, call him to order; in which case he shall immediately sit down, unless permitted, on motion of another Member, to explain. The House shall, if appealed to, decide on the case without debate. It may exonerate the Member called to order, or it may decide that he shall be liable to censure or such punishment as the House may deem proper.

Section 5 of Rule XIV provides that if a Member is called to order for words spoken in debate, the words shall be taken down in writing at the Clerk's desk and read aloud to the House. The Rule, however, provides that a Member, in such a situation, shall not be subject to the censure of the House, if further debate or other business has intervened, i.e. the words should be taken down immediately.

Rule XIV, does not, of course, delineate the limits of reasons for which the House may censure a Member since it relates to activity occurring during House Debate. The fundamental authority,

i.e. Art. I, §5, clause 2, of the Constitution leaves it to the discretion of the House to determine whether a Member's words or actions merit censure.

When unparliamentary words are uttered in debate or other disorderly conduct occurs, a Member may rise for a point of order or the Speaker of the House of Representatives shall call to order the Member speaking. The Member calling him to order shall indicate the words excepted to and they shall be taken down in writing at the Clerk's desk and read aloud to the House (Rule XIV).

If the words are uttered in Committee of the Whole, and a point of order is raised and demand made that the words be taken down, the words are read at the desk and the Committee rises automatically (Cannon's, supra, Vol. VIII, §§2533, 2538, 2539) and reports to the House (Hinds', supra, Vol. V, §6944).

When the words are read from the desk, the Chair decides whether they are in order (Hinds', supra, Vol. II, §1249; Hinds', supra, Vol. V, §§5163, 5169, 5187), and from the decision of the Chair there is no appeal (Hinds', supra, Vol. V, §6944).

If the Speaker holds the words in order, the Member proceeds. If the words are held out of order, the following motions are admissible (Cannon's "Procedure in the House of Representatives", House Doc. 122, 86th Cong., 1st Sess., p. 78):



(a) unanimous consent to withdraw the words,  
(b) motion to expunge,  
(c) motion that the Member who uttered the words be permitted to explain,

(d) motion that the Member who uttered the words be allowed to proceed in order. This is the usual motion made to test the temper of the House (Hinds<sup>c</sup>, supra, Vol. V, §§5188, 5189; Cannon<sup>s</sup>, supra, Vol. VIII, §2534), but a motion that the Member be permitted to explain has been held to have precedence, even in a case where the words have been taken down (Hinds<sup>c</sup>, supra, Vol. V, §5197).

If the House, in voting on the motion, declines to allow the Member to proceed, it is in order for any Member to submit a resolution of censure. One form of such a resolution is found on page 78 of Cannon<sup>s</sup> "Procedure In the House of Representatives," supra.

In certain exceptional cases, as when disorderly words are part of an occurrence constituting a breach of privilege (Hinds<sup>c</sup>, supra, Vol. II, §1657), or when a Member<sup>s</sup> language has been investigated by a committee (supra, §1655), or when he has reiterated on the floor certain published charges (Hinds<sup>c</sup>, supra, Vol. III, §2637), or when he has uttered words alleged to be treasonable (Hinds<sup>c</sup>, supra, Vol. II, §1252), or when the words used have been insulting to the Speaker (supra, §1248), the House has proceeded to censure or other action although business may have intervened.

The House has censured Members for disorderly words (Hinds', supra, Vol. II, §§1253, 1254, 1259, 1305; Cannon's, supra, Vol. VI, §236; and see, Cannon's, Procedure in the House of Representatives, House Doc. No. 610, 87th Cong. p. 75). All such instances involved the direct submission of a censure resolution and action thereon by the House.

However, upon alternative, a resolution may be submitted creating a select committee to investigate and report and instructing it to recommend possible action by the House (see, Hinds', supra, Vol. III, §2637).

In his work, Cannon's Procedure of the House of Representatives, supra, former House Parliamentarian and Member, the Honorable Clarence Cannon, of Missouri, lists situations of breaches of the Rules of which the House has taken note (pp. 80-82)(most of them did not result in censure; references are to Hinds', and Cannon's, Precedents, supra):

BREACHES OF THE RULES OF WHICH THE  
HOUSE HAS TAKEN NOTE

Relating to Members.

- Assaults (II, 1630, 1641-1664).
- Personalities (II, 251; V, 4979, 5131, 5152-5156, 5163, 5169; Journal 81-2-335).
- Criticism of spirit in which another has spoken (V, 6981).
- Accusation of offense not connected with representative capacity (V, 5152, 5153; VIII, 2542).
- Referring to charges pending against a colleague (V, 5155).
- Attributing intentional misrepresentation (V, 5157-5160; VIII, 2545).
- Impugning falsehood (II, 1249; VIII, 2545); includes "canard" (81-1-6042).
- Accusation of false statements (II, 1305; III, 2717; VI, 607).
- Addressing another Member by name (V, 5144-5146; VIII, 2526, 2536).
- Words which subject a Member to ridicule or contempt (VIII, 2527).

Impeaching the loyalty of Members (V, 5139).

Arraigning the motives of Members (V, 5131, 5147-5151).

A Senator having assailed a Member in debate, the House messaged to the Senate a resolution declaring the language a breach of privilege. The message received from the House was not acted upon by the Senate, but the language objected to was subsequently stricken from the Record (VIII, 2516).

Relating to the States.

Disparagement of a State of the Union (VIII, 2522-2525; June 19, 1948).

Relating to the House.

Reflections on the House, its membership or decisions, present or past (V, 5132-5138).

Offensive words against the character of the House (II, 1247).

False and scandalous charges against the House and its membership (III, 2637).

Indecent language against the proceedings of the House (V, 5131).

Criticism of Member (VII, 2513, 2516).

Relating to Senate

Reference to debates or votes in the Senate (V, 5095-5097; VIII, 2504, 2505).

Reflection upon the character of the Senate (V, 5129).

Reference to probable or actual action by the Senate (V, 5101-5105; VIII, 2515).

Criticism of a Senator (V, 5121, 5122, 5127; 65-1-3458; VIII, 2514).

Discussion of functions or proceedings of Senate (VIII, 2503).

Reading papers reflecting on Senate (V, 5128).

Reading Senate proceedings (VIII, 2501, 2506).

Impugning motives (VIII, 2520).

Action outside Senate (VIII, 2515, 2518).

Even by compliment (VIII, 2509).

Anonymous reference (VIII, 2512).

But—

Does not apply to criticism outside of House (VIII, 2510, 2519).

Reference to parliamentary decisions admitted (VIII, 2507, 2508, 2518).

It is the duty of the Chair (VIII, 2515, 2521), without suggestion from the floor, to interfere when statements are made in debate which might give Senators ground for complaint (V, 5095, 5130; VIII, 2520, 2521).

Relating to President

Reference in language personally offensive (V, 5094).  
 Personal abuse, innuendo or ridicule of President (VIII, 2497).  
 In terms of opprobrium (VIII, 2497, 2498).

But—

Legitimate criticism admitted (VIII, 2499, 2500).  
 Under the practice of the House it was held that the Committee of the Whole might, at its option, take action on a point of order against unparliamentary criticism of the President and rise and report it to the House (VIII, 2497).  
 The principles of decorum and courtesy governing the relations of the two Houses should extend to the relations of the House with the President. Debate in the House may refer to the motives of the President but personal criticism, innuendo, or ridicule are not in order. The right to criticize official acts and policies of the President in debate in the House should not be denied or abridged but such debate is subject to proper rules requiring decorum in debate. A select committee appointed to consider the propriety of remarks made by a Member in debate invited him to submit suggestions in writing, and the House struck from the Record a speech containing language reflecting personally on the President of the United States (VIII, 2497).

Relating to Speaker

Criticism of Speaker (V, 5188).  
 Disrespect for Speaker (II, 1366).  
 Words insulting to Speaker (II, 1248).  
 Charging dishonesty (73-2-10168).  
 Charging disregard of rules (74-1-1680).  
 Referring invidiously to decisions of present or former Speakers (VIII, 2531).

Relating to Committee of the Whole

Reference to proceedings of Committee of the Whole not formally reported is prohibited (VIII, 2429, 2494).  
 Replying in House to arguments made in Committee of Whole (V, 5052).

Relating to committees

Reference to proceedings of committee not formally reported to House (V, 5080-5083; VIII, 2269, 2485, 2494).  
 Reference to bill not yet reported from committee (V, 5053).  
 Production in House of records of a committee (V, 5084, 5085).

Disparagement of a committee (March 10, 1948).

While questions of privilege rising in the committee should properly be noted there and reported by the committee to the House, they may subsequently be raised in the House itself if authenticated by official documents or committee publications, as when published in hearings of the committee (VIII, 2216).

V. Procedural Precedents: Privileged Matter

A proposition to censure a Member presents a question of privilege which supersedes the regular order of business (Hinds', supra, Vol. III, §§2649, 2650, 2651). The rule on privilege applies in the cases of consideration of a resolution directly calling for the House to act (ibid), and of consideration of a resolution providing for the creation of a committee to investigate, etc. (Hinds', supra, Vol. III, §§2652, 2653). It applies to a report from a committee instructed to investigate (Hinds', supra, Vol. III, §2525).

Questions of privilege shall have precedence over all other questions, except motions to adjourn (House Rule IX, and see §665, of Jefferson's Manual and Rules of the House of Representatives, House Doc. No. 374, 88th Cong.).

(b). In the House or in Committee of the Whole

Proceedings for censure may arise out of occurrences both in the House (Hinds', supra, Vol. II, §1247), and in Committee of the Whole (supra, §1259). Since only the House can order censure, if the offensive statement is made in Committee of the Whole it should be taken down then and reported to the House (Hinds', supra, Vol. II, §1259). It is not in

order as a question of privilege in the House to propose censure of a Member for disorderly words spoken in Committee of the Whole, but not taken down or reported therefrom (Hinds', supra, Vol. V, §5205).

Acts such as assaults committed in Committee of the Whole are reported to the House for appropriate consideration (Hinds', supra, Vol. II, §§1648, 1649).

(c). Investigations by Committees

Committees instructed to investigate breaches of privileges of the House are usually authorized to issue subpoenas and examine witnesses on oath (see, e.g. Hinds', supra, Vol. II, §§1275, 1655). Sometimes such committees will adopt rules to govern the examination of witnesses and the use of testimony by persons implicated (Hinds', supra, Vol. III, §§1841, 1842). If an investigation of a Member uncovers evidence implicating other Members, they have been allowed to appear and explain or contradict the testimony or evidence (supra, §1845), and call witnesses (§1848). Where a Member's character has been impeached by the statements of another Member before an investigating committee, the committee has allowed both Members to be represented by counsel (§1847).

Committees instructed to investigate may include majority and minority opinions in their reports.

A committee having general authority to examine and recommend in relation to an assault between two Members was held to have authority also to recommend censure of other Members implicated (Hinds', supra, Vol. II, §1656).

(d). Floor Debate

Debate on a question of privilege is under the hour rule (Hinds', supra, Vol. V, §4990; Cannon's, supra, Vol. VIII, §2448).

(e). Right of Member Being Investigated, To Participate

In censure situations, the House has permitted the Member to be heard in debate as a matter of course without permission being asked or given (Hinds', supra, Vol. II, §§1246, 1253), or by unanimous consent (Hinds', supra, Vol. II, §1656).

On occasion the Speaker has asked the Member if he desired to be heard (Cannon's, supra, Vol. VI, §236).

However, after a resolution of censure has been adopted, it has been held that the Member might not then be heard (Hinds', supra, Vol. II, §1259).

(f). Germaneness

It has been held that a proposition to censure is not germane to a proposition to expel (Cannon's, supra, Vol. VI, §236; Contra, Hinds', supra, Vol. V, §5923). The proper procedure is to vote down a proposition to expel, and then vote on a proposition of censure. In one instance where the question on agreeing to resolutions of censure had been decided adversely, the Speaker recognized a Member of the opposition to offer resolutions of censure (Cannon's, supra, Vol. VI, §236).

(g). Resolutions

A resolution of censure should not apply to more than one Member (Hinds', supra, Vol. II, §1240). The House had declined to censure two Members in one resolution, taking such action as enabled a vote to be taken as to each (supra, §1621).

The previous question may be moved on a proposition to censure a Member, although the effect of it might be to prevent him from making an explanation or defense (Hinds', supra, Vol. V, §5459).

(h). Where Speaker Is Concerned

In one instance the Speaker retained the chair and ruled as to a resolution which in effect proposed a censure of a decision made by him as Speaker (Hinds', supra, Vol. III, §2621).

In another instance where the House was considering a resolution censuring a Member for an alleged insult to the Speaker, the latter called another Member to the chair (Hinds', supra, Vol. II, §1248).

(i). Effect of Apology

In situations where Members have apologized following the initiation of censure proceedings, the House has accepted the apology and terminated the proceedings (see, for instance, Hinds', supra, Vol. II, §§1250, 1257, 1258; Hinds', supra, Vol. V, §7006).

(j). Expunging From the Journals

In one instance, the House expunged from the Journals of preceding Congresses its censure of two Members (Hinds', supra, Vol. IV, §§2792, 2793).



(k). Reversal of Censure Decision

In one instance, after a Member had explained, the House reconsidered its vote of censure and reversed it (Hinds', supra, Vol. II, §1653).

VI. Administration of Censure By the Speaker

After the House has ordered censure, it is administered by the Speaker to the Member at the bar of the House (see, for example, Cannon's, supra, Vol. VI, §236; Hinds', supra, Vol. II, §§1251, 1259).

VII. Appearance of Words of Censure in the Journal

After the Speaker has censured a Member by order of the House, the words of censure are spread on the Journal (Hinds', supra, Vol. II, §§1249, 1656, 1251; Cannon's, supra, Vol. VI, §236).

VIII. Censure Following Resignation of Members

In several occasions when a Member has resigned during the pendency of expulsion proceedings against him, the House has nevertheless adopted resolutions of censure in respect to such Members (Hinds', supra, Vol. II, §§1239, 1273, 1275).

In another instance where a Member, for whom the House had voted censure, announced that he had sent his resignation to the Governor of his State, the House nevertheless censured him (Hinds', supra, Vol. II, §1656).

IX. For Acts Done In Previous Congresses

- In the Credit Mobilier case in the Forty-second Congress, the House censured two Members charged with bribery committed in the Fortieth Congress, preferring censure to expulsion but declining to express doubt as to the power to expel in such circumstances (Hinds', supra, Vol. II, §1286).

B. Expulsion of Members by the House

Attached hereto as Appendix II is a list of instances of expulsion of Members by the House.

The expulsion of Members is a power appertaining to each respective house of the Congress alone as provided in Art. I, sec. 5, cl. 2 of the U.S. Constitution which declares: "Each House may determine the Rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member." There is no judicial process for unseating a Member; it is not a function of the Executive; and, it cannot be achieved through State recall statutes (see Burton v. U.S., 202 U.S. 344 (1906); In Re Chapman, 166 U.S. 661 (1897)). Even where a statute prescribes that conviction for an offense shall bar a person from federal office, there is no automatic expulsion of a Member. As the Supreme Court stated in Burton v. U.S., supra, p. 369: ". . . the final judgment of conviction [does] not operate, ipso facto, to vacate the seat of [a] convicted Senator, nor compel the Senate to expel him or to regard him as expelled by force alone of the judgment." The decision must be made by the House involved.

In his work, "History of the House of Representatives", 1961,

George B. Galloway, states that the power to expel has not been resorted to often by the House, and that the House has apparently not exercised it since Civil War days.

He stated, p. 32: "The power of expulsion has frequently been discussed but seldom exercised by the House especially in relation to offenses committed before election. In 1861 John B. Clark, a Member-elect from Missouri who had not appeared or taken the oath, was expelled for treason. Later in the same year, Representatives John W. Reid of Missouri and Henry C. Burnett of Kentucky were expelled for treason. In general, the House has been dubious of its power to punish Members for offenses committed before their election. In the South Carolina election case of Richard S. Whaley in 1913, [see Cannon's, supra, vol. VI, § 78] it was held that the power of the House to expel one of its Members is unlimited, a matter purely of discretion to be exercised by a two-thirds vote, from which there is no appeal. But the charges against Whaley were dismissed. The resignation of an accused Member has always caused a suspension of expulsion proceedings. No cases of expulsion from the House since Civil War days are reported in Hinds<sup>e</sup> (Precedents of the House of Representatives, Vols, I-V) and Cannon's (Precedents of the House of Representatives, Vols. VI-VIII)."

In addition to the vote requirement for expulsion, (two-thirds of those present and voting) there are three major differences as derived

from precedents, between application of the power to expel and the power to censure, by the House.

The first is that expulsion is not exercised for acts occurring prior to an election (precedents state the proposition in two ways, i.e., acts committed before the election or acts committed before the convening of the Congress); censure, nevertheless, was applied in the Credit Mobilier situation for acts occurring during a previous Congress. But, the House, in that situation, struck out of the preamble of the censure resolution, language that ". . . grave doubts exist as to the rightful exercise by this House of its power to expel a Member for offenses committed by such Member long before his election thereto. . . ." (Hinds', supra, Vol. II, § 1286).

The second difference is that expulsion will not be applied where a Member has resigned. As noted in the censure section previously, censure has been utilized after a Member has resigned.

The third major difference is that grounds for expulsion are quite broad and undefined (see Committee report (H. Rept. 158) in the election case against Richard S. Whaley, 63rd Congress, where it is stated that the extent of grounds for expulsion "seems to be unlimited"; Cannon's, supra, Vol. VI, § 77), while, as has been noted, grounds for censure relate to violations of the rights and privileges of the House.

## II. Acts Committed Previously

Precedents as respects non-expulsion for previous acts have not been stated with consistency. For instance, the Committee report in the case of Brigham Roberts, of Utah, in the 56th Congress, (H. Rept. No. 85, 1st Sess.), stated that, "Both Houses . . . had no right to expel for an act unrelated to the Member as such, or because it was committed prior to his election" (Hinds', supra, Vol. I, § 476; see also Hinds', supra, Vol. II, § 1283, 1284; Cannon's, supra, Vol. VI, § 238). Such a precedent has been adopted or stated where the act in question involved conviction for a crime committed prior to the election (State conviction, Hinds', supra, Vol. II, § 1284; federal conviction, Cannon's, supra, Vol. VI, § 238).

However, in its report in the case of Victor Berger, of Wisconsin, in the 66th Congress, H. Report 414, the Committee stated ". . . the House of Representatives . . . has . . . consistently refused to expel a Member once he has been sworn in for any offense committed by him previous to his becoming a Member, on the ground that the constitutional power of expulsion is limited in its application to the conduct of Members of the House during their term of office".

As to when a person becomes a "Member", precedent states that this occurs at the commencement of the term for which elected, not after election day, (see Hinds', supra, Vol. I, § 500). Nevertheless, as has

been noted, the House, as a precedent, did expel a Member-elect for acts committed between the date of the election, (although subsequent to the commencement of the term), and the convening of Congress (see, Hinds', supra, Vol. II, § 1262). In this case, the person was elected in 1860, to the 37th Congress, convening on March 4, 1861, but he did not appear to take the oath on the convening of the Congress on July 4, 1861, and is designated in Hinds', ibid, as a "Member-elect".

Expulsion is also distinguished from exclusion, the power for which arises under Article I, section 5, clause 1, of the Constitution; "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members . . ."; and, Article I, section 6, clause 2; "No Senator or Representative shall, during the time for which he was elected, be appointed to any civil Office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a Member of either House during his continuance in office."

These provisions relate to qualifications and elections and do not contain a two-thirds vote requirement for exclusion. Consequently, persons have been excluded by majority vote after having been sworn in (and after an investigation) (see, Hinds', supra, Vol. I, § 434, where the House excluded John Bailey of Massachusetts, in February, 1824, on

the disqualification grounds of nonresidency, although he had been sworn in at the convening of the 18th Congress on December 1, 1823 (Hinds', supra, Vol. I, § 434; Annals of Congress, 18th Congress, 1st Sess., pp. 793-796); Hinds', supra, Vol. I, § 490, exclusion of a Member by majority vote, after he had vacated his seat in the 37th Congress, and had accepted a commission as colonel in the Union Army; and, exclusion of a Member, after having been sworn in, and pending the outcome of a contested election contest, see, case of Roy O. Jenks, of New Hampshire, 75th Congress, June 8, 1938, 83 Cong. Record 5960-61, 8642-61).

The usual practice in such cases, (except for assuming another office), is to swear in a Member-elect pending an investigation, thus constituting the swearing in interim only.

Persons have also been excluded by majority vote, where they have not been sworn in, on grounds of qualifications or election contests (see, as respects qualifications, the cases of Brigham Roberts of Utah, 56th Congress, (Hinds', supra, Vol. I, §§ 474-480); and Victor Berger, of Wisconsin, 66th Congress, (Cannon's, supra, Vol. VI, §§ 56-58); as respects election contests, see the case of Roush v. Chambers, in the 87th Congress, where neither party was sworn in at the convening of Congress (107 Cong. Record 24, January 3, 1961), and the oath was administered in June, 1961, to the contestant, Mr. Roush, after a decision by the House on the contest (107 Cong. Record 10377-10391)).



### III. Proceedings to Expel - Resolutions

As in censure proceedings, expulsion requires a resolution and a final vote thereon by the House (two-thirds of those present and voting).

It may be a resolution to expel upon which the House acts forthwith (see, Hinds<sup>\*</sup>, supra, Vol. II, §§ 1261, 1262), including a resolution arising out of words spoken in debate (supra, § 1254), or, it may be a resolution providing for a committee to investigate, report, and perhaps recommend. In these latter cases, where the committee is instructed to recommend, it may recommend censure or expulsion (see references re: committee recommendations under this similar heading in Part A of this report, "Censure"). In practice the committee is not instructed to recommend only expulsion.

Reference may be to select committees or to standing committees (see, ibid.), and, committees have recommended action to be taken by the House without actually having been instructed to do so (see, re: standing committee, Hinds<sup>\*</sup>, supra, Vol. II, § 1273—committee reported resolution to expel but member resigned and expulsion proceedings were dropped and he was censured; re: select committee, Hinds<sup>\*</sup>, supra, Vol. II, § 1286—Credit Mobilier investigation).

### IV. Type of Committee to Investigate and Report

See preceding section herein.

## V. Procedural Precedents - Privileged Matter

As in censure proceedings, a question of expulsion involves a question of privilege and it supersedes the regular order of business (Hinds', supra, Vol. III, § 2649). Resolutions, etc., relating to expulsion are privileged (Cannon's, supra, Vol. VI, § 236).

### (b) In House or In Committee of the Whole

As in the matter of censure, resolutions have been submitted to expel Members for words uttered in Committee of the Whole and taken down under the Rule (see, Hinds', supra, Vol. II, § 1258). There is precedent that an expulsion resolution may be submitted because of an assault by one Member upon another for words spoken in debate, even though the words were not taken down at the time, and other business intervened (Hinds', supra, Vol. II, § 1655).

### (c) Investigations by Committees

For grants of authority to committees investigating such situations to issue subpoenas and examine witnesses on oath, see this heading under Part A of this report, "Censure". However, an elections committee has determined that while it was authorized to subpoena witnesses and compel the production of papers in elections cases, where the subject actually concerned expulsion it would be without such authority in proceedings of the latter type unless instructed or authorized by the House (Cannon's, supra, Vol. VI, § 77).

For citations where committees have drawn up rules of procedure for such situations, see this heading also, under Part A, herein, "Censure". Of course, House Rule XI, § 26 would also be applicable today in any investigation of a matter leading to possible expulsion or censure.

Majority and minority reports may be submitted from committees in expulsion situations (see, Hinds', supra, vol. II, § 1275).

(d) Floor Debate

Since expulsion involves a question of privilege, debate is under the hour rule (see this heading in Part A, herein, "Censure").

(e) Rights of Member to Participate

While on one occasion in proceedings for expulsion, the House has declined to give the Members a trial at the bar (Hinds', supra, Vol. II, § 1275), it has allowed a Member to be heard in his own defense (supra, § 1273), to address the House by unanimous consent (supra, § 1275), to address the House as a matter of right (supra, § 1286), and to present a written defense, but not to depute another Member to speak on his behalf (supra, § 1273).

And, in the absence of a Member against whom a resolution of expulsion was offered, consideration of the resolution was postponed with notice that the Sergeant-at-Arms would be asked to deliver to the Member or his secretary a copy of the resolution with notice of its pending consideration (Cannon's, supra, Vol. VI, § 236).

(f) Germaneness

See this heading under part A of this report, "Censure".

(g) Resolutions

A resolution of expulsion will concern one Member only. If a committee reports concerning several Members it will issue a separate report and separate resolution in each respective case (Hinds<sup>2</sup>, supra, Vol. II, § 1275).

(h) Effect of Apology

In several instances where resolutions were submitted to expel because of assaults by one Member against another in Committee of the Whole, apologies by the parties concerned effected a discontinuance of the proceedings for expulsion (see, for example, Hinds<sup>2</sup>, supra, Vol. II, §§ 1650, 1657).

VI. Effect of Resignation of Member on Expulsion Proceedings

In situations where a Member has resigned against whom expulsion proceedings were being considered, either a committee has been discharged from any further action thereon (Cannon<sup>2</sup>s, supra, Vol. VI, § 238), or, the proceedings have been discontinued (Hinds<sup>2</sup>, supra, Vol. II, § 1275). In some such cases after discontinuance of the expulsion proceedings, the House has adopted resolutions of censure (Hinds<sup>2</sup>, supra, Vol. II, §§ 1239, 1273).

VII. Notification to State Governor

Resolutions expelling Members have had included in their phraseology, a clause that the Governor of the State of the Member in question be notified of the expulsion (Hinds<sup>2</sup>, supra, Vol. II, § 1261).

## APPENDIX I

Instances of Censure by the House

During its existence, the House has censured 17 Members and one Delegate. All but one of the instances of censure occurred during the 19th century, 13 Members being censured between 1864 and 1875.

Seven cases of censure involved use of unparliamentary language; two involved conspiracy to assault and assault upon another Member; two involved utterance of treasonable language; two involved insults to the House by the introduction of offensive resolutions; and, five involved corrupt acts.

The last censure case on record arose in 1921, and involved Representative Thomas L. Blanton, of Texas.

The following cases are taken from Hinds' and Cannon's Precedents of the House of Representatives:

1. Use of unparliamentary language--

(a) Jan. 15, 1868, 40th Cong., 2nd Sess., House Journal, pp. 193-195.

Rep. Fernando Wood, of N.Y.

During the consideration of a bill supplementary to the act to provide for the more efficient government of the rebel states, Mr. Wood was called to order for using the words; "A monstrosity, a measure the most infamous of the many infamous acts of this infamous Congress".

Mr. Wood, having declined to explain, the question was put: Shall the Member be permitted to proceed?, and decided in the negative, yeas 40, nays 108.

Then Mr. Henry L. Dawes of Mass. submitted a resolution directing the Speaker to pronounce the censure of the House, which resolution was agreed upon under the operation of the previous question, yeas 114, nays 39.

Whereupon, Mr. Wood appeared at the bar of the House and received the reprimand of the Speaker (Hinds<sup>o</sup>, Vol. II, par. 1247).

(b) May 17, 1890, 51st Cong., 1st Sess., House Journal pp. 623-625.

Rep. William D. Bynum of Indiana.

During consideration of a tariff bill in Committee of the Whole, Rep. Bynum acknowledged that he had on a previous day called another Member "a liar and a perjurer". He then added, "I want to say that I accept and am willing to believe that I have as great confidence in the character of Mr. Campbell as I have in the character of the gentleman who makes this attack upon me".

The Committee rose and the language was reported to the House.

After several procedural matters were considered involving certain points of order and an appeal therefrom, which appeal was laid on the table by a vote of yeas 126, nays 101, Mr. Cutcheon of Michigan submitted a resolution that Mr. Bynum had been guilty of violation of

the rules of the House and merited censure and that censure be administered by the Speaker.

After several further points of order and appeals therefrom (which were laid on the table), the "resolutions (were) agreed to by the House". Mr. Bynum then appeared at the bar of the House and received the reprimand of the Speaker (Hinds' Vol. II, par. 1259).

(c) Jan. 26, 1867, 39th Cong., 2nd Sess., House Journal, pp. 271-273.

Rep. John W. Hunter of N.Y.

During debate on a bill to restore to the States late in insurrection their full political rights, Mr. Hunter was called to order by Rep. Hill of Indiana for use of the following words: "I say that, so far as I am concerned, it is a base lie", referring to a statement by Rep. Ashley of Ohio.

The Speaker having decided the words out of order, Mr. Hill submitted a resolution of censure which was agreed to, yeas 77, nays 33. Mr. Hunter appeared at the bar of the House and the Speaker administered the censure, (Hinds', Vol. II, par. 1249).

(d) Feb. 14, 1869, 40th Cong., 3rd Sess., House Journal, pp. 225-76.

Rep. E. D. Holbrook Delegate from Idaho.

During consideration of a bill making appropriations for the Indian department, Mr. Holbrook was called to order for declaring



that the Representative in charge of the bill had raised points of order and made assertions which he knew at the time to be "unqualifiedly false".

The Speaker ruled the words out of order and Mr. Holbrook, having declined to retract, Mr. James Garfield of Ohio submitted a resolution of censure.

The resolution was agreed to under operation of the previous question and Mr. Holbrook appeared at the bar of the House and was censured by the Speaker, (Hinds', Vol. II, par. 1305).

(e) Feb. 4, 1875, 42nd Cong., 2nd Sess., House Journal pp. 392-394.

Rep. John Young Brown of Kentucky.

During debate on a motion to recommit a bill to protect all persons in their civil and political rights, Rep. Brown referred to Rep. Benjamin Butler of Massachusetts as one "outlawed in his own home from respectable society; whose name is synonymous with falsehood; and who is the champion, and has been on all occasions, of fraud; who is the apologist of thieves; who is such a prodigy of vice and meanness that to describe him would sicken imagination and exhaust invective."

Rep. Hale of N.Y. submitted a resolution of censure. Rep. Dawes of Mass. moved to amend it by substituting a resolution of expulsion but, after debate, withdrew it.

The resolution of censure was agreed to, yeas 161, nays 79, and Mr. Brown appeared at the bar of the House and was censured by the Speaker (Hinds', Vol. II, par. 1251).

(f) Oct. 24, 1921, 67th Cong., 1st Sess., House Journal p. 498.

Rep. Thomas L. Blanton of Texas.

On Oct. 24, 1921, the House agreed to a motion by Mr. Frank Mondell of Wyoming to expunge from the Record an extension of remarks by Mr. Blanton, inserted on the previous legislative day containing "grossly indecent and obscene language". The motion was agreed to, yeas 314, nays 1.

Rep. Mondell then introduced a motion for expulsion and Mr. Garrett of Tennessee submitted a substitute motion of censure.

After debate on procedure the House voted on the expulsion resolution, which, not receiving two-thirds concurrence, was not adopted. The House then adopted the censure resolution, yeas 293, nays 0, and Mr. Blanton appeared at the bar of the House and was censured by the Speaker (Hinds', Vol. VI, sec. 236).

(g) July 11, 1832, 22nd Congress, 1st Sess., House Journal pp. 1113, 1118, 1134-35.

Rep. William Stanberry, of Ohio.

On July 9, 1832, during debate on a question of order, Mr. Stanberry made a statement criticising a ruling of the chair and

adding, "I have heard the remark frequently made, that the eyes of the Speaker are too frequently turned from the chair you occupy toward the White House."

He was called to order and Rep. Foster of Georgia moved to suspend the rules in order to submit a resolution stating that Mr. Stanberry's remark was an indignity to the Speaker and the House and merited the decided censure of the House.

The House, on a vote, refused to suspend the rules, and on July 10, Mr. Bates of Maine presented the resolution again with a slight modification. After some debate on questions of procedure the House took up the orders of the day.

But on the following day debate on the censure resolution was resumed and after hearing Mr. Stanberry speak in his defense, the resolution was agreed to, yeas 93, nays 44 (Hinds', Vol. II, par. 1248).

## 2. For assault

(a) July 24, 1866, 39th Cong., 1st Sess., House  
Journal pp. 842, 843, 1018, 1028, 1031, 1033, 1037, 1074-76, 1111.

Rep. Lovell H. Rousseau, of Kentucky.

On June 15, 1866, Rep. Spalding of Ohio submitted a resolution which was agreed to by the House creating a select committee to investigate and report on an alleged assault by Rep. Rousseau of Kentucky upon Rep. Josiah Grinnell of Iowa for words about "cowardice" spoken by the latter during debate in the House.

The Committee recommended that Mr. Rousseau be expelled and that Mr. Grinnall, for his language, merit the contempt of the House.

After considerable debate, the resolution for expulsion was defeated, two-thirds not concurring therein (July 17).

Thereafter an amended resolution was offered as a substitute providing for the censure of Rep. Rousseau although it was announced that he had submitted his resignation to the Governor of his State. This resolution was agreed to, yeas 89, nays 30 (Hinds<sup>o</sup>, Vol. II, par. 1656).

(b) July 15, 1856, 34th Congress., 1st Sess., House Journal, generally pp. 1023-1216.

Rep. Lawrence Keitt of South Carolina.

This case of censure arose as an aspect of House action to expel Rep. Brooks of South Carolina for physically assaulting Sen. Sumner of Mass. with a cane for words spoken by the Senator in the Senate. The Senate having complained to the House, a select committee was appointed to report and recommend to the House.

Rep. Edmundson of Virginia and Rep. Keitt of South Carolina, were implicated in that it was charged that they had been informed of Rep. Brooks' intent sometime prior to the assault and had done nothing to discourage or prevent it.

On July 14, the House voted on the resolution to expel Rep. Brooks, but it was defeated, two-thirds not concurring. Then, on July 15, the House voted to censure Mr. Keitt, yeas 106, nays 96, but voted to disapprove the censure of Mr. Edmundson, yeas 60, nays 136.

Both Mr. Brooks and Mr. Keitt resigned from the House immediately (Hinds<sup>2</sup>, Vol. II, par. 162D).

3. For treasonable words

(a) April 9, 1864, 38th Cong., 1st Sess., House Journal pp. 506-509.

Rep. Benjamin G. Harris of Maryland.

Rep. Washburne of Illinois submitted a resolution to expel Rep. Harris for stating that the South had asked to be left in peace and not subjugated, "and may God Almighty grant that it may never be (subjugated)".

A vote being taken on the resolution and two-thirds not concurring, Rep. Schanck of Ohio submitted a motion of censure.

This was agreed to by the House, yeas 98, nays 20 (Hinds<sup>2</sup>, Vol II, par. 1254).

(b) April 9, 1864, 38th Cong., 1st Sess., House Journal pp. 505, 520, 522, 523.

Rep. Alexander Long of Ohio.

Speaker Colfax of Indiana temporarily left the Chair to introduce a resolution to expel Rep. Long for having declared himself in favor of recognizing the Confederacy.

After some debate, on April 14, a substitute amendment was offered declaring Mr. Long "to be an unworthy Member of the House of Representatives". The preamble to this resolution was then approved by a vote of yeas 78, nays 63, and the resolution by a vote of 80 yeas and 70 nays (Hinds<sup>2</sup>, Vol. II, par. 1253).

4. For insults to the House

(a) May 14, 1866, 39th Cong., 1st Sess., House Journal p. 695.

Rep. John W. Chanler of N.Y.

Rep. Chanler introduced a resolution expressing House support for Pres. Johnson's vetoes "in (protecting) the rights of the people of this Union against the wicked and revolutionary acts of a few malignant and mischievous men".

Mr. Schenck of Ohio submitted, as a question of privilege, a resolution of censure on the theory that the Chanler resolution was a "gross insult to the House".

The resolution of censure was agreed to, yeas 72, nays 30 (Hinds<sup>2</sup>, Vol. II, par. 1246).

(b) Mar. 21, 1842, 27th Cong., 2nd Sess., House Journal, pp. 573, 576.

Rep. Joshua R. Giddings of Ohio.

Rep. Giddings had presented to the House a series of incendiary resolutions touching upon a portion of the Union then a subject of negotiation between the U.S. and Great Britain, which resolutions reportedly approved "mutiny and murder".

Rep. John B. Weller of Ohio submitted a resolution holding the conduct of Mr. Giddings "unwarranted" and "unwarrantable", and "deserving the severe condemnation of the people of this country, and of this body in particular".

After some debate on Mr. Giddings' right to speak in his defense, the preamble of the resolution was agreed to by yeas 119, nays 66, and the resolution by yeas 125, nays 69.

On Mar. 23, Mr. Giddings resigned his seat in the House but was re-elected to succeed himself and took his seat on May 5 (Hinds<sup>o</sup>, Vol. II, par. 1256).

5. For corrupt acts

(a) Feb. 27, 1873, 42nd Cong., 3rd Sess., House Journal, generally pp. 429-499.

Rep. Oakes Ames of Mass., and Rep. James Brooks of N.Y.

Speaker Blaine, on Dec. 2, 1872 submitted a resolution for the creation of a select committee to investigate and report on

the Credit Mobilier and Union Pacific R.R. Co. scandal.

The Committee reported on Feb. 18, 1873 (House Rept. 72, 42nd Cong., 3rd Sess.) finding that Reps. Ames and Brooks had attempted to bribe Members of Congress by offering them shares of Credit Mobilier stock considerably below value, and recommending their expulsion. The transactions reportedly occurred before both men were elected to the 42nd Congress. On Feb. 26, Rep. Sargent of California offered a substitute resolution pointing out that the alleged transgressions had taken place more than five years previously and were not connected with the election of the Members to the 42nd Congress; and, that the House "absolutely condemn" both Members.

The substitute was adopted, yeas 115, nays 110, and the resolution condemning Ames was adopted, yeas 182, nays 36, as was the resolution condemning Brooks, yeas 174, nays 32 (Hinds<sup>o</sup>, Vol. II par. 1286).

(b) March 16, 1870, 41st Congress, 2nd Sess., House Journal, pp. 481, 485, 487-88.

Rep. Roderick R. Butler of Tenn.

On March 16, 1870, a majority of the House Military Affairs Committee submitted a report recommending that the House condemn Rep. Butler for nominating a young man to West Point who was not an



actual resident of his district and for subsequently taking money from the boy's father for political purposes.

A minority of the Committee recommended a resolution of expulsion and the House, by 101 yeas to 68 nays agreed to substitute this for the resolution of condemnation. The expulsion resolution was defeated, two-thirds not concurring therein, and the original resolution of condemnation was amended to a resolution of censure. The resolution, as amended, was adopted, yeas 158, nays 0 (Hinds', Vol. II, par. 1274.).

(c) Feb. 24, 1870, 41st Cong., 2nd Sess., House Journal pp. 373.

Rep. B. F. Whittemore, of South Carolina.

On Feb. 21, 1870, the Committee on Military Affairs, having been instructed to investigate the alleged sale of appointments to the Military and Naval Academies by Members of Congress submitted a report recommending the expulsion of Mr. Whittemore.

After some procedural debate about the right of Mr. Whittemore to speak in his defense, and during the presentation of his remarks, the Speaker was informed that Mr. Whittemore had submitted his resignation from the House to the Governor of South Carolina. The Speaker then cut Mr. Whittemore off, ruling that he could only proceed by unanimous consent.

The House then decided, that Mr. Whittemore having resigned, the expulsion resolution should be laid on the table.

The Military Affairs Committee then submitted a resolution declaring that Mr. Whittemore was unworthy to hold a seat in the House and condemning him as having engaged in conduct unworthy of a Representative. This was adopted, yeas 187, nays 0 (Hinds<sup>2</sup>, Vol. I par. 1273).

(d) March 1, 1870, 41st Congress, 2nd Sess., House Journal, pp. 390, 396.

Rep. John T. Deweese, North Carolina.

On Feb. 28, 1870, the House was informed that Mr. Deweese had resigned from Congress. On Mar. 1, 1870, the House Military Affairs Committee submitted a resolution of condemnation against Mr. Deweese for selling an appointment to the Naval Academy pointing out that a resolution of expulsion would have been reported had Mr. Deweese not resigned. The resolution of censure was agreed to, yeas 170, nays 0, (Hinds<sup>1</sup>, Vol. II, par. 1239).

APPENDIX 2

Instances of Expulsion by the House

Treason

(a) July 13, 1861, 37th Congress, 1st Session, House Journal, pp. 75-76.

Member-elect John B. Clark, of Missouri.

On July 13, 1861, Representative Francis P. Blair, Jr., of Missouri, as a question of privilege, submitted a preamble and resolution to the effect that John B. Clark was elected to the Thirty-seventh Congress in August, 1860, that since that time he had taken up arms against the Government and held a commission in the so-called State guard of Missouri, under the Confederate Governor of that State, and that he had taken part in the battle at Booneville, Missouri, in June, 1861, and, that he had forfeited all right to sit as a Representative and that he be expelled.

Congress was in a special session, convening on July 4, 1861.

Hinds' reports that the debate was brief, being limited by the previous question. Representative Blair, upon his responsibility as a Member, affirmed that the allegation of the preamble was true. There was some objection that the case should be considered by a committee; but no Member raised the point, which is apparent from the Journal, that Mr. Clark was a Member-elect merely, not having appeared and taken the oath.

The resolution of expulsion was agreed to by a two-thirds vote, yeas 94, nays 45 (Hinds', Precedents of the House of Representatives, Vol. II, §1262; Congressional Globe, 37th Congress, 1st Session, pp. 116-117).

(b) December 2, 1861, 37th Congress, 2nd Session, House Journal, p. 8.

John W. Reid, of Missouri.

On December 2, 1861, Representative Francis P. Blair, Jr., of Missouri, offered a resolution to expel John W. Reid, of Missouri, for having taken up arms against the Government, which was agreed to by a two-thirds vote (Hinds', supra, Vol. II, §1261).

Mr. Reid had not occupied his seat after August 3, 1861.

(c) December 3, 1861, 37th Congress, 2nd Session, House Journal, pp. 26-27.

Henry C. Burnett, of Kentucky.

On December 3, 1861, Representative W. McKee Dunn, of Indiana offered a preamble and resolution that Rep. Burnett of Kentucky was in open rebellion against the Government, that he be expelled, and that the Sergeant-at-Arms be directed not to pay to Rep. Burnett his salary accrued since the close of the first (special) session (August 6, 1861). The resolution was agreed to by a two-thirds vote (Hinds', supra, Vol. II, §1261).

During the debate on the resolution it was revealed that Mr. Burnett was president of a revolutionary convention claiming to be the

provisional government of the State, some of the members of which were in armed rebellion, and that the convention was planning to carry the State into the Confederate cause (Congressional Globe, 37th Cong., 2nd Sess., pp. 7-8).

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