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Secret Sessions of Congress: A Brief Historical Overview

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Summary

“Secret” or “closed door” sessions of the House of Representatives and Senate are held periodically to discuss business, including impeachment deliberations, deemed to require confidentiality and secrecy. Authority for the two chambers to hold these sessions is implied by Article I, section 5, of the Constitution. Both the House and the Senate have supplemented this clause through rules and precedents.

While secret sessions were common in Congress’ early years, they have been less frequent in the twentieth century. National security is Congress’s principal reason for such sessions in recent years. Members and staff who attend these meetings are prohibited from divulging information. Violations are punishable by each chamber’s disciplinary rules. Members may be expelled and staff fired for violations of the rules of secrecy. Transcripts from secret sessions are not published unless the relevant chamber votes, during the session, or at a later time, to release them. The portions released then may be printed in the *Congressional Record*.

This report will be revised when either house holds another secret session or amends its rules for these meetings.

Introduction

"Secret," or "closed," sessions of the House and Senate exclude the press and the public. These sessions are used for Senate deliberations during impeachment trials, as well as to discuss issues of national security, confidential information, and sensitive communications received from the President. During a secret session, the doors of the chamber are closed, and the chamber and its galleries are cleared of all individuals except Members and those officers and employees specified in the rules or essential to the session. Secret sessions occur infrequently and have been held more often in the Senate than the House. Any Member of Congress may request a secret session.

Authority in the Constitution and Rules

Authority for the House and Senate to hold secret sessions is implied by Article I, section 5, of the Constitution, which says: "Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy...." Both chambers have supplemented this clause through rules and precedents. However, all the normal rules of debate apply during secret sessions in the House and Senate, except during impeachment deliberations in the Senate.

In the House, Rule XVII, clause 9, governs secret sessions, including the types of business to be considered behind closed doors.¹ A motion to resolve into a secret session may only be made in the House, not in Committee of the Whole. A Member who offers such a motion announces the possession of confidential information, and moves that the House go into a secret session. The motion is not debatable, but if agreed to, the Member making the motion is recognized under the one-hour rule in closed session. In addition, under Rule X, clause 11(D-F), the House Select Committee on Intelligence may move that the House hold a secret session to determine whether classified information held by the committee should be made public.

For Senate impeachment proceedings, Rules XX and XXIV of the Senate Rules for Impeachment Trials govern secret deliberations. The Senate has interpreted these rules to require that deliberations be closed during impeachment trials.²

Standing Senate Rules XXI, XXIX, and XXXI cover secret sessions for legislative and executive business (nominations and treaties).³ Rule XXI calls for the Senate to close its doors once a motion is made and seconded. The motion is not debatable, and its disposition is made behind closed doors. Rule XXIX calls for Senate consideration of treaties to be conducted in secret unless a majority votes to lift the "injunction of secrecy," which it usually does. Rule XXXI mandates that all nominations be considered in open session unless the Senate votes to do so in secret.

History and Current Practice

Both the Continental Congress and the Constitutional Convention met in secret. The Senate met in secret until 1794, its first rules reflecting a belief that the body's various special roles, including providing advice and consent to the executive branch, compelled

¹For additional information, see: William Holmes Brown, *House Practice, A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 1996), pp. 421-424.

²For the 1805 impeachment trial of Supreme Court Associate Justice Samuel Chase, the Senate decided that: "At all times whilst the Senate is sitting upon the trial of an impeachment, the doors of the Senate Chamber shall be kept open." See "Trial of Judge Chase," *Annals of Congress*, Eighth Congress, 2nd sess., Dec. 24 and 31, 1804, p. 92.

³For additional information, see: U.S. Congress, Senate, *Riddick's Senate Procedure, Precedents and Practices*, S. Doc. 101-28, 101st Cong., 2nd sess. (Washington: GPO, 1992), pp. 275-281, 876.

it to conduct its business behind closed doors. The Senate's executive sessions (to consider nominations and treaties) were not opened until 1929.

Since 1929, the Senate has held 53 secret sessions, generally for reasons of national security. Six of the most recent secret sessions, however, were held during the impeachment trial of President William Clinton. Four of those sessions were in February 1999 during the final impeachment deliberations.⁴ Two were in January 1999 to discuss a motion to end the trial and another motion to call witnesses.⁵

Two of the Senate's secret meetings have been held in the old Senate chamber because its lack of electronic equipment is thought to enhance security. One session was in 1988 to discuss the Intermediate-Range Nuclear Force Missiles Treaty, and the other was in 1992 to debate the "most favored nation" status of China. See Table 1 for a complete list of the 53 secret sessions held by the Senate since 1929.

The House met frequently in secret session through the end of the War of 1812; mainly to receive confidential communications from the President, although also for routine legislative business. Subsequent secret meetings were held in 1825 and in 1830. Since 1830, the House has met behind closed doors only three times: in 1979, 1980, and 1983.⁶ Table 2 identifies the secret House sessions beginning in 1825.

Members and staff of both houses are prohibited from divulging information from secret sessions, and all staff are required to sign an oath of secrecy. Violations of secrecy are punishable by the disciplinary rules of a chamber. A Member may be subject to a variety of punishments, including loss of seniority, fine, reprimand, censure, or expulsion. An officer or employee may be fired or subject to other internal disciplinary actions.

⁴Prior to going into the first of the four closed-door deliberations during the impeachment trial of President Clinton, the Senate agreed to a motion to allow any Senator to insert in the *Congressional Record*, at the conclusion of the trial, his or her statements made in closed session on the Articles of Impeachment. See "Motion Relating to Record of Proceedings Held in Closed Session," *Congressional Record*, daily edition, vol. 145, Feb. 9, 1999, pp. H1386-H1387.

⁵On January 8, 1999, the Senate Democratic and Republican Conferences held a rare joint, secret meeting in the old Senate chamber to discuss the procedure for the pending impeachment trial of the President, but this was not a formal, secret session of the Senate. See Peter Baker and Helen Dewar, "Senate Votes Rules for President's Trial; Proceedings to Begin Next Week," *Washington Post*, Jan. 9, 1999, p. A1.

⁶On July 27, 1998, the House had a secret briefing from law enforcement officials in the House chamber to receive information related to the shooting of two Capitol policemen on July 24, 1998. On March 18, 1999, the House had another closed meeting to discuss "highly classified material relating to the emerging ballistic missile threat to the U.S." This meeting was not considered a "secret session," because it was conducted by a former secretary of defense who is the chair of the Commission to Assess the Ballistic Missile Threat to the United States. After the meeting, the House convened to consider legislation to deploy a national missile defense. The session was for Members only and was conducted at the "top secret classification level." Source: "Dear Colleague" letter from the Speaker of the House, dated March 15, 1999, and conversations with the office of the House parliamentarian.

Transcripts

The proceedings of a secret session are not published unless the relevant chamber votes, during the meeting or at a later time, to release them. Then, those portions released are printed in the *Congressional Record*.

If the House decides not to release the transcript of a secret session, the Speaker refers the proceedings to the appropriate committee(s) for evaluation. The committees are required to report to the House on their ultimate disposition of the transcript. If a committee decides not to release the transcript, it becomes part of the committee's noncurrent records (pursuant to House Rule VII, clause 3) and is transferred to the clerk of the House for transmittal to the archivist at the National Archives and Records Administration. Transcripts may be made available to the public after 30 years unless the clerk of the House determines that such availability "would be detrimental to the public interest or inconsistent with the rights and privileges of the House" (Rule VII, clause 3).

If the Senate does not approve release of a secret session transcript, the transcript is stored in the Office of Senate Security and ultimately sent to the National Archives and Records Administration. The proceedings remain sealed until the Senate votes to remove the injunction of secrecy.

Table 1. Closed Senate Sessions Since 1929

| Date | Reason for the Session |
|----------------------|--------------------------------------------------------------------------------------------|
| May 24, 1933 | Impeachment trial deliberations on Judge Harold Louderback |
| February 10, 1934 | Investigations of air and ocean mail contracts involving William P. McCracken, Jr., et al. |
| February 13-14, 1934 | Contempt proceedings against William P. McCracken, Jr., et al. |
| April 15-16, 1936 | Impeachment trial deliberations on Judge Halsted Ritter |
| June 26, 1942 | Naval policies on building battleships and aircraft carriers |
| October 7-8, 1943 | Reports from the war fronts |
| April 11, 1963 | Nike-Zeus anti-missile program |
| July 14, 1966 | Resolution creating a Committee on Intelligence Operations; security agency oversight |
| October 2, 1968 | Defense Department appropriations; anti-ballistic missile system |
| July 17, 1969 | Military procurement authorizations; anti-ballistic missile system |
| December 15, 1969 | Defense Department appropriations |
| September 10, 1970 | Proposed legislative program for the second session of the 91 st Congress |

| Date | Reason for the Session |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| December 18, 1970 | Discussion of certain legislation to be completed before the <i>sine die</i> adjournment of the 91 st Congress |
| June 7, 1971 | United States involvement in Laos |
| May 2-4, 1972 | Discussion of the release of a classified National Security Council memorandum (two sessions on May 2, 1972) |
| September 25, 1973 | Defense procurement authorization program; trident submarine program |
| June 10, 1974 | Defense procurement authorization; funds for the “counterforce” capability program |
| June 4, 1975 | Military procurement authorization; U.S. strategic missiles |
| November 20, 1975 | Report from the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities; alleged assassination plots involving foreign leaders |
| December 17-18, 1975 | Department of Defense appropriations; Angola |
| July 1, 1977 | Funding for neutron bombs |
| February 21-22, 1978 | Panama Canal treaties |
| May 15, 1978 | Proposed airplane sales to Egypt, Israel, and Saudi Arabia |
| September 21, 1979 | Mobilization of U.S. forces; military preparedness |
| February 1, 1980 | Armed forces personnel management legislation |
| May 4, 1982 | Defense Department authorizations; United States-USSR capabilities |
| February 16, 1983 | Nominations of Richard R. Burt and Richard T. McCormack to be Assistant Secretaries of State |
| April 26, 1983 | Nicaragua |
| February 1, 1984 | President’s report to Congress on Soviet compliance with various arms control agreements |
| June 12, 1984 | Omnibus defense authorizations; anti-satellite (ASAT) missiles |
| October 7-9, 1986 | Impeachment trial deliberations on Judge Harry Claiborne (two closed sessions on October 7, 1986) |
| March 29, 1988 | Intermediate-Range Nuclear Force (INF) Missiles Treaty (held in the old Senate chamber) |
| March 16, 1989, and October 19, 1989 | Impeachment trial deliberations on Judge Alcee Hastings |
| November 2, 1989 | Impeachment trial deliberations on Judge Walter Nixon |

| Date | Reason for the Session |
|---------------------|---------------------------------------------------------------------------------|
| February 25, 1992 | Most favored nation status for China (held in old Senate chamber) |
| April 24, 1997 | Chemical Weapons Convention |
| January 25-26, 1999 | Discussion of procedures for the impeachment trial of President William Clinton |
| February 9-12, 1999 | Impeachment trial deliberations on President William Clinton |

Source: Senate Historical Office, Senate Library, and Robert C. Byrd, “Closed Sessions of the Senate Since 1929,” in *The Senate 1789-1992; Historical Statistics 1789-1992*, S. Doc. 100-20, 100th Cong., 1st sess. (Washington: GPO, 1993), pp. 470-472.

Note: Prior to 1929, when the Senate changed its rules, executive sessions were routinely held behind closed doors. There were no closed sessions between October 8, 1943 and April 11, 1963.

Table 2. Closed House Sessions Since 1812

| Date | Reason for the Session |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------|
| December 27, 1825 | To receive a confidential message from the President regarding relations with Indian tribes ^a |
| May 27, 1830 | To receive a confidential message from the President on a bill regulating trade between the U.S. and Great Britain ^b |
| June 20, 1979 | Panama Canal Act of 1979; implementing legislation |
| February 25, 1980 | Cuban and other Communist-block countries involvement in Nicaragua |
| July 19, 1983 | U.S. support for paramilitary operations in Nicaragua |

Note: Prior to 1812, the House met frequently in closed session. There were no House secret sessions from 1831 to 1978.

^a Asher Hinds, *Hind's Precedents of the House of Representatives*, vol. v (Washington: GPO, 1907), p. 1108.

^b “Secret Sitting,” *Debates in Congress*, vol. 51, May 28, 1830, p. 1139.