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# Secret Sessions of the House and Senate: Authority, Confidentiality, and Frequency

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## Summary

Secret, or closed, sessions of the House and Senate exclude the press and the public. They may be held for matters deemed to require confidentiality and secrecy—such as national security, sensitive communications received from the President, and Senate deliberations during impeachment trials. Although Members usually seek advance agreement for going into secret session, any Member of Congress may request a secret session without notice. When the House or Senate goes into secret session, its chamber and galleries are cleared of everyone except Members and officers and employees specified in the rules or designated by the presiding officer as essential to the session. After the chamber is cleared, its doors are closed.

Authority for the House and Senate to hold secret sessions appears in Article I, Section 5, of the Constitution: “Each House may determine the Rules of its Proceedings.... 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 implemented these constitutional provisions through rules and precedents.

In the House, Rule XVII, clause 9 governs secret sessions, including the types of business to be considered behind closed doors. In addition, House Rule X, clause 11 authorizes the House Permanent Select Committee on Intelligence to bring before the House material to help it determine whether classified material held by the committee should be made public.

In the Senate, under Senate Rule XXI, the presiding officer exercises no discretion about going into secret session. Any Senator may make a motion that the Senate go into closed session, and, if seconded, the Senate will immediately proceed into a secret session. Once in a secret session, the Senate operates under applicable portions of Senate Rules XXIX and XXXI.

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 it to conduct its business behind closed doors. Since 1929, when the Senate began debating nominations and treaties (referred to as executive business) in open session, the Senate has held 57 secret sessions, most often for reasons of national security or for consideration of impeachment proceedings.

The House met frequently in secret session through the end of the War of 1812, mainly to receive confidential communications from the President, but occasionally for routine legislative business. Subsequent secret meetings were held in 1825 and in 1830. Since 1830, the House has met behind closed doors four times: in 1979, 1980, 1983, and 2008.

A chamber’s rules apply during a secret session. 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*.

This report will be updated as events warrant.

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**S**ecret, or closed, sessions of the House and Senate exclude the press and the public. They may be held for matters deemed to require confidentiality and secrecy—such as national security, sensitive communications received from the President, and Senate deliberations during impeachment trials.<sup>1</sup> Although Members usually seek advance agreement for going into secret session, any Member of Congress may request a secret session without notice.<sup>2</sup> When the House or Senate goes into secret session, its chamber and galleries are cleared of everyone except Members and officers and employees specified in the rules or designated by the presiding officer as essential to the session. When the chamber is cleared, its doors are closed.

## Authority: Constitution, Chamber Rules, and Precedents

Authority for the House and Senate to hold secret sessions appears in Article I, Section 5, of the Constitution: “Each House may determine the Rules of its Proceedings.... 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 implemented these constitutional provisions through rules and precedents.<sup>3</sup>

In the House, Rule XVII, clause 9 governs secret sessions. A secret session may be held when the House has received confidential communications from the President or when a Member informs the House that the Member has communications that should be kept secret. A secret session may occur pursuant to a special rule or by a motion to resolve into a secret session made in the House. The House has also agreed on one occasion to a unanimous consent request authorizing the chair to resolve the House into secret session pursuant to this rule.<sup>4</sup> A motion to resolve into secret session is in order in the House; it is not in order in the 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, and no point of order is available to require the communication at issue to be disclosed before the vote. If the motion is agreed to by a simple majority (a quorum being present), the chamber and galleries are cleared. When the only persons present are Members, officials allowed under Rule XVII, clause 9, and staff designated by the Speaker as essential to the proceedings, the chamber doors are closed, and the House begins the secret session. The Member making the motion is then recognized under the hour rule for debate.<sup>5</sup>

In addition, under Rule X, clause 11, paragraphs (g)(2)(D) through (g)(2)(G), the House Select Committee on Intelligence may move that the House hold a secret session to determine whether

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<sup>1</sup> Congressional committee meetings that are closed to the public are sometimes called *executive sessions*.

<sup>2</sup> On November 1, 2005, Senate Democrats compelled a secret session of the Senate with no notice. See Charles Babington and Dafna Linzer, “Senate Democrats Force Closed Meeting,” *Washington Post*, November 2, 2005, pp. A1, A4.

<sup>3</sup> This report does not cover the rules governing the committees of the House and Senate concerning conduct of closed-door meetings. Please see CRS Report 98-311, *Senate Rules Affecting Committees*, by Valerie Heitshusen, and CRS Report 97-357, *House Rules Affecting Committees*, by Christopher M. Davis.

<sup>4</sup> U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives*, H.Doc. 112-161, 112<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 2013), §969, p. 774.

<sup>5</sup> *Ibid.*, pp. 767-769. For House precedents on secret sessions, please see *Deschler-Brown Precedents of the House of Representatives*, 94<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Doc. 94-661 (Washington: GPO, 1977), ch. 29, section 85, pp. 874-909.

classified information held by the committee should be made public. This procedure is invoked only if the committee desires such a disclosure and the President personally objects to it.

In the Senate, any Senator may make a motion that the Senate go into closed session, and, if seconded by another Senator, the Senate will immediately proceed into a secret session.<sup>6</sup> Under Senate Rule XXI, the presiding officer exercises no discretion about going into secret session if the motion is made and seconded. The motion is not debatable. A Senator may interrupt another Senator to make the motion and may cause the other Senator to lose the floor.<sup>7</sup>

Once in a secret session, the Senate operates under applicable portions of Senate Rules XXIX and XXXI. Rule XXIX specifies which of the Senate's officers and staff may stay during the closed session and authorizes the presiding officer to include other staff at his discretion. Rule XXXI requires Senate business to be transacted in open session, but states that the Senate by majority vote may determine that a specific treaty, nomination, or other matter may be considered in secret session. A motion to return to open session is in order at any time, is not debatable, and requires a simple majority vote, a quorum being present.

When the Senate is conducting an impeachment trial, it may hold deliberations behind closed doors. During this time, Senate standing rules are supplemented by additional rules, called "Rules of Procedure and Practice in the Senate when Sitting on Impeachment Trials."<sup>8</sup>

## Confidentiality and Publication Requirements

Members and staff of both houses are prohibited from divulging information from secret sessions. In the Senate, staff are sworn to secrecy, whereas in the House, staff must sign an oath not to reveal what happens in the secret session, unless the House decides to make its actions public. 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.<sup>9</sup>

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*.

Under Rule XVII, 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

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<sup>6</sup> Until 1929, the Senate routinely considered treaties and nominations (executive business) in closed executive session, but since then only rarely has the Senate used that method.

<sup>7</sup> For Senate precedents, see Floyd M. Riddick and Alan S. Frumin, *Riddick's Senate Procedure: Precedents and Practices*, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess., S. Doc. 101-28 (Washington: GPO, 1992), "Closed Doors," pp. 275-281.

<sup>8</sup> U.S. Congress, Senate, Committee on Rules and Administration, *Senate Manual*, 112<sup>th</sup> Cong., 1<sup>st</sup> sess., S.Doc. 112-1 (Washington: GPO, 2011), p. 20. Impeachment rules appear in the *Senate Manual* following the standing rules and standing orders of the Senate.

<sup>9</sup> For more on internal discipline of Members of Congress, please see CRS Report RL31382, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, by Jack Maskell, and CRS Report RL30650, *Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*, by Jacob R. Straus.

(pursuant to House Rule VII, clause 3) and is transferred to the Clerk of the House for transmittal to the Archivist of the United States 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, clauses 3 and 4). If the Senate does not approve release of a secret session transcript, it 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.<sup>10</sup>

## Frequency of Secret Sessions

The Senate met in secret until 1794,<sup>11</sup> its first rules reflecting a belief that the body’s various roles, including providing advice and consent to the executive branch, compelled it to act behind closed doors. Although legislative sessions were generally open after 1795, the Senate’s executive sessions (to consider nominations and treaties) were usually closed until 1929.<sup>12</sup>

Since 1929, the Senate has held 57 secret sessions, generally for reasons of national security or for consideration of impeachment questions. On December 20, 2010, for example, the Senate met in closed session to discuss the ratification of the New Start Treaty with Russia (Treaty Doc. 111-5). On December 7, 2010, the Senate met in closed session to debate the impeachment of federal judge G. Thomas Porteous, Jr., of Louisiana. Six secret sessions were held during the impeachment trial of President William J. Clinton in 1999.<sup>13</sup> In 1997, the Senate met in secret to consider the Chemical Weapons Convention Treaty and, in 1992, to debate the “most favored nation” status of China. **Table 1** identifies the 57 secret sessions of 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, but occasionally for routine legislative business. Subsequent secret meetings were held in 1825 and in 1830. Since 1830, the House has met behind closed doors four times: in 1979, 1980, 1983, and 2008.<sup>14</sup> **Table 2** identifies secret House sessions since 1825.

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<sup>10</sup> S.Res. 243 of the 100<sup>th</sup> Congress established the Office of Senate Security within the Office of the Secretary of the Senate. In part, the office is responsible for establishing Senate policy on the handling of classified matters. See *Senate Manual*, standing orders, pp. 189-192.

<sup>11</sup> According to the Senate Historian’s Office, “The framers of the Constitution assumed that the Senate would follow their own practice, as well as that of the Continental Congress, of meeting in secret.” See [http://www.senate.gov/artandhistory/history/minute/The\\_Senate\\_Opens\\_Its\\_Doors.htm](http://www.senate.gov/artandhistory/history/minute/The_Senate_Opens_Its_Doors.htm).

<sup>12</sup> In its discussion of executive sessions, the Senate Historian’s Office says that after six years of Senate operation, “pressure from the state legislatures then electing senators caused a change in policy. In a compromise, the Senate agreed to open its legislative proceedings, but to conduct all executive business related to nominations and treaties in private.” See [http://www.senate.gov/artandhistory/history/minute/Executive\\_Sessions.htm](http://www.senate.gov/artandhistory/history/minute/Executive_Sessions.htm).

<sup>13</sup> On January 8, 1999, the Senate Democratic and Republican Conferences held a rare joint closed 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.

<sup>14</sup> On July 27, 1998, the House had a secret briefing from law enforcement officials the chamber to receive information related to the shooting of two Capitol police officers on July 24, 1998. On March 18, 1999, the House had a 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 Defense Secretary who was 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 (continued...)

**Table I. Closed Senate Sessions Since 1929**

| Date                     | Reason for the Session  |
|--------------------------|---|
| May 24, 1933             | Judge Harold Louderback impeachment trial deliberations   |
| February 10, 1934        | Investigations of air and ocean mail contracts involving William P. McCracken Jr. et al.  |
| February 13 and 14, 1934 | Contempt proceedings against William P. McCracken Jr. et al.  |
| April 15 and 16, 1936    | Judge Halsted Ritter impeachment trial deliberations  |
| June 26, 1942            | Naval policies on building battleships and aircraft carriers  |
| October 7 and 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 <sup>st</sup> Congress  |
| December 18, 1970        | Discussion of certain legislation to be completed before the <i>sine die</i> adjournment of the 91 <sup>st</sup> Congress   |
| June 7, 1971             | United States involvement in Laos   |
| May 2 and 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 and 18, 1975 | Department of Defense appropriations; Angola  |
| July 1, 1977             | Funding for neutron bombs   |
| February 21 and 22, 1978 | Panama Canal Treaty   |
| May 15, 1978             | Proposed military aircraft 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   |

(...continued)

“top secret classification level.” Source: “Dear Colleague” letter from the Speaker of the House, dated March 15, 1999. For the debate prior to the 2008 secret session, refer to *Congressional Record*, daily edition, vol. 164 (March 13, 2008), pp. H1690-H1699. See also Tim Starks, “House FISA Bill Picks Up Some Backers,” *CQ Today*, March 14, 2008, pp. 1, 20; and Dana Milbank, “The Secret is Out: There Was No Big Secret,” *Washington Post*, March 14, 2008, p. A2.

| Date                                 | Reason for the Session   |
|--------------------------------------|--|
| 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, 8, 9, 1986                | Judge Harry Claiborne impeachment trial deliberations (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 | Judge Alcee Hastings impeachment trial deliberations   |
| November 2, 1989                     | Judge Walter Nixon impeachment trial deliberations   |
| February 25, 1992                    | Most-favored-nation status for China (held in the Old Senate Chamber)                          |
| April 24, 1997                       | Chemical Weapons Convention  |
| January 25 and 26, 1999              | Discussion of procedures for the impeachment trial of President William Clinton                |
| February 9, 10, 11, and 12, 1999     | President William J. Clinton impeachment trial deliberations                                   |
| November 1, 2005                     | Iraq war intelligence  |
| November 16, 2006                    | United States-India Peaceful Atomic Energy Cooperation Act                                     |
| December 7, 2010                     | Judge G. Thomas Porteous Jr. impeachment trial deliberations                                   |
| December 20, 2010                    | New START Treaty (held in the Old Senate Chamber)  |

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

**Note:** Prior to a 1929 rule change, executive sessions to consider treaties and nominations (executive business of the Senate) were routinely held behind closed doors.

**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 <sup>a</sup>                        |
| May 27, 1830      | To receive a confidential message from the President on a bill regulating trade between the U.S. and Great Britain <sup>b</sup> |
| June 20, 1979     | Panama Canal Act of 1979; implementing legislation  |
| February 25, 1980 | Cuban and other Communist-bloc countries' involvement in Nicaragua  |
| July 19, 1983     | U.S. support for paramilitary operations in Nicaragua   |
| March 13, 2008    | Foreign Intelligence Surveillance Act and electronic surveillance   |

**Sources:** William Holmes Brown, Charles W. Johnson, and John V. Sullivan, *House Practice, A Guide to the Rules, Precedents and Procedures of the House* (Washington: GPO, 2011), pp. 445-448; "Closed House Session," *Congressional Quarterly Almanac 1979* (Washington: Congressional Quarterly, Inc., 1980), p. 149; and "Closed House Session," *Congressional Quarterly Almanac 1980* (Washington: Congressional Quarterly, Inc., 1981), p. 334.

**Notes:** Prior to 1812, the House met frequently in closed session. Also, on September 26, 2006, the House defeated an attempt for a closed session to discuss Iraq war intelligence. See *Congressional Record*, daily edition, vol. 152 (September 26, 2006), p. H7371. On May 10, 2007, the House rejected three attempts for a closed session during the debate on the Intelligence Authorization Act for Fiscal Year 2008. See *Congressional Record*, daily edition, vol. 153 (May 10, 2007), pp. H4795-H4796, H4808, and H4867-H4868.



- a. A. Hinds, *Hinds' 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.

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