



# 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 appears in Article I, Section 5, of the Constitution. Both the House and the Senate have supplemented this clause through rules and precedents.

Although secret sessions were common in Congress’s early years, they were less frequent through the 20<sup>th</sup> century. National security is the principal reason for such sessions in recent years. Members and staff who attend these meetings are prohibited from divulging information. Violations are punishable pursuant to each chamber’s disciplinary rules. Members may be expelled and staff dismissed for violations of the rules of secrecy. Transcripts from secret sessions are not published unless the relevant chamber votes to release them during the session or at a later time. 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. For additional information, please refer to CRS Report 98-718, *Secret Sessions of the House and Senate*, by Mildred Amer.

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## 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, although there is usually agreement in advance among Members of both parties before one calls for a closed session.<sup>1</sup>

## Authority in the Constitution and Rules

Authority for the House and Senate to hold secret sessions appears in Article I, Section 5, of the Constitution, which states, “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 this section through rules and precedents. A chamber’s rules 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.<sup>2</sup> 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, para. (g)(2)(D)-(g)(2)(G), 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 open during impeachment trials, unless a majority votes for a closed session.<sup>3</sup>

Standing Senate Rules XXI, XXIX, and XXXI cover secret sessions for legislative and executive business (nominations and treaties).<sup>4</sup> 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 the Senate lifts the “injunction of secrecy,” which it usually does by unanimous consent.

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

<sup>2</sup> For additional information, see William Holmes Brown and Charles W. Johnson, *House Practice, A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2003), pp. 440-442.

<sup>3</sup> For the 1805 impeachment trial of Supreme Court Associate Justice Samuel Chase, the Senate decided, “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*, 8<sup>th</sup> Cong., 2<sup>nd</sup> sess., Dec. 24 and 31, 1804, p. 92.

<sup>4</sup> For additional information, see U.S. Congress, Senate, *Riddick’s Senate Procedure, Precedents and Practices*, S.Doc. 101-28, 101<sup>st</sup> Cong., 2<sup>nd</sup> sess. (Washington: GPO, 1992), pp. 275-281, 876.

Rule XXXI mandates that all nominations, treaties, and other matters be considered in open session unless the Senate votes to consider a matter in secret and, for treaties, the injunction of secrecy has been removed.

## 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 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 54 secret sessions, generally for reasons of national security. Six of the seven most recent secret sessions, however, were held during the impeachment trial of President Bill Clinton. Two of those sessions were in January 1999 to discuss a motion to end the trial and another motion to call witnesses.<sup>5</sup> Four were in February 1999 during the final impeachment deliberations.<sup>6</sup>

Two of the Senate's secret meetings were held in the old Senate chamber because its lack of electronic equipment was 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 54 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 but 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 four times: in 1979, 1980, 1983, and 2008.<sup>7</sup> **Table 2** identifies the secret House sessions beginning in 1825.

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<sup>5</sup> In addition, on Jan. 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," *The Washington Post*, Jan. 9, 1999, p. A1.

<sup>6</sup> Prior to going into the first of the six 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*, vol. 145, Feb. 9, 1999, pp. 2054-2055.

<sup>7</sup> On 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 police officers on July 24, 1998. On Mar. 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 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 "top secret classification level." Source: "Dear Colleague" letter from the Speaker of the House, dated Mar. 15, 1999, and conversations with the Office of the House Parliamentarian. For the debate prior to the 2008 secret session, refer to *Congressional Record*, daily edition, vol. 164, Mar. 13, 2008, pp. H1690-H1699. See also Tim Starks, "House FISA Bill Picks Up Some Backers," *CQ Today*, Mar. 14, 2008, pp. 1,20; and Dana Milbank, "The Secret is Out: There Was No Big Secret," *The Washington Post*, Mar. 14, 2008, p. A2.

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 dismissed or subject to other internal disciplinary actions.

## 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 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, 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 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 13-14, 1934	Contempt proceedings against William P. McCracken Jr. et al.
April 15-16, 1936	Judge Halsted Ritter impeachment trial deliberations
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 <sup>st</sup> Congress
December 18, 1970	Discussion of certain legislation to be completed before the sine die adjournment of the 91 <sup>st</sup> Congress
June 7, 1971	United States involvement in Laos

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<b>Date</b>	<b>Reason for the Session</b>
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 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
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	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 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	President William Clinton impeachment trial deliberations
November 1, 2005	Iraq war intelligence

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**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*, S.Doc. 100-20, 100<sup>th</sup> Cong., 1<sup>st</sup> sess. (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, "Consideration and Debate," in *House Practice, A Guide to the Rules, Precedents, and Procedures of the House of Representatives* (Washington: GPO, 2006), pp. 440-442; "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 Sept. 26, 2006, the House defeated an attempt for a closed session to discuss Iraq war intelligence. See *Congressional Record*, daily edition, vol. 152, Sept. 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. H4795-4796, 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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