
RECORDS OF THE HOUSE

OCTOBER 4, 1988.—Referred to the House Calendar and ordered to be printed

Mr. MOAKLEY, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 419]

[Including cost estimates of the Congressional Budget Office]

The Committee on Rules, to whom was referred the resolution (H. Res. 419) amending the Rules of the House of Representatives with respect to preservation of, and access to, noncurrent records of the House, having considered the same, report thereon with an amendment and recommend that the resolution, as proposed to be amended, do pass.

The amendment in the nature of a substitute proposes to strike out all after the resolving clause and insert in lieu thereof the following:

SECTION 1. RULE RELATING TO PRESERVATION AND AVAILABILITY OF NONCURRENT RECORDS OF THE HOUSE.

Rule XXXVI of the Rules of the House of Representatives is amended to read as follows:

"RULE XXXVI

"PRESERVATION AND AVAILABILITY OF NONCURRENT RECORDS OF THE HOUSE

"1. (a) At the end of each Congress, the chairman of each committee of the House shall transfer to the Clerk any noncurrent records of such committee, including the subcommittees thereof.

"(b) At the end of each Congress, each officer of the House elected pursuant to rule II shall transfer to the Clerk any noncurrent records made or acquired in the course of the duties of such officer.

"2. The Clerk shall deliver the records transferred pursuant to clause 1 of this rule, together with any other noncurrent records of the House, to the Archivist of the United States for preservation at the National Archives and Records Administration. Records so delivered are the permanent property of the House and remain subject to this rule and the orders of the House.

"3. (a) Subject to paragraph (b) of this clause, clause 4 of this rule, and orders of the House, the Clerk shall authorize the Archivist of the United States to make

available for public use the records delivered to the Archivist under clause 2 of this rule.

"(b)(1) Any record that the House or a committee of the House (or a subcommittee thereof) makes available for public use before such record is delivered to the Archivist under clause 2 of this rule shall be made available immediately.

"(2) Any investigative record that contains personal data relating to a specific living individual (the disclosure of which would be an unwarranted invasion of personal privacy), any administrative record with respect to personnel, and any record with respect to a hearing closed pursuant to clause 2(g)(2) of rule XI shall be made available if such record has been in existence for 50 years.

"(3) Any record for which a time, schedule, or condition for availability is specified by order of the House shall be made available in accordance with that order. Except as otherwise provided by order of the House, any record of a committee for which a time, schedule, or condition for availability is specified by order of the committee (entered during the Congress in which the record is made or acquired by the committee) shall be made available in accordance with the order of the committee.

"(4) Any record (other than a record referred to in subparagraph (1), (2), or (3) of this paragraph) shall be made available if such record [has been in existence] for 30 years.

"4. (a) A record shall not be made available for public use under clause 3 of this rule if the Clerk determines that such availability would be detrimental to the public interest or inconsistent with the rights and privileges of the House. The Clerk shall notify in writing the chairman and the ranking minority party member of the Committee on House Administration of any determination under the preceding sentence.

"(b) A determination of the Clerk under paragraph (a) is subject to later order of the House and, in the case of a record of a committee, later order of the committee.

"5. (a) This rule does not supersede rule XLVIII or rule L and does not authorize the public disclosure of any record if such disclosure is prohibited by law or Executive order of the President.

"(b) The Committee on House Administration may prescribe guidelines and regulations governing the applicability and implementation of this rule.

"(c) A committee may withdraw from the National Archives and Records Administration any record of the committee delivered to the Archivist of the United States under this rule. Such withdrawal shall be on a temporary basis and for official use of the committee.

"6. As used in this rule the term 'record' means any official, permanent record of the House, including—

"(a) with respect to a committee of the House, an official, permanent record of the committee (including any record of a legislative, oversight, or other activity of such committee or a subcommittee thereof); and

"(b) with respect to an officer of the House elected pursuant to rule II, an official, permanent record made or acquired in the course of the duties of such officer.

Such term does not include a record of an individual Member of the House."

SEC. 2. REQUIREMENT FOR COMMITTEE RULES RELATING TO AVAILABILITY OF NONCURRENT RECORDS.

Clause 2(e) of rule XI of the Rules of the House of Representatives is amended by adding at the end the following new subparagraph:

"(3) Each committee shall include in its rules standards for availability of records of the committee delivered to the Archivist of the United States under rule XXXVI. Such standards shall specify procedures for orders of the committee under clause 3(b)(3) and clause 4(b) of rule XXXVI, including a requirement that nonavailability of a record for a period longer than the period otherwise applicable under that rule shall be approved by separate vote of the committee."

SEC. 3. PRIVILEGED REPORTS OF THE COMMITTEE ON HOUSE ADMINISTRATION.

Clause 4(a) of rule XI of the Rules of the House of Representatives is amended, in the matter relating to the Committee on House Administration, by inserting after "contingent fund of the House" the following: ", and on all matters relating to preservation and availability of noncurrent records of the House under rule XXXVI"

SUMMARY

The resolution, as proposed to be amended, establishes an entirely new text of rule XXXVI of the Rules of the House of Representatives, currently entitled, "Papers."

The resolution amends the rule governing retired records of the House to establish a general rule making records available after 30 years. The current standard is 50 years, which the proposed rule retains for records of closed sessions, personnel records, and sensitive investigating files relating to an individual.

The rule also authorizes a committee to establish shorter or longer limits for its own records—or portions of such records.

It also proposes related amendments to the rules of the House to require committees to establish written rules governing use of records, and to expand the authority of the Committee on House Administration to present to the House issues related to record use.

EXPLANATION OF AMENDMENTS

The following is a summary and explanation of the modifications contained in the amendment recommended by the committee:

TECHNICAL

The committee amendment modifies the title of rule XXXVI, proposed by section 1 of the resolution, and the title of that section, by substituting the word "availability" for "access." The modification only conforms the title to the convention used in the drafting of the rule itself.

The proposed clause 2(a) is redesignated as clause 2, to reflect a modification which strikes clause 2(b), relating to the Clerk and Secretary acting jointly.

COMMITTEE ORDERS

The committee amendment modifies the language of clause 2 of rule XXXVI, proposed by section 1 of the resolution, by striking a reference to committee orders governing access to records. Clause 2 continues to provide that records deposited at the Archives are subject to "this rule," and the committee intends for the reference to include contemporaneous committee orders under clause 3(b)(3), as modified by the amendment.

JOINT ACTION WITH THE SENATE

The committee amendment strikes clause 2(b) of rule XXXVI, proposed by section 1 of the resolution. The provision, carried from the rule of 1946, authorizes the Clerk, in transmitting records, to act jointly with the Secretary of the Senate.

The provision is obsolete. The officers of each House deal directly with the Archivist, and the committee feels that adequate administrative discretion exists to act jointly, when necessary, even in the absence of a rule.

CLARIFICATION OF PRIOR AVAILABILITY

The committee amendment modifies the language of clause 3(b)(1) of rule XXXVI, proposed by section 1 of the resolution, to more clearly describe records intended to be available at the Archives immediately upon deposit. The introduced resolution provided that any "record that has previously been made available by law, rule, or order of the House shall be made available immediately."

However the committee recognizes that the broad availability of congressional records derives in more cases from practices of the House and its committees than from any requirement of rule or law.

The proposed amendment clarifies the situation, essentially, by making the standard whether the record was made available, rather than whether it was required to be made available.

This is the standard currently used, so the amendment simply makes the intent of the rule clearer. The rule, of course, refers to official availability. A committee document which has been read outside the Capitol, but not properly made available by the committee, would not automatically be within the reach of the rule.

CLARIFICATION OF PRIVACY EXCLUSION

The committee amendment modifies the language of clause 3(b)(2) of rule XXXVI, proposed by section 1 of the resolution, relating to an exclusion from the new 30-year rule, for privacy purposes, of certain records.

The resolution, as introduced, proposes a general 30-year standard for access to House records. It identifies certain sensitive records for which it is considered appropriate to retain a 50-year rule. One of these items was an exception for "[a]ny investigative record that contains personal data relating to a specific individual."

During consideration of the resolution, the committee sought wide input from other committees, to assure that their individual concerns could be accommodated. During this process, the Honorable Glenn English was especially generous in sharing the expertise on Government records which he has gained from his long service as chairman of the Subcommittee on Government Information, Justice, and Agriculture of the Committee on Government Operations.

It was suggested that the language was probably broader than needed to meet the legitimate privacy concerns of the resolution. The proposed amendment would modify the exception to read, "Any investigative record that contains personal data relating to a specific living individual (the disclosure of which would constitute an unwarranted invasion of personal privacy)."

The amendment recognizes a point made by Congressman English, and concurred in by the chairman of the Committee on House Administration; Congressman Annunzio observed, "Individual privacy concerns tend to expire upon the death of the individual, at which point the public's interests again predominate."

The committee would stress that the portion of the amendment that addresses these suggestions does not represent a policy determination that all records touching on an individual need be put out

on the reading tables at the Archives on the evening of that person's death. The proposed rule permits sensitive records relating to an individual to be withheld after the expiration of 30 years—but not beyond 50 years, except in extraordinary situations. The portion of the modification is only an exception from that extended authority.

The committee assumes that the Archivist will exercise normal archival discretion, in consultation with the Clerk, and that some records falling within the "window" between the individual's death and the 50-year period might be withheld under the authorities of the proposed clause 4.

The committee believes that such discretion might, in a very extraordinary case, be applied to a record more than 50 years old. However, even if the individual involved were still alive at the expiration of that period, the committee would view such a determination as suspect, and would urge the Archivist, Clerk, and the several committees to act with extreme reluctance on any such suggested withholding.

The amendment also addresses a broader, and more important, concern raised by Congressman English—his entire correspondence is printed in the subcommittee hearing on the resolution:

The categories of records described in this clause are too broad. First, "investigative records" may include most of the records generated by investigative subcommittees such as those of the Committee on Government Operations. By having a special restriction on a subset of these investigative records, the Clerk of the House and the Archivist may be required to do a considerable amount of review of these Committee records in order to segregate those records that contain "personal data relating to a specific individual". Since this type of review can be burdensome, the subset of protected records should be as narrow and as clearly defined as possible.

The phrase "personal data relating to a specific individual" is unclear and is broader than is needed to protect any privacy or investigatory interests involved. Does the qualifier "personal" exclude records that reflect official actions of government officials? Will records of corporate transactions be considered as "personal"? Is a record that contains information already in the public domain required to be withheld?

I think that a blanket exclusion of all personal data is unnecessary. Some personal data is not sensitive at all. Most remaining personal data loses its sensitivity rapidly over time. To mandate withholding of all of this data for 50 years is unnecessary. In addition, it is generally recognized that privacy interests cease with the death of an individual.

I would propose a more flexible standard. The sixth exemption of the FOIA protects personal data when disclosure would constitute "a clearly unwarranted invasion of personal privacy." This type of standard allows for the withholding of sensitive personal data and the release of

nonsensitive data. It will also allow for recognition of diminished privacy interests over time and after the death of an individual.

The committee agrees with Congressman English that the rule proposed by the introduced text is overly broad and involves unnecessary additional work. In addition, if interpreted too strictly, the rule could lead to the inadvertent withholding of information that is neither sensitive nor embarrassing to anyone.

The committee concurs that the recommended language is a fair standard. In proposing language similar to that suggested in the letter, however, the committee wishes to stress that no inappropriate judgment should be reached from its similarity to the Freedom of Information Act. It is the committee's unequivocal intent that the resolution is an exercise of the rulemaking power of the House, and that the judgment of the House with respect to its records is an exercise of its absolute, and unreviewable, constitutional prerogatives. In exercising judgments under the rule, Members, officers, and employees of the House may find some of the experiences under FOIA illuminating, but the committee determines all statutes—and precedents under those laws—wholly inapplicable to congressional records.

The committee also desires to clarify two issues raised in the above cited correspondence.

It is not the committee's intent that a corporation, for purposes of the rule, would be considered an "individual." There might be contexts in which information about an entity, other than a natural person, might legitimately be withheld under exercise of the authorities specified in the proposed clause 4, or under a committee order pursuant to the proposed clause 3(b)(3). However the committee does not intend that the proposed clause 3(b)(2) would create any privacy expectation by any entity other than a living human being.

Likewise, the committee expects the term "personal" to be construed narrowly. The term does not circumscribe the availability of records touching on the official acts of a public official. Nor is the term intended to limit records dealing with events or matters in which a person would not, normally, have any expectation of privacy.

CONTEMPORANEOUS COMMITTEE ORDERS

The committee amendment modifies the language of clause 3(b)(3) of rule XXXVI, proposed by section 1 of the resolution, to clarify that committee orders to establish a special schedule of availability can only be "entered during the Congress in which the record was created."

The amendment also changes the reference to the Congress in which a record is created; the proposed language refers to the Congress in which it is made or acquired. The change is intended to clarify that the committee's orders apply, not only to material it created, but the total archived record, including materials obtained by the committee.

It is not the committee's intent that neither a transfer between committees, nor retrieval from the Archives, could be construed as

an acquisition, for purposes of the rule. Indeed, the committee intends the provision to clarify the applicability of an order to an entire record made at the time the record is first created or obtained shall be of continuing applicability.

The amendment seeks to assure that committees make a contemporaneous determination about the availability of their records, and to prevent arbitrary revisions by later committees with different membership. The new provision is intended to address, in part, the concerns raised by the Committee on House Administration in the committee chairman's letter—printed in full subsequently in this report. Congressman Annunzio suggests:

Turning for a moment to the need for discretion to shorten or lengthen whatever standardized period is most appropriate, the authority to shorten the period should be retained exclusively by the whole House. This is because all records generated by House committees and officers are *House records*, and are not the property of the committee or the officer which generated them. Shortened periods for access or release should therefore be subject to the discretion of the institution as a whole.

Of course each standing committee of the House should have access to noncurrent House records generated in earlier Congresses by their predecessor committees. However access to such records should be for the internal use of the committee only. If discretion is left to each committee to release House records at will, then changes in chairmanship, leadership, or party control might obviate the very purposes for which a standardized "decompression" period was adopted. For such a rule to be meaningful, the discretion to shorten the period of access or release should reside solely with the House.

The point made by Congressman Annunzio is an important one. The House of Representatives is not a continuing body, and a committee of one Congress, in more than just a technical sense, is a separate legal entity from the committee of the prior Congress.

In preparing the resolution, nevertheless, the committee has attempted to respond to the realization that a committee's name, chairman, and membership enjoy considerable continuity, and a committee will always be in a better position than the Clerk to make ministerial judgments about records, based on detailed internal memory of the context within which the records originally were generated. The committee has desired to strengthen the role of committees in recognition that these decisions will not, in any event, usually be made by the House as a whole. The House itself has addressed access questions, by resolution, on extraordinarily few occasions, and they have tended to be noncontroversial. To the extent that access questions raise policy issues, a committee which generated the records is the most appropriate forum for making decisions—absent a judgment by the House itself.

Although the committee wishes to address the concern of the Committee on House Administration as effectively as possible, it is reluctant to abandon this central goal of the resolution, which is to

enhance the role of committees in making judgments about their records.

The committee believes it has elected a cautious approach to balance the two concerns. The modification contained in the proposed committee amendment, in conjunction with a modification of the proposed committee order language of clause 2, would ameliorate the concerns cited above. Specifically, committee orders would be effective only if entered in the Congress in which the record was generated.

The committee notes that the right of a committee to release records during the Congress in which they are created is almost unlimited. Indeed, although not sanctioned by the rule, no effective check exists on a committee's ability to send for records of a prior Congress, and release them on an ad hoc basis or, for that matter, never to archive them at all.

If a committee has the effective power, without any new rule, to release a paper immediately or never send it to Archives, the authority to fix a specific intermediate date does not appear to be a radical new power. Indeed, it has some significant advantages:

It assures that the question is directly addressed when the record is created.

It minimizes the use of ad hoc methods to restrain or enhance access to records.

It assures that public use is made at the Archives, which minimizes danger to the records by their removal to the Capitol for uses that would occur with more security at the Archives.

In addition to requiring the order to be entered contemporaneously, the amendment should be read in light of the modified language of the amendments made by the new proposed section 3 of the resolution, which requires the broad policy issues to be addressed by the full committee in its rules. The extraordinary nature of lengthening orders is also underscored by language included in that modification, requiring such orders to be entered by vote of the committee.

It should also be noted that the proposed section 3, contained in the committee amendment, significantly enhances the ability of the committee with general policy jurisdiction, the Committee on House Administration, to present any access issue to the House itself for final determination.

Finally, in the case of any expedited availability, at the time the schedule ripens, the Clerk, under the proposed clause 4, if he determines that the release would be inappropriate under the standards of the rule, presents the matter to the committee for another review. And, even that final determination, can be addressed by the submission of a resolution by any Member for reference to the Committee on House Administration.

HOUSE ADMINISTRATION NOTIFICATION

The committee amendment inserts language in clause 4 of rule XXXVI, proposed by section 1 of the resolution, to require that the Committee on House Administration be notified of all exercises, under the proposed clause 4, to withhold any record, if it is deter-

mined that "such availability would be detrimental to the public interest of inconsistent with the rights and privileges of the House."

The committee has retained the standard only out of an abundance of caution, and expects the power to be rarely, if ever, used. For the same reason, such a requirement will pose little burden for the Clerk or for the Committee on House Administration. The committee believes that an exercise to withhold records for more than 30 years age—or 50 years in the case of some records—is so extraordinary that the matter must be presented to the appropriate committee for review.

RETRIEVAL

The committee amendment inserts a new paragraph (c) in clause 5 of rule XXXVI, proposed by section 1 of the resolution. That clause contains other general provisions. The modification codifies the well established practice that a committee may always send for the records of its predecessor committee for which it has current need for the committee's official use.

Although not previously provided for in statute or rule, the authority is undoubted, and has been exercised routinely for many years.

The committee finds it impossible to define any limitation on the uses to be made of retrieved records, but intends the authority to be only for the committee's own official use. The committee would hope that proper use of retrieved records might be an appropriate area for the Committee on House Administration to address in exercising its regulatory authorities under the proposed clause 5(b) of the rule.

In using the term "Member" rather than "member," the committee intends the term to be understood as referring to any Member of the House. The committee does not wish to deny Members access they need, for official purposes, to records of committees on which they do not sit. However, the committee expects that it will be understood that all uses are for official purposes, and that any Member using a record is subject to the rules of the House governing their use.

Also, the committee does not view this provision as conferring any rights, with respect to retired records, broader than those which exist with respect to current records.

Clause 2(e)(2) of rule XI currently provides that all Members will have access to committee records. The committee takes a common sense view of the requirements of the existing rule, which requires committee records to be kept separate from the congressional office records of the chairman, and to be generally available to Members. The rule is probably overly broad, but works well because of the general civility and restraint with which Members make requests, and the comity with which committees respond.

The clear intent of the rule is that Members of the House should be able to obtain from its committees only records and information for which they have appropriate need. In administering its internal records, for example, the Committee on House Administration has held that a Member may not rely on the rule to examine the

records relating to the management of another Member's office. This is a perfectly appropriate construction of the intent of the rule, and the committee would assume that the same standard would legitimately be applied to use of similar, recently archived, records.

MINORITY RECORDS

The committee amendment strikes section 2 of the introduced resolution, which would have amended clause 2(e)(2) of rule XI of the Rules of the House of Representatives to establish that minority and subcommittee records are part of a committee's records.

It has not been the practice to include minority records in the committee files archived under the rule. The committee believes that the practice denigrates the role of the minority in shaping the Nation's laws, and deprives users of congressional records providing important information about the minority's input which, by the nature of the institution, is often most significant in the committee process.

However, the committee is sensitive to concerns about the appropriateness of requiring the minority to turn its records over the majority control, and believes that the minority must have the right to determine what portions of its records are appropriate for current archiving. The committee has determined that the inclusion of minority records, presented to the committee for archiving, does not require any specific change in the rule, and is within reach of a committee's existing general authority over its records.

The committee would strongly urge the minority to archive appropriate portions of its records, and hopes that the minority—to the extent that it decides recent records are too sensitive for current archiving—would retain records of historical value and submit them as they mature and lose sensitivity.

The intent of the introduced section 2, with regard to subcommittee records, is otherwise provided for in the resolution by proposed language in clause 1(a) of rule XXXVI, requiring subcommittee records to be incorporated in the full committee's archived records.

STANDARDS ESTABLISHED BY COMMITTEE RULE

The committee amendment proposes a new section 2 of the resolution, which would add a new requirement to clause 2(e) of rule XI, relating to committee rules, to require that the committee include in its written rules, adopted pursuant to clause 2(a) of that rule, the standards that will govern access to the committee records, and the procedures for issuing orders providing alternative access periods.

The committee amendment also provides that any exercise to lengthen the period in which a record would otherwise be available must be voted on by the committee. It is not envisioned that a committee need vote paper by paper, and provisions, in the committee rules or otherwise, that defined classes of materials to be withheld would meet the requirement of the rule.

The committee wishes to assure that at least the general policy governing access to committee records will be established by the full membership of the committee, acting collegially. The commit-

tee believes that requiring the matter to be addressed in the committee's rules, will assure that the policy is set by the committee itself. The committee hopes that the matter will be addressed in some detail by each committee, and that delegations of authority will be limited and governed by fairly specific policy.

HOUSE ADMINISTRATION JURISDICTION

The committee amendment proposes a new section 3 of the resolution, which would amend clause 4(a) of rule XI, relating to privileged reports, to confer on the Committee on House Administration the authority to report, as privileged, resolutions governing access to specific records.

The committee expects that this authority will seldom need to be used, but believes that it is an appropriate check on the broad delegations of discretion proposed by the rule.

BACKGROUND

Since 1880, the rules have provided for the Clerk to obtain all noncurrent committee records at the end of a Congress, although the precedents suggest that the rule codified practices which had already existed.

The Joint Committee on the Organization of Congress, in 1946, recommended that the noncurrent records of the Congress be deposited with the National Archives. A similar recommendation in 1937, by the House Library Committee, had not been acted on. The joint committee recommendation was incorporated in the Legislative Reorganization Act of 1946 (section 140(a)), but was not made part of the Rules of the House of Representatives until several years later (H. Res. 5, 83d Congress, adopted January 3, 1953). The rule was subject to later amendment (H. Res. 5, 92d Congress, adopted January 22, 1971) which incorporated a provision of the Legislative Reorganization Act of 1970 (section 129(n)) which substituted General Services Administration for National Archives and made other technical changes in the rule.

In the 99th Congress, the rule was amended again (H. Res. 114, 99th Congress). The resolution changes the reference "General Services Administration" to "National Archives and Records Administration." The amendment was a technical conforming change to the National Archives and Records Administration Act of 1984 (Public Law 98-497) which made the Archives an independent agency, separate from GSA, effective April 1, 1985. The rule (clause 2 of rule XXXVI) currently provides:

At the close of each Congress, the Clerk of the House shall obtain all noncurrent records of the House and each committee thereof and transfer them for the National Archives and Records Administration for preservation, subject to the order of the House. In making the transfer, the Clerk may act jointly with the Secretary of the Senate.

During the same period in which the provision of law relating to deposit of congressional papers was made a rule, the Committee on House Administration reported a resolution (H. Res. 288, 83d Con-

gress, adopted June 16, 1953) to extend limited authorization for access to retired records. The resolution provided:

Resolved. That the Clerk of the House is authorized to permit the Administrator of General Services to make available for use—

(1) any records of the House of Representatives, transferred to the National Archives, which have been in existence for not less than fifty years, except when he determines that the use of such records would be detrimental to the public interest; and

(2) any records of the House of Representatives, transferred to the National Archives, which have previously been made public.

SEC. 2. Such permission may continue so long as it is consistent with the rights and privileges of the House of Representatives.

A simple resolution, if not enacted into permanent law, expires at the end of the Congress by which it was passed. The resolution relating to access to papers of the House has presumably been kept in force by the reference in the rule to "orders of the House." There having been no order after 1953, the Clerk continues to exercise his responsibilities under the expired resolution.

The 50-year standard reflected the then contemporary practice with respect to Government records but has not been evaluated in light of modern changes in other Government records, and evolving practices of the House itself. Specifically, in 1978, the 50-year standard for executive branch papers (44 U.S.C. 2103(1)) was reduced to 30 years (Public Law 95-416). In 1980, the Senate established a 20-year standard for the bulk of its records (S. Res. 474, 96th Congress, adopted December 1, 1980).

Reforms in the House, largely from the early 1970's, have required an increasing portion of congressional activity to occur in open committee sessions, have created limited public rights to inspect House and committee documents, and have encouraged wider publication and dissemination of hearings and other committee publications.

These trends, without any examination of the rules governing access to papers at the Archives, have led to certain incongruities. For example, if a historian seeking to examine a recent committee roll call presents himself at the Archives, the Clerk is not permitted to authorize access. However, the committee is required by rule (clause 2(e)(1) of rule XI) to make the roll calls available for inspection by the public at its offices. Likewise a reporter, seeking information on recent House expenditures cannot obtain access at the Archives; however, an exhaustive compilation of House expenditures is printed quarterly and is available free of charge from the House Document Room.

Also, although committees retain broad discretion, they generally have come to regard their retired files in a less proprietary manner. It is not at all unusual for the 50-year standard to be circumvented through the committee in question, and the Archives responded to 7,800 retrieval requests from the House during a recent 2-year period—"The Public Historian," Vol. 2, No. 4,

Summer 1980. In some cases, there requests were for the internal use of the committee, but many are understood to have been entered on behalf of persons with no other access to the records. Since processing the requests involved some serious clerical burden on the committees, there has been some concern that this ad hoc system leads to unequal access.

Historians and other interested observers of Congress generally feel that the 50-year standard should be reviewed by the House, especially in light of the newer standard of the Senate. However, there appears to be general agreement that the standard should be changed but, although discussion of an alternative has tended to focus on 20 years as a result of the Senate's choice of that number, there is no consensus in Congress for any figure. An essential tension exists between those interested in records of the more distant past, on one hand, and potential users of more contemporary records, on the other. Historians recognize that the completeness and quality of archived material may be affected adversely by reduction in the period in which it becomes available for public use.

There is relatively little practical difference between 30- and 50-year standards, but a 20 year or lower standard significantly increases the population affected. The number of current Members of the House of Representatives, who would find any records touching on a portion of their career open during the present Congress by various access limitations is as follows:

	<i>Members</i>
50 years	0
40 years	1
30 years	13
20 years	49

Any reduction below 20 years expands the affected population to a significant degree and there appears to be no serious proposal for any revised standard below that figure.

During hearings in the 99th Congress, on related legislation, the Subcommittee on Rules of the House held oversight hearings on the subject of House records. On the basis of the investigation, the Committee on Rules made an oversight report to the House (H. Rept. 99-994). In part, that report directed the subcommittee to continue its investigation and to recommend modifications in the rule to permit more reasonable access to House records:

Although the committee has elected to defer any legislative action until the next Congress, it determines that the House's current 50-year rule is no longer appropriate. The committee expects that the subcommittee will continue its oversight review in the next Congress, and present recommendations with respect to a 20- or 30-year standard for records of the House of Representatives, with balanced exceptions to safeguard classified or sensitive material.

APPLICABILITY OF LAWS RELATING TO PUBLIC DOCUMENTS

The Congress is not covered by most statutes dealing with public papers, and is specifically exempt from the Privacy Act and the Freedom of Information Act. No statute comparable to the Presi-

for the official records of the congressional services of Senator Claude Pepper, dating back to 1937. Senators Eastland and Ribicoff hired professional archivists to assist them in preparing their records for university deposit at the time of their retirement, and Senator Byrd of West Virginia employed an archivist to assist his staff in establishing recordkeeping procedures.

On the other hand, a 1975 questionnaire to former Members of Congress indicated that nearly 20 percent of respondents had discarded their files at the end of their congressional service, and another 20 percent had personally retained their records.

Officers: The Clerk is the custodian of current institutional records, and their management presents little difficulty for him. Likewise the records of the other officers of the House are largely ministerial and have presented little difficulties.

The Speaker's office and those of the respective party leaders present a quandry since their records are a hybrid of institutional and individual records.

The resolution would permit the Clerk to archive any institutional records provided to him by those offices. However, the committee is aware of the practice, particularly in the case of former Speakers' records, of archiving those collections at academic libraries, and the rule imposes no requirements for leadership offices.

Committees: Notwithstanding the relatively strong wording of the current rule, the Clerk is confined to a relatively passive role with respect to committee papers. For example, although the requirement that papers be turned over to the Clerk for deposit at the National Archives was enacted into law in 1946, the first deposit from the House Committee on Appropriations is dated 1962. Some committees include subcommittee files, others do not. Some committees carefully sort and organize all their files, and others simply box sets of bills, hearings, and reports already available on many library shelves.

The Clerk limits his role to accepting whatever a committee chooses to send and transmitting the records to the Archives. The Archives receives custody but does not control the records and, understandably, acts largely as agent for the House in managing the files.

COMMITTEE CONSIDERATION

The resolution was introduced March 29, 1988, and referred to the House Committee on Rules. On May 17, 1988, the resolution was referred to the subcommittee on Rules of the House.

The subcommittee held hearings on June 15, 1988, and, at that meeting, ordered the resolution forwarded to full committee, favorably, without amendment. At that hearing testimony was received from the Honorable Don W. Wilson, Archivist of the United States; the Honorable Donald K. Anderson, Clerk of the House of Representatives; Dr. Raymond W. Smock, Historian of the House of Representatives; and Dr. Bernard Weisberger, a historian, representing the National Coordinating Committee for Promotion of History.

The resolution had been developed in response to a more extensive review undertaken in the 99th Congress, discussed in the committee's oversight report on the subject (H. Rept. 99-994).

dential Recordings and Materials Preservation Act has ever been enacted with respect to congressional records.

In addition, the courts have been very reluctant to intervene in the matter of congressional records. Current case law suggests that Congress retains extraordinarily large latitude to grant or withhold access to its records, and could assert significant constitutional privilege under the publications clause, the speech and debate clause, and implied privileges deriving from the separation of power doctrine.

The provision of law requiring records to be transferred to the National Archives—section 140(a) of the Legislative Reorganization Act of 1946—makes clear that such records remain subject to the control of the respective Houses. The Clerk has consistently maintained, from the adoption of the order of the House in 1953, that records deposited at the Archives are the property of the House, that access is governed by the resolution notwithstanding its expiration, and that the Archives acts solely as agent for the Clerk, with all requests for access to papers—even beyond 50 years—requiring item-by-item clearance from the Clerk's office.

ARCHIVAL PRACTICES OF HOUSE OFFICES

Clause 2 of rule XXXVI, previously discussed, requires the Clerk to obtain noncurrent records of the House and its committees and to deposit them at the Archives. Clause 1 of the rule dates from 1880, although the practice of depositing committee records with the Clerk seems already to have been established by that time. It provides:

The clerks of the several committees of the House shall, within three days after the final adjournment of a Congress, deliver to the Clerk of the House all bills, joint resolutions, petitions, and other papers referred to the committee, together with all evidence taken by such committee under the order of the House during the said Congress and not reported to the House; and in the event of the failure or neglect of any clerk of a committee to comply with this rule the Clerk of the House shall, within 3 days thereafter, take into his keeping all such papers and testimony.

Members: It is relatively clear that the rule refers only to papers of the committees and departments of the House. No files of Members' congressional offices have been obtained under the rule. Although Congress has never specifically so provided by rule or law, it is relatively clear that Members' papers have been regarded as their personal property, as appears to be confirmed by the underlying premise of the rule relating to committee records (clause 2(e)(2) of rule XI):

All committee hearings, records, data, charts, and files shall be kept separate and distinct from the congressional offices records of the Members serving as chairman of the committee * * *

Nevertheless, some Members have been extremely conscientious about maintaining records from their services. The University of Florida recently dedicated a library which serves as the depository