SENATE LEGAL COUNSEL

The Office of Senate Legal Counsel was created by Title VII of the Ethics in Government Act of 1978 (2 U.S.C. §§ 288, et seq.). The Counsel and Deputy Counsel are appointed by the President pro tempore of the Senate upon the recommendation of the Majority and Minority Leaders. The appointments are to be made without regard to political affiliation. The appointments of the Counsel and Deputy Counsel are made effective by resolution of the Senate, and the term of appointment for each is two Congresses. The office is responsible to a bipartisan leadership group. The statute provides for four major activities of the office: (1) defending the Senate, its committees, Members, officers, and employees in civil litigation relating to their official responsibilities or when they have been subpoenaed to testify or to produce Senate records; (2) representing committees of the Senate in proceedings to aid their investigations; (3) appearing for the Senate when it intervenes or appears as amicus curiae in lawsuits to protect the powers or responsibilities of the Congress; and (4) advising committees and officers of the Senate.

The Office of Senate Legal Counsel, which was created by Title VII of the Ethics in Government Act of 1978, was the product of several years of legislative work in the Senate, by both the Committee on Governmental Affairs and the Subcommittee on the Separation of Powers of the Committee on the Judiciary. As originally conceived, the legislation would have created an Office of Congressional Legal Counsel. The House conferees on the Ethics Act stated that the House was not prepared to establish a joint office, but agreed to a Senate amendment to establish an Office of Senate Legal Counsel.

The Counsel and Deputy Counsel are appointed by the President pro tempore of the Senate upon the recommendation of the Majority and Minority Leaders. The appoint-

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3 H.R. Rep. No. 1756, 95th Cong., 2d Sess. 80 (1978), reprinted in 1978 U.S. Code Cong. & Admin. News 4381, 4396. The interests of the House in litigation are represented by the General Counsel to the Clerk. Senate Counsel and House Counsel cooperate in litigation pursuant to the direction of the conference report on the Ethics Act that "the Senate Legal Counsel should, whenever appropriate, cooperate and consult with the House in litigation matters of interest to both Houses." Id.
ment of each is made effective by a resolution of the Senate, and each may be removed from office by a resolution of the Senate. The term of appointment of the Counsel and Deputy Counsel is two Congresses. The appointment of the Counsel and Deputy Counsel and the Counsel’s appointment of Assistant Senate Legal Counsel are required to be made without regard to political affiliation.4 The office is responsible to a bipartisan Joint Leadership Group, which is comprised of the Majority and Minority Leaders, the President pro tempore, and the chairman and ranking minority member of the Committees on the Judiciary and on Rules and Administration.5 As the Senate report on the Ethics Act states, “[t]he purpose of the Office is to serve the institution of Congress rather than the partisan interests of one party or another.” 6

1. Defense of the Senate, its committees, Members, officers, and employees

Defensive representation may be authorized when the Senate, a committee, Member, officer, or employee is named as a party defendant in a civil lawsuit about the validity of a proceeding or action that was undertaken in an official or representative capacity.7 The report sets forth the intention of the Committee on Governmental Affairs that “[o]fficial capacity will cover any actions a Member of Congress or employee takes in the normal course of his employment,” and that, in deciding whether a Senate defendant has acted within that individual’s official duties, “the scope of the legislator’s or aide’s official duties be broadly construed.” 8

Examples in recent years of damage claims against Members, officers, and employees of the Senate include a defamation action by a government-funded researcher against a Member and legislative assistant for statements in a news release,9 a claim by a nursing home operator

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4 Ethics Act, § 701(a) and (b); 2 U.S.C. § 288(a) and (b).
7 Ethics Act, § 704(a)(1); 2 U.S.C. § 288(c)(11). “The Counsel may not be directed to represent a defendant in a criminal action or an action involving the unofficial activity of the defendant. . . . [N]o representation may be provided in contested election cases.” S. Rep. No. 95-170, at 87; 1978 U.S. Code Cong. & Admin. News 4300.
that communications by a committee chairman with federal and state health care financing agencies interfered tortiously with the business relationship between the operator and those agencies, a claim against a committee chairman, counsel, and investigator for damages for violations of the constitutional rights and common-law privacy rights of persons whose documents were obtained by the committee during an investigation, and a discrimination claim by a dismissed Capitol telephone operator against the Senate Sergeant at Arms.

In other cases plaintiffs have named Senate parties in challenges to the constitutionality of congressional practices or actions. These actions have included claims by an impeached judge that the Senate could not constitutionally receive impeachment evidence through a committee and that his impeachment trial was barred by double jeopardy, a claim by a Member of the Senate and Members of the House that provisions of the Federal Salary Act of 1967 that were in effect at the time of the lawsuit violated Article I, section 6, clause 1 of the Constitution, which requires that the compensation of Members of Congress "be ascertained by Law," a claim by Members of the House that the Tax Equity and Fiscal Responsibility Act of 1982 was passed in violation of Article I, section 7,

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12 Hanson v. Hoffmann, 626 F.2d 42 (D.C. Cir. 1980). The provision of counsel by the Senate does not commit the Senate to pay for damages that may be awarded. Thus, in reporting S. Res. 483 of the 94th Congress, a resolution (prior to the creation of the Office of Senate Legal Council) to authorize the payment of fees for defense counsel in Hutchinson v. Proxmire, the Committee on Rules and Administration expressly stated that those payments "would not include any amount that might possibly be obtained in the nature of a money judgment." S. Rep. No. 1041, 94th Cong., 2d Sess. 2 (1976).
13 Payments of damages would require separate action by the Senate. Thus, disavowing the intent to create a precedent on indemnification by the Senate for the constitutional torts of its employees, the Senate, in agreeing to S. Res. 357 of the 99th Congress, determined that "the unique circumstances" of a judgment in McSurely v. McClellan against the widow of a former Senate employee, as representative of his estate, warranted the acceptance by the Senate of the responsibility of paying judgments resulting from the former employee's actions. 132 Cong. Rec. 1924 (1986) (remarks of Sen. Roth). See also 125 Cong. Rec. 22771 (1980) (text of S. Res. 487, 96th Cong., authorizing back pay for Capitol telephone operator reinstated as a result of a settlement in Hanson v. Hoffmann).
clause 1 of the Constitution, which requires that all bills for raising revenue shall originate in the House,\textsuperscript{15} a claim by Members of the House and private persons that the editing practices for the Congressional Record, including those of the Senate’s Editor-in-Chief of the Official Reporters of Debates, violate their first amendment rights,\textsuperscript{16} and a claim by taxpayers that the disbursement by the Secretary of the Senate of compensation to the Senate chaplain violates the establishment clause of the first amendment.\textsuperscript{17}

The second kind of defensive representation the Counsel undertakes occurs when the Senate, its committees, Members, officers, or employees are subpoenaed to produce documents or provide testimony relating to official or representative functions.\textsuperscript{18} Although the authority to represent Members, committees, officers, and employees as defendants is limited to civil proceedings, the authority to represent them when they are subpoenaed as witnesses extends to criminal proceedings as well.\textsuperscript{19}

The representation of Members, committees, officers, and employees, when their testimony or documents are subpoenaed, helps to effectuate the Senate’s power over the disposition of Senate documents, and to protect the Senate’s interest in the attendance of its Members while the Senate is in session.\textsuperscript{20} The Office of Senate Legal Counsel advises Members, officers, and employees when they receive subpoenas or requests for documents or testi-

\textsuperscript{15} Moore v. The United States House of Representatives, 733 F.2d 946 (D.C. Cir. 1984) (the Senate was also a defendant), cert. denied, 469 U.S. 1106 (1986).


\textsuperscript{17} Murray v. Buchanan, 720 F.2d 689 (D.C. Cir. 1983) (en banc). Both Houses’ chaplains, who invite a limited number of guest chaplains, have also sued for not inviting as a guest a nontheist to deliver secular remarks to open sessions of the Senate and the House. Kurtz v. Baker, 829 F.2d 1133 (D.C. Cir. 1987), cert. denied, 486 U.S. 1059 (1988).


\textsuperscript{19} S. Rep. No. 95–170, at 88; 1978 U.S. Code Cong. & Admin. News 4904 (“[T]he Counsel may be directed to defend [Senate parties] if the case is civil or criminal in nature but only if the subpoena arises from the performance of official duties. Grand jury subpoenas for Congressional documents and testimony are a matter of routine. Most such subpoenas were when Congress investigates conduct which results in a criminal indictment.”).

\textsuperscript{20} Resolutions that authorize testimony by Senators have recited that “by Rule VI of the standing Rules of the Senate, no Senator shall absent himself from the service of the Senate without leave,” and that testimony is authorized “except when [the Senator’s] attendance at the Senate is necessary for the performance of [the Senator’s] legislative duties,” and, when appropriate, “except concerning matters about which a privilege against disclosure should be asserted.” E.g., 132 Cong. Rec. 19604–05 (1986) (text of S. Res. 400, 99th Cong.).
mony and assists them in determining whether a congressional privilege should be asserted. The office also assists in preparing Senate resolutions to permit the production of documents and to authorize Members, officers, and employees to testify on matters not subject to a claim of congressional privilege.21

The representation of the Senate, its committees, Members, officers, or employees, whether as defendants or as subpoenaed witnesses, may be authorized by a resolution of the Senate.22 To enable the Senate Legal Counsel to take initial necessary steps to defend Senate parties effectively in "emergencies," particularly matters that arise during adjournments,23 representation of Senate defendants or witnesses may alternatively be authorized by a vote of two-thirds of the members of the Joint Leadership Group.24 The Senate has also empowered the Joint Leadership Group by a vote of two-thirds to authorize Senate testimony or the production of Senate documents during adjournments.25 The defense of individuals—Members,
officers, or employees—may be undertaken only with the consent of the individual involved.  

2. Proceedings to aid investigations by Senate committees

The Senate Legal Counsel may represent committees in proceedings to obtain evidence for Senate investigations. Two specific proceedings are authorized.

18 U.S.C. § 6005 provides that a committee or subcommittee of either House of Congress may request an immunity order from a United States district court when the request has been approved by the affirmative vote of two-thirds of the Members of the full committee. By the same vote, a committee may direct the Senate Legal Counsel to represent it or any of its subcommittees in an application for an immunity order. The Attorney General is entitled to ten days' notice of the intention of the committee or subcommittee to apply for the order, although the Attorney General may waive the notice period and enable the committee or subcommittee to proceed sooner. On the request of the Attorney General, the district court is required to defer action on the immunity application for up to twenty days. The district court must grant the application for an immunity order if it determines that these procedural requirements have been satisfied. The witness may not refuse to testify on the basis of the constitutional privilege against self-incrimination after the immunity order has been communicated to the witness by the chairman of the committee or subcommittee.

The Senate Legal Counsel may also be directed to represent a committee or subcommittee of the Senate in a civil action to enforce a subpoena. Prior to the Ethics in Government Act of 1978, subpoenas of the Senate could be enforced only through the cumbersome method of a contempt proceeding before the bar of the Senate or by a

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26 Ethics Act, § 704(b); 2 U.S.C. § 288c(b).
27 It is a basic principle of the American Bar Association’s Canons of Ethics that a client be given the freedom to choose the attorney who will represent him. Accordingly, while this bill provides that, with respect to committees . . . the representation by the [Senate] Legal Counsel will be mandatory, with respect to the representation of an individual, the Counsel can provide representation only if the individual to be represented consents.” S. Rep. No. 96–170, at 88; 1978 U.S. Code Cong. & Admin. News 4304.
certification to the United States attorney and a prosecution for criminal contempt of Congress under 2 U.S.C. §§ 192, 194. The Ethics Act authorizes a third method to enforce Senate subpoenas, through a civil action in the United States District Court for the District of Columbia. The House chose not to avail itself of this procedure and this enforcement method applies only to Senate subpoenas. Senate subpoenas have been enforced in several civil actions, most recently in proceedings to hold in contempt a recalcitrant witness in the impeachment proceedings against Judge Alcee L. Hastings.

The new civil action has important advantages, both for investigating committees and for witnesses. For committees, it establishes an expeditious procedure to test the objections offered by a witness and, if those objections are insufficient, to obtain by a judicial proceeding an order directing the witness to testify. A failure to comply with the order is a contempt of the court and may lead to the imposition of coercive sanctions. For the witness who asserts in good faith a legal objection to a Congressional inquiry, the civil proceeding provides a neutral forum to determine the validity of the objection, without the initiation of a criminal prosecution.

The statute details the procedure for directing the Senate Legal Counsel to bring a civil action to enforce a subpoena. In contrast to an application for an immunity order, which may be authorized by a committee, only the full Senate by resolution may authorize an action to enforce a subpoena. The Senate may not consider a resolution to direct the Counsel to bring an action unless the investigating committee reports the resolution by a majority vote. The statute specifies the required contents of the committee report; among other matters, the committee must report on the extent to which the subpoenaed party has complied with the subpoena, the objections or privileges asserted by the witness, and the comparative effectiveness of a criminal and civil proceeding.

There is a significant limitation on the civil enforcement remedy. The statute excludes from its coverage actions against officers or employees of the federal government acting within their official capacities. Its reach is

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31 Ethics Act, § 705(c); 2 U.S.C. § 253b(b).
32 Ethics Act, § 705(c); 2 U.S.C. § 253(b)(c).
limited to natural persons and to entities acting or purporting to act under the color of state law. 33

3. Representing the interests of the Senate as intervener or amicus

The Senate by resolution may direct the Counsel to intervene or to appear as amicus curiae in the name of the Senate, or an officer, committee, subcommittee, or chairman of a committee or subcommittee, in any federal or state proceeding in which the powers or responsibilities of the Congress are placed in issue. 34 The Act provides that “[t]he Counsel shall be authorized to intervene only if standing to intervene exists under section 2 of article III of the Constitution. . . .” 35

This authorization permits the Senate to advocate an interest of the Congress in cases in which the Department of Justice has challenged the constitutionality of a statute. 36 For example, the Senate Legal Counsel represented the Senate as amicus curiae in defense of the constitutionality of the independent counsel law. 37 The Senate Legal

34. Ethics Act, §§ 706, 713(a); 2 U.S.C. §§ 288e, 288f(a).
35. Ethics Act, § 706(a); 2 U.S.C. § 288d(a).
36. To enable the Houses of Congress to determine whether they should appear in litigation to defend Acts of Congress, the Attorney General is required to report to each House whenever he or she “determines that the Department of Justice will contest, or will refrain from defending, any provision of law enacted by the Congress in any proceeding before any court of the United States, or in any administrative or other proceeding, because of the position of the Department of Justice that such provision of law is not constitutional.” Department of Justice Appropriation Authorization Act, Fiscal Year 1980, Pub. L. No. 96-132, § 21(a)(2), 93 Stat. 1040, 1049-50, extended by Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. No. 101-515, § 202(a), 104 Stat. 2101, 2116-17. The Attorney General is also required to provide timely notice to the Senate Legal Counsel of any determination by the Department of Justice not to appeal, in a case in which the United States is a party, any decision affecting the constitutionality of an Act of Congress. Ethics Act, § 712(b); 2 U.S.C. § 288(b).

Continued
Counsel has also represented the Senate as plaintiff-intervenor in an action brought by Members of the House to invalidate the President's use of a pocket veto in an intersession adjournment of the Congress during which each House had authorized an officer to receive veto messages from the President. 38

In several cases the Senate Legal Counsel has appeared as amicus curiae in the name of committees of the Senate in support of requests or subpoenas to obtain information in the possession of the Department of Justice. 39

Additionally, the Senate or its committees have appeared as amicus curiae in cases in which the interests of the executive and legislative branches are in harmony, but where there is still a special interest in separate Senate representation. The Senate Legal Counsel appeared on behalf of the Senate in an action to defend the...
Congressional frank, which had been challenged on the theory that it unfairly advantages incumbents over challengers. The Legal Counsel also appeared on behalf of the Committee on Governmental Affairs as amicus curiae in an appeal concerning a Senator's participation in an oversight investigation of an executive department, and intervened in the name of the Select Committee on Intelligence to represent the committee's interests in litigation under the Freedom of Information Act involving documents in the possession of an executive agency that the committee had generated in the course of an investigation.

4. Advice to committees and officers of the Senate

The Ethics Act details a number of advisory functions of the Office of Senate Legal Counsel. Principal among these are the responsibility of advising officers of the Senate with respect to subpoenas or requests for the withdrawal of Senate documents, and the responsibility of advising committees about their promulgation and implementation of rules and procedures for congressional investigations. The office also provides advice about legal questions that arise during the course of investigations.

5. Other duties

Section 708(c) of the Ethics Act provides that the Counsel shall perform such other duties consistent with the purposes and limitations of Title VII as the Senate may direct.

When the office was changed in conference from an Office of Congressional Legal Counsel to an Office of Senate Legal Counsel, no specific provision was made for the representation of Senate interests concerning agencies which serve the entire Congress. One such entity is the Congressional Research Service. After an administrative law judge at the Federal Trade Commission issued a subpoena to CRS, at the request of oil company respondents in an FTC antitrust proceeding, the Senate used the

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42 Patz v. CIA, 724 F.2d 201 (D.C. Cir. 1984).
43 Ethics Act, § 708(a)(5) and (6); 2 U.S.C. §§ 288g(a)(5) and (6).
44 2 U.S.C. § 288g(c).
catchall authority of section 708(c) to direct the Office of Senate Legal Counsel to represent CRS in order to protect the confidentiality of communications from CRS to the Members and committees of Congress.\textsuperscript{45}

Section 708(c) was also used in the investigation relating to Billy Carter and Libya when the Senate directed the Counsel and Deputy Counsel to work under the direction of the chairman and vice chairman of the subcommittee charged with the conduct of that investigation. The Senate turned to the Office of Senate Legal Counsel as a nonpartisan office; the office became the nucleus of the investigating staff, and continued in that role under the direction of former Judge Philip Tone, when he was appointed to be Special Counsel to the subcommittee.\textsuperscript{46}

Members of the office have undertaken other special assignments. In the Senate's investigation of Abscam and other undercover activities, the office detailed an Assistant Senate Legal Counsel to work on the committee staff.\textsuperscript{47} The Senate Legal Counsel served as counsel to the Senate Impeachment Trial Committee that received evidence in the impeachment proceedings concerning Judge Harry E. Claiborne.\textsuperscript{48} An Assistant Senate Legal Counsel served as counsel to the Impeachment Trial Committee on the Articles Against Judge Walter L. Nixon, Jr.,\textsuperscript{49} and the office provided extensive assistance to the Impeachment Trial Committee on the Articles Against Judge Alcee L. Hastings.\textsuperscript{50}

The Senate has assigned the Legal Counsel duties in connection with the consideration of claims presented under the Federal Tort Claims Act.\textsuperscript{51}

In addition, the Legal Counsel provides informal advice to Members, officers, and employees on a wide range of legal and administrative matters relating to Senate business.


SENATORS

Absent:


Blind Senator:

In 1928, Senator Schall, a blind Senator was authorized, by resolution, to appoint a messenger to act as personal attendant in lieu of a page previously appointed. ¹

Certificates of Election:


Classification of:

The legislature of a State has no authority to designate the particular class to which Senators first elected shall be assigned. ²

The procedure used for classification of the Senators from New Mexico and Arizona is set forth in the following resolution adopted on April 2, 1912: ³

Resolved, That the Senate proceed to ascertain the classes to which the Senators from the States of Arizona and New Mexico shall be assigned, in conformity with the resolution of the Senate of the 14th of May 1789, and as the Constitution requires.

Resolved, That the Secretary put two papers of equal size in each of two separate ballot boxes, and in each instance one of such papers shall be numbered one and the other shall be a blank. The Senators from the State of Arizona shall proceed to draw the papers from one of such ballot boxes, and the Senators from the State of New Mexico shall proceed to draw the papers from the other ballot box, proceeding to draw in the alphabetical order of their names. The Senators who draw papers numbered one shall be assigned to the class of Senators whose terms of service will expire on the 3d day of March 1917. That the Secretary then put into one ballot box two papers of equal size, one of which shall be numbered two and the other shall be

¹ May 21 and 25, 1928, 70-1, Journal, pp. 495, 542, Record, pp. 9322, 9860.
² Dec. 4, 1889, 51-1, Record, p. 92.
³ Found at p. 244 of Journal for 2d sess. of the 62d Cong.; see also Aug. 24, 1959, 86-1, Record, p. 16740; Jan. 7, 1959, 86-1, Record, pp. 7-8, for like resolutions used for classifying Senators from Alaska and Hawaii.
numbered three. The two Senators who in the first instance drew blank ballots shall, in the alphabetical order of their names, each draw one paper from said ballot box, and the Senator who shall draw the paper numbered two shall be assigned to the class of Senators whose terms of service will expire on the 3d day of March 1913, and the Senator who shall draw the paper numbered three shall be assigned to the class of Senators whose terms of service will expire on the 3d day of March 1915.

The procedure used for classification of the first Senators from Alaska and Hawaii is set forth in the following two resolutions adopted in 1959, which through the years has remained the same established procedure: ¹

Classification of Senators From Alaska

Mr. JOHNSON of Texas submitted the following resolution (S. Res. 1), which was considered by unanimous consent and agreed to:

Resolved, That the Senate proceed to ascertain the classes to which the Senators from the State of Alaska shall be assigned in conformity with the resolution of the 14th of May 1789, and as the Constitution requires.

Resolved, That the Secretary put into the ballot box 3 papers of equal size, numbered, respectively, 1, 2, 3. Each of the Senators from the State of Alaska shall draw out one paper. The paper numbered 1, if drawn, shall entitle the Senator to be placed in the class of Senators whose terms of service will expire the 2d day of January 1961. The paper numbered 2, if drawn, shall entitle the Senator to be placed in the class of Senators whose terms of service will expire the 2d day of January 1961. And the paper numbered 3, if drawn, shall entitle the Senator to be placed in the class of Senators whose terms of service will expire the 2d day of January 1963.

Whereupon

The Secretary having put into the ballot box three papers, numbered 1, 2, and 3, respectively, Mr. Gruening drew the paper numbered 3, and is accordingly in the class of Senators whose terms of service will expire on the 3d day of January 1963; Mr. Bartlett drew the paper numbered 2, and is accordingly in the class of Senators whose terms of service will expire on the 3d day of January 1961.

Classification of Senators From Hawaii

Mr. JOHNSON of Texas submitted the following resolution (S. Res. 172), which was considered by unanimous consent and agreed to:

Resolved, That the Senate proceed to ascertain the classes to which the Senators from the State of Hawaii shall be assigned, in conformity with the resolution of the 14th of May 1789, and as the Constitution requires.

Resolved, That the Secretary put into a ballot box two papers of equal size, one of which shall be numbered 1 and the other shall be a blank. Each of the Senators from the State of Hawaii shall draw out one paper, and the Senator who shall draw the paper numbered 1

shall be assigned to the class of Senators whose terms of service will expire the 2d day of January 1965. That the Secretary then put into a second ballot box two papers of equal size, one of which shall be numbered 2 and the other shall be numbered 3. The other Senator shall draw out one paper. If the paper drawn be numbered 2, the Senator shall be assigned to the class of Senators whose terms of service will expire the 2d day of January 1961; and if the paper drawn be numbered 3, the Senator shall be assigned to the class of Senators whose terms of service will expire the 2d day of January 1963.

Conflict of Interest:

See “Excused from Voting,” pp. 1409-1411.

Credentials of Senators-Elect:

See “Credentials and Oath of Office,” pp. 695-710.

Deaths and Funerals of Senators and Representatives:

See “Memorial Services,” pp. 913-916.

Debate, Floor Cannot Be Taken Away From:

See “Interruption of Senator Who Has the Floor Is Not Allowed—Except by His Consent,” pp. 749-753.

Debate, Senators Address Each Other in Third Person:

See “Senator Addresses Another in Third Person,” p. 775.

Debate, Senators May Not Use Disorderly Language:


Ethics—Leasing Automobiles:

The Committee on Standards and Conduct in 1970 made a report guiding Senators not to participate after the current model year in agreements of leasing automobiles granting favorable terms to Senators not available to anybody else.⁶

Excused From Voting:
See “Excused from Voting,” pp. 1409-1411.

Expulsion of Senators:

Funerals:
See “Memorial Services,” pp. 913-916.

List of Senators Who Have Lain in State in the Rotunda:
The following persons who died while Members of the Senate lay in state in the Rotunda:
Henry Clay of Kentucky (July 1, 1852)
Charles Sumner of Massachusetts (Mar. 13, 1874)
John A. Logan of Illinois (Dec. 30-31, 1886)
Robert Taft of Ohio (August 3, 1953)
Everett McKinley Dirksen of Illinois (Sept. 9-10, 1969)

Mail on Desks:
There is nothing in the rules regulating the amount of mail Senators may have on or around their desks.8

Mileage Pay for Senators:
See “Mileage Pay for Travel of Senators,” p. 916.

Modification of a Senator’s Amendment:
See “Modification of,” pp. 64-70.

Nomination of Senators to Administrative Posts:

Oath of Office:
See “Credentials and Oath of Office,” pp. 695-710.

Reading of Papers by:
See “Reading by a Senator,” pp. 972-973.

Recognition:

Required to Vote:
See “Excused from Voting,” pp. 1409-1411.

Resignation of Senators:
The right of a Senator to resign his seat is unquestionable, but the procedure thereon has varied at different times. As a rule, resignations have been made by letters, setting forth the date of said resignations. These letters have been addressed to the President of the Senate in the earlier instances, but in no case does any record show the acceptance of such resignations by the Senate. The letters have been read or placed on file, and in the earlier years the Senate adopted orders directing its President to notify the executive of the State from which the Senator came of said resignation. Today, it is the common practice for the Senator who is resigning to direct a letter not only to the President of the Senate but also to the governor of the State from which that Senator was elected or appointed, specifying the date of his resignation.

Salaries, Commencement of Salary of Senators Elected or Appointed To Fill Unexpired Terms:
The salaries of Senators elected or appointed to fill unexpired terms are regulated by Section 36 of Title 2, U.S. Code, which provides:

Salaries of Senators appointed to fill vacancies in the Senate shall commence on the day of their appointment and continue until their successors are elected and qualified: Provided, That when Senators have been elected during a sine die adjournment of the Senate to succeed appointees, the salaries of Senators so elected shall commence on the day following their election.

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6 See Jan. 3, 1869, 91-1, Journal, p. 1, for following example.
Salaries of Senators elected during a session to succeed appointees shall commence on the day they qualify: Provided, That when Senators have been elected during a session to succeed appointees, but have not qualified, the salaries of Senators so elected shall commence on the day following the sine die adjournment of the Senate.

When no appointments have been made the salaries of Senators elected to fill such vacancies shall commence on the day following their election. (Feb. 10, 1923, ch. 68, 42 Stat. 1225; Feb. 6, 1931, ch. 111, 46 Stat. 1065; June 19, 1934, ch. 648, title I, § 1, 48 Stat. 1022; Feb. 13, 1935, ch. 6, § 1, 49 Stat. 22, 23.)

Pursuant to the above law, the Senate in 1957, adopted the following resolution to eliminate any confusion which might have arisen because of the contention by the Governor of South Carolina that the term of service of Senator Thomas A. Wofford, whom he had appointed to fill a vacancy, terminated on November 6, 1956, the day of the general election, and not on January 2, 1957. The renewed service of Senator Strom Thurmond began on November 7, 1956, the day after the election and not on January 2, 1957:

Resolved, That in accordance with the provisions of title 2, United States Code, section 36 (49 Stat. 221, and under the precedents of the Senate, the term of service of Thomas A. Wofford, appointed a Senator by the Governor of the State of South Carolina, to fill the vacancy

RESIGNATION OF SENATOR FROM KENTUCKY

The VICE PRESIDENT laid before the Senate the following communications, which were read and ordered to be placed on file:

U.S. Senate,
Hon. Herbert H. Humphrey,
President of the U.S. Senate,
U.S. Capitol,
Washington, D.C.

My Dear Mr. President: I herewith tender my resignation as a Member of the United States Senate from Kentucky to become effective at the close of business on Monday, December 16.

Respectfully yours,

Thurston B. Morton.

For an example of a resignation submitted to the President of the Senate and the Governor of the State being notified, see Mar. 6, 1861, 36-2, Record, p. 1439.

See also Jan. 28, 1935, 74-1, Record, p. 1057.
in the term ending January 2, 1961, caused by the resignation of Strom Thurmond, expired on election day, November 6, 1956; and be it further

Resolved. That the term of service of Strom Thurmond, duly elected a Senator on said day to fill the vacancy in the said unexpired term ending January 2, 1961, commenced, under said statute and precedents, on November 7, 1956, the day following the election.  

Speeches, Two in Same Legislative Day:


Subpoena for:

In 1913, a subpoena duces tecum issued by a United States District Court and served upon a member of a Senate Committee was referred, after the authority of the court had been challenged, to the Committee on the Judiciary for a report; the records of the Senate do not show that the matter was reported back to the Senate.  

In 1929, a Senator having declined to heed a summons to appear and testify before a Federal grand jury, the court held that if he failed to obey the subpoena voluntarily the court was without power to compel his attendance.

In one instance in 1957 there was quite a discussion concerning a request of a member of the Senate, who was subpoenaed to appear as a witness before the District Court of the United States for the District of Columbia, for permission to testify.

A resolution was subsequently submitted giving the consent of the Senate for him to appear at a time when the Senate was not in session.

After the matter was debated at some length, considerable opposition having developed as to certain phases of the matter, the resolution was finally postponed indefinitely.

It later appeared that the Court did not have before it the question of quashing the subpoena, did not rule upon it, but recognized the privilege of a Senator not to testify if he chose not to do so.  

\[10\] Jan. 9, 1957, 85-1, Record, pp. 3-4.
\[12\] Cannon's Precedents of the House of Representatives, VI, 588.
Testify in Courts:
   Senate has adopted resolutions at different times to permit Senators to testify in the courts pursuant to subpoenas or on their own.14

Voting by Senators:

Widows of Late Senators:
   It is the uniform practice of the Senate to pay 1 year's salary to the widow of a deceased Senator.15

Yielding by Senators in Debate:

SENATORS-ELECT