

On Mar. 15, 1973,⁽¹⁾ the Speaker⁽²⁾ laid before the House as a matter involving the question of the privilege of the House a communication from the Clerk advising that he had been served with a notice of the taking of a deposition in connection with a civil action⁽³⁾ pending in the U.S. District Court for the District of Columbia. Subsequently, on Mar. 19, 1973,⁽⁴⁾ the House agreed to a privileged resolution⁽⁵⁾ offered by Mr. John J. McFall, of California, authorizing the Clerk to respond to the notice.

§ 17. Service of Process on Committee Chairmen and Employees

Service of Summons and Complaint on Committee Chairman

§ 17.1 The receipt of a summons and complaint naming the chairman of a House committee as a defendant in

1. 119 CONG. REC. 7955, 7956, 93d Cong. 1st Sess.
2. Carl Albert (Okla.).
3. *Common Cause v W. Patrick Jennings et al.*, Civil Action File No. 2379-72 (U.S.D.C. D. D.C.).
4. 119 CONG. REC. 8485, 93d Cong. 1st Sess.
5. H. Res. 313.

a civil action brought in a federal court raises a question of the privilege of the House, and the matter is laid before the House for its consideration.

On May 16, 1972,⁽⁶⁾ the Speaker⁽⁷⁾ laid before the House as a matter involving a question of the privilege of the House a communication from the Chairman of the Committee on Rules advising that he had been served with a summons and complaint as a defendant in a civil action⁽⁸⁾ brought in the U.S. District Court for the Eastern District of Louisiana. At the same time, the Speaker, who stated that he and the Clerk of the House had received summons and complaint in the same action, inserted copies of the following letters in the Record:

MAY 16, 1972.

Hon. RICHARD G. KLEINDIENST,
Acting Attorney General, Department of Justice, Washington, D.C.

DEAR MR. KLEINDIENST: On May 15, 1972, I received by certified mail a Summons and complaint in Civil Action No. 72-1126 in the United States District Court for the Eastern District of Louisiana. A copy of the Summons and complaint is enclosed herewith.

6. 118 CONG. REC. 17398, 92d Cong. 2d Sess.
7. Carl Albert (Okla.).
8. Civil Action File No. 72-1126 (§H, U.S.D.C. E.D. La.).

Representative William M. Colmer, Chairman of the Committee on Rules of the House of Representatives, and the Clerk of the House of Representatives, Hon. W. Pat Jennings, have also received Summons and complaint in the action.

In accordance with the provisions of 2 U.S.C. 118, I have sent a copy of the Summons and complaint in this action to the U.S. Attorney for the Eastern District of Louisiana requesting that he take appropriate action under the supervision and direction of the Acting Attorney General. I am also sending you a copy of the letter I forwarded this date to the U.S. Attorney.

Sincerely,

CARL ALBERT,
*Speaker of the House
of Representatives.*

MAY 16, 1972.

Hon. GERALD J. GALLINGHOUSE,
*U.S. Attorney for the Eastern District
of Louisiana, New Orleans, La.*

DEAR MR. GALLINGHOUSE: I am sending you a copy of a Summons and complaint in Civil Action No. 72-1126 in the United States District Court for the Eastern District of Louisiana, against me in my official capacity as Speaker of the House of Representatives, received by certified mail on May 15, 1972.

Representative William M. Colmer, Chairman of the Committee on Rules of the House of Representatives, and the Clerk of the House of Representatives, Hon. W. Pat Jennings, have also received by certified mail copies of the Summons and complaint.

In accordance with the provisions of 2 U.S.C. 118, I respectfully request that you take appropriate action, as

deemed necessary, under the supervision and direction of the Acting Attorney General, in defense of this suit against the Speaker, the Chairman of the Committee on Rules of the House of Representatives, and the House of Representatives. I am also sending you a copy of the letter that I forwarded this date to the Acting Attorney General of the United States.

Sincerely,

CARL ALBERT,
*Speaker of the House
of Representatives.*

Subpenas Served on Committee Chairmen

§ 17.2 The chairman of a House committee, having received a subpoena duces tecum from a federal court, reported the facts to the speaker who laid the matter before the House.

On Feb. 21, 1961,⁽⁹⁾ the Chairman of the Committee on Un-American Activities, Francis E. Walter, of Pennsylvania, rose to a question of the privilege of the House and informed the House that he had been subpoenaed to appear and testify in connection with a case⁽¹⁰⁾ pending before the U.S. District Court for the Southern District of New York. Following the presentation of the

9. 107 CONG. REC. 2481, 87th Cong. 1st Sess.

10. *U.S. v Seeger*, Criminal Case No. C 152-240, Cr. 800 (U.S.D.C. S.D. N.Y.).

subpena to the House, a resolution,⁽¹¹⁾ authorizing the chairman to appear and testify, offered by Mr. John W. McCormack, of Massachusetts, was agreed to.

§ 17.3 When the chairman of a House committee receives a subpena duces tecum from the Tax Court of the United States, a question of the privilege of the House arises.

On Aug. 12, 1969,⁽¹²⁾ the Chairman of the Committee on Banking and Currency, Wright Patman, of Texas, rose to a question of the privilege of the House and informed the House that he had been served with a subpena duces tecum requesting the production of certain documents before the Tax Court of the United States. The subpena was sent to the desk, and the Speaker⁽¹³⁾ instructed the Clerk to read it to the House.

Parliamentarian's Note: Chairman Patman stated that the documents called for in the subpena were not in his possession or control, and the House took no action thereon.

§ 17.4 The chairman of a House committee, having been sub-

11. H. Res. 178.

12. 115 CONG. REC. 23354, 91st Cong. 1st Sess.

13. John W. McCormack (Mass.).

penaed to appear and testify before a state court, rose to a question of the privilege of the House.

On July 7, 1971,⁽¹⁴⁾ the Chairman of the Committee on Internal Security, Richard H. Ichord, of Missouri, rose to a question of the privilege of the House and addressed the Chair:

MR. ICHORD: Mr. Speaker . . . I have been subpoenaed to appear before the Superior Court of the District of Columbia on the 7th day of July 1971 at 2 p.m. in the case of United States v. Margaret Butterfield (docket No. 27078-71) and to bring with me certain papers under the control of the Committee on Internal Security.

Under the precedents of the House, I am unable to comply with this subpena duces tecum without the consent of the House, the privileges of the House being involved. I therefore submit the matter for the consideration of this body.

I send the subpena duces tecum to the desk.

The subpena was sent to the desk, and the Speaker pro tempore⁽¹⁵⁾ instructed the Clerk to read it to the House.

14. 117 CONG. REC. 23813, 92d Cong. 1st Sess. On the same day a similar subpena served on the Chairman of the Committee on Ways and Means, Wilbur D. Mills (Ark.), by the same court in connection with the same case was also presented to the House.

15. Hale Boggs (La.).

Service of Subpenas on Committee Employees

§ 17.5 Where a House committee employee had been subpoenaed by a federal court, in a matter related to committee business, the chairman of the committee advised the Speaker of this fact by letter and the Speaker then laid the matter before the House for its consideration.

On Feb. 21, 1961,⁽¹⁶⁾ the Speaker⁽¹⁷⁾ laid before the House as a matter giving rise to a question of the privilege of the House a communication from the Chairman of the Committee on Un-American Activities:

FEBRUARY 20, 1961.

Hon. SAM RAYBURN,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Mr. Frank S. Tavenner, Jr., an employee of the House, while serving at my direction as counsel for the Committee on Un-American Activities, received a subpoena duces tecum directing him to appear as a witness before the U.S. District Court for the District of Columbia, in the case of the *United States of America v. Martin Popper* (No. 1053-59). The return date of the subpoena has been extended to April 15, 1961.

16. 107 CONG. REC. 2482, 87th Cong. 1st Sess.

17. Sam Rayburn (Tex.).

The portion of the subpoena duces tecum requiring the production of documents was, on the 3d day of February 1961, quashed by Mr. Justice Edward M. Curran.

The subpoena in question is transmitted herewith and the matter is presented for such action as the House, in its wisdom, may see fit to take.

Sincerely yours,
FRANCIS E. WALTER,
Chairman.

After the Clerk's reading of the subpoena, the House agreed to a resolution⁽¹⁸⁾ offered by Mr. John W. McCormack, of Massachusetts, authorizing the committee employee to appear in response to the subpoena duces tecum as modified.

§ 17.6 When an employee of a House committee had been served with a subpoena from a state court, in a matter related to committee business, the chairman of the committee informed the Speaker who laid the matter before the House.

On May 21, 1962,⁽¹⁹⁾ the Speaker pro tempore,⁽²⁰⁾ rising to a question of the privilege of the House, laid before the House the

18. H. Res. 181.

19. 108 CONG. REC. 8823, 8824, 87th Cong. 2d Sess. For a further illustration see 105 CONG. REC. 5858, 86th Cong. 1st Sess., Apr. 14, 1959.

20. Carl Albert (Okla.).

following communication from the Chairman of the Committee on Un-American Activities:

MAY 21, 1962.

Hon. JOHN McCORMACK,
Speaker, House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Mr. Donald Appell, an employee of the House, while serving at my direction as an investigator on the Committee on Un-American Activities, received a subpoena directing him to appear as a witness in the Supreme Court of the State of New York, New York County, on the 23d day of May 1962, in the case of *John Henry Faulk, plaintiff v. Aware, Inc., Laurence A. Johnson and Vincent Hartnett, defendants.*

The subpoena in question is transmitted herewith and the matter is presented for such action as the House, in its wisdom, may see fit to take.

Sincerely yours,
FRANCIS E. WALTER,
Chairman.

After a reading of the subpoena by the Clerk, a resolution⁽¹⁾ was offered by Mr. Francis E. Walter, of Pennsylvania, authorizing the employee's appearance to testify to any matter determined by the court to be material and relevant to the identification of any publicly disclosed document, but prohibiting his testimony as to any matter that may be based on knowledge acquired by him in his official capacity as committee in-

1. H. Res. 650.

vestigator. The resolution was agreed to.

Service of Grand Jury Subpena on Committee Chairman

§ 17.7 The chairman of a House committee, having received a subpoena duces tecum from a federal grand jury, rose to a question of the privilege of the House.

On Aug. 15, 1972,⁽²⁾ the Chair recognized Mr. Charles M. Price, of Illinois:

MR. PRICE of Illinois: Mr. Speaker, I rise to a question of the privileges of the House.

THE SPEAKER:⁽³⁾ The gentleman will state the question of privilege of the House.

MR. PRICE of Illinois: Mr. Speaker, in my capacity as chairman of the Committee on Standards of Official Conduct, I have been subpoenaed to appear before the grand jury of the U.S. District Court for the Western District of Pennsylvania, on August 22, 1972, and to bring with me certain records of the Committee on Standards of Official Conduct. Under the rules and precedents of the House, I am unable to comply with the subpoena duces tecum without the permission of the House [the privileges of the House] being involved.

I therefore submit the matter for the consideration of the House.

2. 118 CONG. REC. 28286, 92d Cong. 2d Sess.

3. Carl Albert (Okla.).

THE SPEAKER: The Clerk will read the subpoena.

After the reading of the subpoena, a privileged resolution⁽⁴⁾ was offered by Mr. Hale Boggs, of Louisiana, authorizing the chairman to appear in response to the subpoena but permitting the production of certified copies of only those subpoenaed House papers and documents subsequently determined by the court to be material and relevant.

Service of Grand Jury Subpoenas on Committee Employees

§ 17.8 A House committee employee, having received a subpoena duces tecum from a federal grand jury, informed the Speaker who laid the matter before the House.

On Jan. 16, 1968,⁽⁵⁾ the Speaker⁽⁶⁾ laid before the House as a matter involving the privilege of the House a communication from the clerk of the Committee on House Administration advising that he was in receipt of a sub-

4. H. Res. 1092.

5. 114 CONG. REC. 81, 90th Cong. 2d Sess. For further examples see 113 CONG. REC. 29374-76, 90th Cong. 1st Sess., Oct. 19, 1967; and 113 CONG. REC. 17562, 90th Cong. 1st Sess., June 27, 1967.

6. John W. McCormack (Mass.).

pena duces tecum commanding his appearance for the purpose of testifying and producing certain original records before the grand jury of the U.S. District Court for the District of Columbia. Following the presentation of the communication and the reading of the subpoena to the House, a privileged resolution⁽⁷⁾ was offered by Mr. Carl Albert, of Oklahoma, authorizing the committee clerk to appear and produce the requested original papers and documents in response to the subpoena. The resolution was agreed to.

Service of Discovery Orders

§ 17.9 Where a federal district court, pursuant to the Federal Rules of Criminal Procedure, issued a discovery order for the inspection and copying of certain original papers and documents in the possession and under the control of a House committee, a question of the privilege of the House arose.

On July 1, 1969,⁽⁸⁾ the Chairman of the Committee on Internal Security, Richard H. Ichord, of Missouri, rose to a question of the privilege of the House and offered

7. H. Res. 1023.

8. 115 CONG. REC. 17948, 91st Cong. 1st Sess.

a resolution⁽⁹⁾ for the consideration of the House. The resolution authorized him to make available to the U.S. attorney, in response to a discovery order issued by a federal district court pursuant to Rule 16 of the Federal Rules of Criminal Procedure, for the purpose of inspection and copying by parties in a pending criminal action,⁽¹⁰⁾ certain enumerated committee papers and documents. The resolution was agreed to.

§ 17.10 Where certain employees and former employees of a House committee were named parties defendant in a federal civil action and had received discovery orders and interrogatories, a question of the privilege of the House was invoked.

On Mar. 2, 1971,⁽¹¹⁾ Mr. Richard H. Ichord, of Missouri, rising to a question of the privilege of the House, offered a resolution⁽¹²⁾ for the consideration of the House. The resolution authorized specified employees and former employees of the Committee on In-

ternal Security to testify and produce certain documents in response to discovery orders and written and oral interrogatories served on them as parties defendant in a civil action⁽¹³⁾ pending before the U.S. District Court for the Northern District of Illinois. The previous question was immediately moved on the resolution. Mr. Abner Mikva, of Illinois, objected to the vote because a quorum was not present. On a call of the roll pursuant to Rule XV, the resolution was agreed to.

§ 18. Authorization to Respond to Process

When the Clerk or other officer of the House is served with a subpoena duces tecum when the House is in session, the House ordinarily deals with each subpoena by resolution on an individual basis. During periods of adjournment, however, the current practice is to authorize the officer in receipt of such a court order to appear (but not to take original documents of the House) pursuant to a resolution providing continuing authority to respond during that period. The court may be provided with copies of House documents except

- 9. H. Res. 459.
- 10. *U.S. v Stamler, Hall, and Cohen*, Criminal Action No. 67 CR 393, 67 CR 394, 67 CR 395 (U.S.D.C. No. 1). Ill).
- 11. 117 CONG. REC. 4584-93, 92D Cong. 1st Sess.
- 12. H. Res. 264.

- 13. Civil Action File No. 65 C 800, 65 C 2050 (U.S.D.C. No. D. Ill.).