Whereas, by the privileges of this House no evidence of a documentary character under the control and in the possession of the House of Representatives can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession except by its permission: Therefore be it

Resolved, That when it appears by the order of any court in the United States or a judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the House is needful for use in any court of justice or before any judge or such legal officer, for the promotion of justice, this House will take such action thereon as will promote the ends of justice consistently with the privileges and rights of this House; be it further

Resolved, That during any recess or adjournment of its Ninety-third Congress, when a subpena or other order for the production or disclosure of information is by the due process of any court in the United States served upon any Member, officer, or employee of the House of Representatives, directing appearance as a witness before the said court at any time and the production of certain and sundry papers in the possession and under the control of the House of Representatives, that any such Member, officer, or employee of the House, be authorized to appear before said court at the place and time named in any such subpena or order, but no papers or documents in the possession or under the control of the House of Representatives shall be produced in response thereto; and be it further

Resolved, That when any said court determines upon the materiality and the relevancy of the papers or documents called for in the subpena or other order, then said court, through any of its officers or agents, shall have full permission to attend with all proper parties to the proceedings before said court and at a place under the orders and control of the House of Representatives and take copies of the said documents or papers and the Clerk of the House is authorized to supply certified copies of such documents that the court has found to be material and relevant, except that under no circumstances shall any minutes or transcripts of executive sessions, or any evidence of witnesses in respect thereto, be disclosed or copied, nor shall the possession of said documents and papers by any Member, officer, or employee of the House be disturbed or removed from their place of file or custody under said Member, officer, or employee; and be it further

Resolved, That a copy of these resolutions be transmitted by the Clerk of the House to any of said courts whenever such writs of subpena or other orders are issued and served as aforesaid.

The resolution was agreed to.

A motion to reconsider was laid on the table.

§ 19. Providing for Legal Counsel

Legal counsel, through the Department of Justice, is made available to the officers—but not

the Members—of the House pursuant to 2 USC § 118, which provides in part:

> In any action brought against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty, in executing any order of such House, the district attorney for the district within which the action is brought, on being thereto requested by the officer sued, shall enter an appearance in behalf of such officer . . . and the defense of such action shall thenceforth be conducted under the supervision and direction of the Attorney General.

However, the Attorney General has recommended that the House retain other legal counsel in cases where he had determined that a conflict may have existed between the legislative and executive interests.

Appointment of Special Counsel by the Speaker

§ 19.1 On one occasion the House, by resolution, authorized the Speaker to appoint and fix the compensation for a special counsel to represent the House and those Members named as defendants in a suit brought by a former Member.

On Mar. 9, 1967,[5] the Speaker[6] announced as a matter involving a question of the privilege of the House, that he and certain other Members and officers of the House had been served with a summons issued by the U.S. District Court for the District of Columbia in connection with an action[7] brought by Adam Clayton Powell, Jr. Following the reading of the summons by the Clerk, Mr. Hale Boggs, of Louisiana, rose to a question of the privilege of the House and offered a resolution (H. Res. 376) as follows:

> Whereas Adam Clayton Powell, Jr., et al., on March 8, 1967, filed a suit in the United States District Court for the District of Columbia, naming as defendants certain Members, and officers of the House of Representatives, and contesting certain actions of the House of Representatives; and
>
> Whereas this suit raises questions concerning the rights and privileges of the House of Representatives, the separation of powers between the legislative and judicial branches of the Government and fundamental constitutional issues: Now, therefore, be it
>
> *Resolved*, That the Speaker of the House of Representatives of the United States is hereby authorized to appoint and fix the compensation of such spe-

5. 113 Cong. Rec. 6035–48, 90th Cong. 1st Sess.
6. John W. McCormack (Mass.).
7. Civil Action File No. 559–61 (U.S.D.C.D. D.C.).

cial counsel as he may deem necessary to represent the House of Representatives, its Members and officers named as defendants, in the suit filed by Adam Clayton Powell, Jr., et al. in the United States District Court for the District of Columbia, as well as in any similar or related proceeding brought in any court of the United States; and be it further

Resolved, That any expenses incurred pursuant to these resolutions, including the compensation of such special counsel and any costs incurred thereby, shall be paid from the contingent fund of the House on vouchers authorized and signed by the Speaker of the House of Representatives and approved by the Committee on House Administration; and be it further

Resolved, That the Clerk of the House of Representatives transmit a copy of these resolutions to the aforementioned court and to any other court in which related legal proceedings may be brought.

Debate on the resolution ensued, after which the resolution was agreed to.[8]

8. *Parliamentarian's Note:* On Mar. 14, 1967, the Speaker announced the appointment of special counsel pursuant to H. Res. 376. 113 CONG. REC. 6603, 90th Cong. 1st Sess. The House, on Feb. 17, 1969, by simple resolution (H. Res. 243) continued the authority granted the Speaker by the provisions of H. Res. 376, 90th Congress, to retain special counsel, 115 CONG. REC. 3359, 91st Cong. 1st Sess.

Appointment of Special Counsel for Members and Employees

§ 19.2 The House may, by resolution, authorize a committee to arrange for the legal defense of certain committee members and employees who are named in their official capacities as defendants in a civil action.

On Aug. 1, 1953,[9] Mr. Charles A. Halleck, of Indiana, offered a resolution[10] authorizing the Committee on the Judiciary to file appearances, to provide counsel and to provide for the defense of certain members and employees of the Committee on Un-American Activities who had been named as parties defendant in a civil action[11] brought in the Superior Court for the State of California. The resolution stated:

Whereas Harold H. Velde, of Illinois, Donald L. Jackson, of California, Morgan M. Moulder, of Missouri, Clyde Doyle, of California, and James B. Frazier, Jr., of Tennessee, all Representatives in the Congress of the United States; and Louis J. Russell, and William Wheeler, employees of the House of Representatives, were by sub-

9. 99 CONG. REC. 10949, 10950, 83d Cong. 1st Sess.

10. H. Res. 386.

11. *Michael Wilson et al.* v *Loew's Inc., et al.*

poenas commanded to appear on Monday and Tuesday, March 30 and 31, 1953 in the city of Los Angeles, Calif., and to testify and give their depositions in the case of *Michael Wilson, et al.* v. *Loew's, Incorporated, et al.,* an action pending in the Supreme Court of California in and for the County of Los Angeles; and . . .

Whereas Harold H. Velde, Donald L. Jackson, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Jr., Louis J. Russell, and William Wheeler appeared specially in the case of Michael Wilson, et al. versus Loew's Incorporated, et al., for the purpose of moving to set aside the service of summonses and to quash the subpoenas with which they had been served; and

Whereas on July 20, 1953, the Superior Court of the State of California in and for the County of Los Angeles ruled that the aforesaid summonses served upon Harold H. Velde, Morgan M. Moulder, James B. Frazier, Jr., and Louis .J. Russell should be set aside for the reason that it was the public policy of the State of California "that nonresident members and attachés of a congressional committee who enter the territorial jurisdiction of its courts for the controlling purpose of conducting legislative hearings pursuant to law should be privileged from the service of process in civil litigation"; and . . .Whereas on July 20, 1953, the Superior Court of the State of California in and for the County of Los Angeles further ruled that the subpoenas served on Clyde Doyle and Donald Jackson should be recalled and quashed because such service was invalid under the aforementioned article I, section 6, of the Constitution of the United States; and

Whereas the case of *Michael Wilson, et al.* v. *Loew's Incorporated, et al.* in which the aforementioned Members, former Members, and employees of the House of Representatives are named parties defendant is still pending; and

Whereas the summonses with respect to Donald L. Jackson, Clyde Doyle, and William Wheeler and the subpoena with respect to William Wheeler in the case of *Michael Wilson, et al.* v. *Loew's Incorporated, et al.* have not been quashed:

Resolved, That the House of Representatives hereby approves of the special appearances of Harold H. Velde, Donald L. Jackson, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Jr., Louis J. Russell, and William Wheeler heretofore entered in the case of *Michael Wilson, et al.* v. *Loew's Incorporated, et al.;* and be it further

Resolved, That the Committee on the Judiciary, acting as a whole or by subcommittee, is hereby authorized to direct the filing in the case of *Michael Wilson, et al.* v. *Loew's Incorporated, et al.* of such special or general appearances on behalf of any of the Members, former Members, or employees of the House of Representatives named as defendants therein, and to direct such other or further action with respect to the aforementioned defendants in such manner as will, in thejudgment of the Committee on the Judiciary, be consistent with the rights and privileges of the House of Representatives; and be it further

Resolved, That the Committee on the Judiciary is also authorized and directed to arrange for the defense of the Members, former Members, and employees of the Committee on Un-Amer-

ican Activities in any suit hereafter brought against such Members, former Members, and employees, or any one or more of them, growing out of the actions of such Members, former Members, and employees while performing such duties and obligations imposed upon them by the laws of the Congress and the rules and resolutions of the House of Representatives. The Committee on the Judiciary is authorized to incur all expenses necessary for the purposes hereof. . . .

The resolution was agreed to, and a motion to reconsider was laid on the table.[12]

Authorizing the Clerk to Appoint Special Counsel

§ 19.3 On one occasion the House, by resolution, authorized the Clerk to appoint and fix compensation for counsel to represent him in any suit brought against him as supervisory officer under the Corrupt Practices Act of 1925 or the Federal Election Campaign Act of 1971.

On Feb. 22, 1972,[13] the Speaker[14] laid before the House a communication from the Clerk advising that a civil action[15] had been filed in the U.S. District Court for the District of Columbia naming, among others, the Clerk of the House as a party defendant. The Clerk in his communication also advised that pursuant to 2 USC § 118 he had on Feb. 18, 1972, written to the Acting Attorney General of the United States and to the U.S. Attorney for the District of Columbia requesting that they carry out their assigned statutory responsibilities in defending the Clerk in this matter.

On Mar. 15, 1972,[16] the Speaker laid before the House a communication from the Clerk advising that in response to his request of Feb. 18, 1972, he was in receipt of replies from the Department of Justice and the U.S. Attorney for the District of Columbia in which they agreed, pursuant to 2 USC § 118, to furnish representation for the Clerk in the civil action unless a "divergence of interest" developed between the positions of

12. *Parliamentarian's Note:* On Sept. 6, 1961, the House, by resolution (H. Res. 417), continued the authority of the Committee on the Judiciary granted by the provisions of H. Res. 386, 83d Cong., to arrange for the legal defense of members, former members and employees of the Committee on Un-American Activities. 107 CONG. REC. 18240, 87th Cong. 1st Sess.

13. 118 CONG. REC. 5024, 92d Cong. 2d Sess.

14. Carl Albert (Okla.).

15. *Nader et al.* v *Jennings et al.,* Civil Action File No. 243–72 (U.S.D.C. D. D.C.).

16. 118 CONG. REC. 8470, 92d Cong. 2d Sess.

the Clerk and the Justice Department.

On May 3, 1972, the Clerk received a letter from the Attorney General stating that a "divergence of interest" had developed between the positions of the Clerk and the Justice Department and requesting the Clerk to obtain other counsel. The letter was not communicated to the Speaker or laid before the House. Pursuant to the authority granted the Clerk in House Resolution 955 the Clerk obtained other counsel.

On May 3, 1972,[17] Mr. Wayne L. Hays, of Ohio, offered the resolution below (H. Res. 955) as a matter involving the question of the privilege of the House:

> *Resolved,* That the Clerk of the House of Representatives is hereby authorized to appoint and fix the compensation of such special counsel as he may deem necessary to represent the Clerk and the interests of the House in any suit now pending or hereafter brought against the Clerk arising out of his actions while performing duties or obligations imposed upon him by the Federal Corrupt Practices Act, 1925, or the Federal Election Campaign Act of 1971; and be it further
>
> *Resolved,* That any expenses incurred pursuant to these resolutions, including the compensation of such special counsel and any costs incurred thereby, shall be paid from the contingent fund of the House on vouchers approved by the Committee on House Administration.

The House agreed to the resolution.

On Jan. 6, 1973,[18] the House, by unanimous consent, agreed to a resolution[19] continuing the authority of the Clerk to appoint and fix compensation for legal counsel in suits brought against him under the Corrupt Practices Act of 1925 or the Federal Election Campaign Act of 1971.

Parliamentarian's Note: The provision for payment of such expenses is now permanent law [see 87 Stat. 527 at p. 537, Pub. L. No. 93–145 (Nov. 1, 1973)], but the statute authorizes compensation only for attorneys who represent the Clerk in suits brought against him in the performance of his official duties as mandated by either the Federal Corrupt Practices Act of 1925 or the Federal Election Campaign Act of 1971. There is no comparable provision of law which authorizes the payment by the House of attorneys' fees for Members indicted, sued, or subpoenaed as witnesses either in their official or individual capacities.

17. 118 CONG. REC. 15627, 15628, 92d Cong. 2d Sess.

18. 119 CONG. REC. 379, 93d Cong. 1st Sess.

19. H. Res. 92.