

Activities regarding refusal to produce requested records, books, and papers.

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 573) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

Resolved, That the Speaker of the House of Representatives certify the report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following persons to produce before the said committee for its inspection the books, papers, and records of an unincorporated organization known as the Joint Anti-Fascist Refugee Committee, with offices at 192 Lexington Avenue, New York, N.Y., together with all the facts relating thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law:

Dr. Edward K. Barsky, 54 East Sixty-first Street, New York City.

Dr. Jacob Auslander, 286 West Eighty-sixth Street, New York City.

Prof. Lyman R. Bradley, New York University, New York City.

Mrs. Marjorie Chodorov, 815 Park Avenue, New York City. . . .

MR. WOOD: Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Wood: Strike from the resolution the names of all individuals except that of Edward K. Barsky.

The amendment was agreed to.

Parliamentarian's Note: Dr. Barsky was the only person who

had been subpoenaed. All the others, members of the executive board of the organization, were cited in the report and resolution because the board refused to permit Dr. Barsky to produce the subpoenaed materials. Mr. Wood was Chairman of the Committee on Un-American Activities.⁽¹²⁾

§ 18. Time for Consideration

Reports

§ 18.1 A report from a committee relating to the refusal of a witness to produce certain subpoenaed documents is privileged; it is presented and read before a resolution is offered directing the Speaker to certify the refusal to a U.S. Attorney.

On Aug. 23, 1960,⁽¹³⁾ Speaker Sam Rayburn, of Texas, indicated the order in which to read a report and resolution relating to contempt of a witness.

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I rise to a question

12. See 92 CONG. REC. 2744, 2745, 79th Cong. 2d Sess., for the text of the report and §19.4, *infra*, for a discussion of this incident as it relates to a point of order challenging citation of persons who had not been subpoenaed.

13. 106 CONG. REC. 17278, 86th Cong. 2d Sess.

of the privilege of the House and offer a resolution which I send to the Clerk's desk along with a privileged report (Rept. No. 2117) of the Committee on the Judiciary detailing the facts concerning the contumacious conduct of the subject of the resolution.

THE SPEAKER: The Chair would think that the gentleman would desire to file the report first and then offer the resolution.

MR. CELLER: The report has been filed, Mr. Speaker.

THE SPEAKER: The Clerk will read the report, then.⁽¹⁴⁾

§ 18.2 Because a report on the contemptuous conduct of a witness before a committee gives rise to a question of privileges of the House (re-

14. This report cited Austin J. Tobin, executive director of the Port Authority of New York for contempt for his refusal to submit subpoenaed documents before Subcommittee No. 5 of the Committee on the Judiciary. The resolution, H. Res. 606, authorized the Speaker to certify the report to a U.S. Attorney. See 106 CONG. REC. 17281, 86th Cong. 2d Sess., Aug. 23, 1960, for the text of this resolution and 106 CONG. REC. 17313 (H. REPT. No. 2120) and 17316 (H. Res. 607), 86th Cong. 2d Sess., Aug. 23, 1960, for similar proceedings against S. Sloan Colt, chairman of the board of commissioners of the Authority; and 106 CONG. REC. 17316 (H. REPT. No. 2121) and 17319 (H. Res. 608), 86th Cong. 2d Sess., Aug. 23, 1960, for similar proceedings against Joseph G. Carty, secretary of the authority.

lating both to the implied constitutional power of the House and its authority under Rule IX to dispose directly of questions affecting the dignity and integrity of House proceedings), it is privileged for consideration immediately upon presentation to the House.

On July 13, 1971,⁽¹⁵⁾ Speaker Carl Albert, of Oklahoma, ruled that House Report No. 92-349, citing the Columbia Broadcasting System, Inc. and its president, Frank Stanton, for contempt for refusal to submit subpoenaed materials to the Committee on Interstate and Foreign Commerce, was privileged under Rule IX,⁽¹⁶⁾ and consequently could be considered on the same day it was reported notwithstanding the requirement of Rule XI clause 27(d)(4),⁽¹⁷⁾ that reports from committees be available to Members for at least three calendar days prior to their consideration.

PROCEEDING AGAINST FRANK STANTON AND COLUMBIA BROADCASTING SYSTEM, INC.

MR. [HARLEY O.] STAGGERS [of West Virginia]: I rise to a question of the

15. 117 CONG. REC. 24720, 24721, 92d Cong. 1st Sess.
 16. House Rules and Manual §661 (1973).
 17. House Rules and Manual §735(d)(4) (1973).

privilege of the House, and I submit a privileged report (Report No. 92-349).

The Clerk proceeded to read the report.

MR. [SAM M.] GIBBONS [of Florida]: Mr. Speaker, I want to raise a point of order against the consideration of this matter at this time.

THE SPEAKER: The gentleman will state his point of order.

MR. GIBBONS: Mr. Speaker, I rise to object to the consideration of this matter at this time in that I believe that it violates clause 27, subparagraph (d)(4) of rule XI of the Rules of the House of Representatives.

Mr. Speaker, I refer to the language contained on page 381 of the House Rules and Manual, 92d Congress. I would call your attention to the fact that the rule, subparagraph (d)(4), clause 27 of rule XI was adopted last year in the Legislative Reorganization Act, and was readopted earlier this year.

Mr. Speaker, I think it would be best if I read just a portion of the rule, and this rule reads as follows:

A measure or matter reported by any committee (except the Committee on Appropriations, the Committee on House Administration, the Committee on Rules, and the Committee on Standards of Official Conduct) shall not be considered in the House unless the report of that committee upon that measure or matter has been available to the Members of the House for at least three calendar days (excluding Saturdays, Sundays, and legal holidays) prior to the consideration of that measure or matter in the House.

Now, there is some more to that rule. The next sentence goes on to deal with the hearings of the committee,

but then there is an exception to that rule, and it is:

This subparagraph shall not apply to—

(A) any measure for the declaration of war or the declaration of a national emergency, by the Congress; and

(B) any executive decision, determination, or action which would become, or continue to be, effective unless disapproved or otherwise invalidated by one or both Houses of Congress.

Mr. Speaker, that rule was adopted last year. I have examined the committee report. It is obvious the reasoning for its adoption was to prevent the premature or rapid or precipitous consideration of matters such as this kind, even though they dealt with a matter of privilege. The matter of privileged matters is specifically not excepted from this rule because I think many Members helping to frame these rule changes last year felt that the Congress had not acted wisely on some of these things that have come up pretty fast.

The committee report, which is still classified as a committee print, without any number, was not available until 10:30 this morning. It is 272 pages long. I presume it is well written, I have not had a chance to read it, and I doubt that very many other Members have had a chance to read it in full.

I would hope that the Chair would sustain this point of order. I do not believe there is any grave emergency. I do not believe that the person sought to be cited, or the organization sought to be cited are about to leave the country. I would hope that the House could

consider this matter in a more rational manner and after it has had the opportunity to read and examine the report.

Mr. Speaker, I realize that some may say a matter of this sort is a matter of privilege and, therefore, is excepted from the rule. It is my contention, Mr. Speaker, that the matter of privilege was specifically not excluded from the requirement of a 3-day lay-over for the printing of the report but that the Committees on Appropriations, House Administration, Rules, and Standards of Official Conduct—those being the committees that generally deal with matters of privilege—were set down under specific exception and that it was never intended that citations such as this could be considered in such a preemptive type of procedure as is now about to take place.

MR. [OGDEN R.] REID of New York: Mr. Speaker, will the gentleman yield?

MR. GIBBONS: I yield to the gentleman.

MR. REID of New York: Mr. Speaker, in furtherance of the point that the gentleman is making, if the Chair will look at rule IX, it states in the rule:

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings;

I would say, Mr. Speaker, that the 3-day rule is an important principle, uniquely relevant to the Constitutional question. This is the very idea of the 3-day rule and I believe that today to rush through an important question does not comport with an enlightened discharge of our responsibility.

Mr. Speaker, I hope the point of order is upheld.

THE SPEAKER: Does the gentleman from West Virginia (Mr. Staggers) desire to be heard on the point of order?

MR. STAGGERS: I do, Mr. Speaker.

THE SPEAKER: The gentleman is recognized.

MR. STAGGERS: Mr. Speaker, rule IX provides that "Question of privilege shall be, first, those affecting the rights of the House collectively"—as the gentleman from New York has just read—"its safety, dignity and the integrity of its proceedings."

Privileges of the House includes questions relating to those powers to punish for contempt witnesses who are summoned to give information.

House Rule 27(d) of rule XI the so-called 3-day rule, clearly does not apply to questions relating to privileges of the House. The rule applies only to simple measures or matters reported by any committee. It excludes matters arising from the Committee on Appropriations, House Administration, Rules, and Standards of Official Conduct.

It is clear that the terms "measure" or "matter" as used in rule 27(d) do not apply to questions of privilege.

To apply it in such a way would utterly defeat the whole concept of the question of privilege.

Too, a privileged motion takes precedence over all other questions except the motion to adjourn.

The fact that the 3-day rule excludes routine matters from the Appropriations, Administration, Rules, and Standards of Official Conduct Committees clearly shows that the 3-day rule does not apply to privileged questions.

If the rule were meant to apply to questions of privilege, it surely would not make exceptions for routine business coming from regular standing committees.

THE SPEAKER: The Chair is ready to rule.

The Chair appreciates the fact that the gentleman from Florida has furnished him with a copy of the point of order which he has raised and has given the Chair an opportunity to consider it.

The gentleman from Florida (Mr. Gibbons) makes a point of order against the consideration of the report from the Committee on Interstate and Foreign Commerce on the grounds that it has not been available to Members for at least 3 days as required by clause 27(d)(4) of rule XI. The Chair had been advised that such a point of order might be raised and has examined the problems involved.

The Chair has studied clause 27(d)(4) of rule XI and the legislative history in connection with its inclusion in the Legislative Reorganization Act of 1970.

That clause provides that "a matter shall not be considered in the House unless the report has been available for at least 3 calendar days."

The Chair has also examined rule IX, which provides that:

Questions of privilege shall be, first, those affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings . . . and shall have precedence of all other questions, except motions to adjourn.

Under the precedents, a resolution raising a question of the privileges of the House does not necessarily require a report from a committee. Immediate consideration of a question of privilege of the House is inherent in the whole concept of privilege. When a resolution is presented, the House may then

make a determination regarding its disposition.

When a question is raised that a witness before a House committee has been contemptuous, it has always been recognized that the House has the implied power under the Constitution to deal directly with such conduct so far as is necessary to preserve and exercise its legislative authority. However, punishment for contemptuous conduct involving the refusal of a witness to testify or produce documents is now generally governed by law—Title II, United States Code, sections 192–194—which provides that whenever a witness fails or refuses to appear in response to a committee subpoena, or fails or refuses to testify or produce documents in response thereto, such fact may be reported to the House. Those reports are of high privilege.

When a resolution raising a question of privilege of the House is submitted by a Member and called up as privileged, that resolution is also subject to immediate disposition as the House shall determine.

The implied power under the Constitution for the House to deal directly with matters necessary to preserve and exercise its legislative authority; the provision in rule IX that questions of privilege of the House shall have precedence of all other questions; and the fact that the report of the committee has been filed by the gentleman from West Virginia as privileged—all refute the argument that the 3-day layover requirement of clause 27(d)(4) applies in this situation.

The Chair holds that the report is of such high privilege under the inherent constitutional powers of the House and

under rule IX that the provisions of clause 27(d)(4) of rule XI are not applicable.

Therefore, the Chair overrules the point of order.

The Clerk will continue to read the report.

Point of Order Regarding House Trial

§ 18.3 The point of order was made that the House should itself try contempt cases, rather than certify such matters to the courts; the report which was objected to having just been read, the Speaker indicated that submission of such issue (which is one to be decided by the House) should be postponed until a resolution was actually presented for consideration by the House.

On May 28, 1936,⁽¹⁸⁾ after the reading of a privileged report from the Select Committee on Investigating Old Age Pensions, House Report No. 2857, regarding contempt of Dr. Francis E. Townsend, president and founder, and two members of the national board of directors of Old Age Revolving Pensions, Ltd., for failure to provide subpoenaed testimony and documents, Speaker Joseph W.

18. 80 CONG. REC. 8221, 74th Cong. 2d Sess.

Byrns, of Tennessee, responded to a point of order regarding the procedure to try and punish contempt.

MR. [THOMAS L.] BLANTON [of Texas]: Mr. Speaker, I make the point of order that under the Constitution of the United States the House of Representatives of the legislative branch is a separate and distinct department of government from the judiciary, or the courts, that this is undoubtedly a contempt of the House of Representatives, the legislative branch, and is a contempt that should be tried and punished, not by the courts, but by the House of Representatives itself. We ought not to pass the buck to the courts. We ought to assume the responsibility ourselves.

I admit that all three witnesses clearly are in contempt, and deserve punishment and that the House ought to try these three witnesses, convict them of contempt, and punish all three of them with a heavy fine and send them all to jail, until they can have some respect for the institutions of their country. I therefore make the point of order that the House of Representatives should try its own contempt proceedings and fix its own punishment.

THE SPEAKER: That matter is not under discussion now. This is simply a report from a select committee which has been read and which has been ordered printed. The Chair recognizes the gentleman from Missouri.

It should be noted that the Speaker did not indicate that the point of order, even if timely, would have been valid. Rather, the Speaker implied that such

issues were to be determined by the House by voting on whatever resolution was presented to the House.⁽¹⁹⁾

Resolutions

§ 18.4 A resolution directing the Speaker to certify to the U.S. Attorney the refusal of a witness to respond to a subpoena issued by a House committee may be offered from the floor as privileged and may be disposed of immediately.

On July 13, 1971,⁽²⁰⁾ House Resolution 534, authorizing the Speaker to certify to the U.S. Attorney a report citing the contemptuous refusal of the Columbia Broadcasting System and its president, Frank Stanton, to respond to a subpoena duces tecum issued by the Committee on Interstate and Foreign Commerce, and House Report No. 92-349, citing this contempt, were offered from the floor. The resolution was considered as privileged by the Speaker.⁽¹⁾

19. See §19.2, *infra*, for a discussion of the proceedings as they relate to the authority of a committee to report the contempts of witnesses.

20. 117 CONG. REC. 24720, 24721, 24723, 92d Cong. 1st Sess.; see §18.2, *supra*, for the text of the point of order and ruling regarding the privileged status of the report.

1. Carl Albert (Okla.).

§ 18.5 Because it is a matter of high privilege, a resolution directing the Speaker to certify an individual in contempt may be called up at any time.

On Aug. 2, 1946,⁽²⁾ Speaker Sam Rayburn, of Texas, responded to a parliamentary inquiry regarding the privileged status of a resolution authorizing the Speaker to certify an individual in contempt.

PROCEEDING AGAINST RICHARD MORFORD

THE SPEAKER: For what purpose does the gentleman from Mississippi rise?

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, I send to the Clerk's desk a privileged resolution and ask that it be read.

THE SPEAKER: The Clerk will read the resolution.

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, has not the Speaker the power to determine the order of business by recognizing or not recognizing gentlemen requesting the consideration of various pieces of legislation? I make that parliamentary inquiry because there is very important business pending before the House—social security, appro-

2. 92 CONG. REC. 10746, 79th Cong. 2d Sess.

priations for terminal-leave pay, and for automobiles for amputees—and I see no reason why this resolution should be given preference.

THE SPEAKER: It would not be given preference if it were an ordinary resolution, but this is a resolution of high privilege.

Calendar Wednesday

§ 18.6 A report of a committee citing a witness for contempt was considered on Calendar Wednesday.

On June 26, 1946,⁽³⁾ Calendar Wednesday, the House considered a privileged report from the Committee on Un-American Activities, House Report No. 2354, citing Corliss G. Lamont, chairman of the National Council of American-Soviet Friendship, Inc., for contempt for his refusal to produce subpoenaed materials.⁽⁴⁾

§ 19. Matters Decided by House

Content of Report

§ 19.1 The House, not the Chair, determines whether a report citing an individual

- 3. See 92 CONG. REC. 7589–91, 79th Cong. 2d Sess., for the text of the report.
- 4. This report is discussed at §19.1, *infra*.

for refusal to produce subpoenaed materials must contain the full testimony or only selected portions thereof.

On June 26, 1946,⁽⁵⁾ Speaker Sam Rayburn, of Texas, responded to a point of order regarding the sufficiency of a hearing transcript in a committee report citing a I witness for contempt.

PROCEEDINGS AGAINST CORLISS G. LAMONT

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report and ask that it be read.

The Clerk read as follows:

The Committee on Un-American Activities, as created and authorized by the House of Representatives by House Resolution 5 of the Seventy-ninth Congress, caused to be issued a subpoena to Corliss G. Lamont, chairman of the National Council of American-Soviet Friendship, Inc., with offices at 114 East Thirty-second Street, New York City, N.Y. The said subpoena required the said person to produce books, papers, and records of the organization for the inspection of your committee. The subpoena is set forth as follows: . . .

In response to the said subpoena the said Corliss Lamont appeared before your committee on February 6, 1946, and your committee then

- 5. 92 CONG. REC. 7589–91, 79th Cong. 2d Sess. See §18.6, *supra*, for a discussion of this instance as it relates to consideration on Calendar Wednesday.