

who were never subpoenaed, and never given an opportunity to appear and state whether or not they would or could comply with a subpoena. Under those circumstances, I maintain that insofar as those individuals are concerned this matter is not properly before the House, in that neither the resolution nor the report from the committee sets forth that these individuals were subpoenaed, with the exception of Dr. Barsky. None of the others were subpoenaed; none of the others came before the committee and were accorded even an opportunity to say "yes" or "no" as to whether or not they had authority or control over the records and books and whether they could or would comply with the committee's subpoena. For that reason, as far as they are concerned, this resolution is not properly before this House.

The SPEAKER: The Chair is ready to rule.

The report and the resolution are both before the House for its determination, and not the determination of the Chair. The Chair overrules the point of order.<sup>(11)</sup>

## §20. Particular Conduct as Contumacious

The contempt statute, 2 USC §192, penalizes any person summoned as a witness by a committee who "willfully<sup>(12)</sup> makes

11. See §17.4, supra, in which the House agreed to an amendment deleting names of all persons who had not been subpoenaed.
12. See §7, supra, for a discussion of willfulness in relation to intent of witness.

default" or who, having appeared, "refuses to answer any question. . . ." The word "default" means failure to appear in response to a summons<sup>(13)</sup> as well as failure to produce papers.<sup>(14)</sup> With respect to a witness summoned to give testimony, "default" includes not only failure to appear, but refusal to be sworn.<sup>(15)</sup>

A district court<sup>(16)</sup> held that the contempt statute proscribes every willful failure to comply with a summons, not merely the failure to appear pursuant to a summons, and interpreted the word "default" to mean failure to give testimony or produce papers as well as refusal to testify or appear. "Default" also applies to a witness' withdrawal from a hearing without consent of the committee.<sup>(17)</sup>

13. *United States v Bryan*, 339 U.S. 323, 327 (1950). See §§20.1, 20.2, infra.
14. *United States v Bryan*, 339 U.S. 323, 327 (1950). See §§20.9, 20.10, infra.
15. *Eisler v United States*, 170 F2d 273 (D.C. Cir. 1948), cert. dismissed, 338 U.S. 883 (1949); *United States v Josephson*, 165 F2d 82 (2d Cir. 1947), cert. denied, 333 U.S. 838 (1948). See §§20.3, 20.4, infra.
16. *United States v Hintz*, 193 F Supp 325 (N.D. Ill. 1961).
17. *United States v Costello*, 198 F2d 200 (2d Cir. 1952), cert. denied, 344 U.S. 874 (1952); *Townsend v United States*, 95 F2d 352 (D.C. Cir. 1938), cert. denied, 303 U.S. 664 (1938). See §§20.7, 20.8, infra.

The portion of the statute regarding refusal to answer any question is closely related to willfulness, an element which has been read into the statute notwithstanding the fact that “willful” or “willfully” does not expressly modify refusal to answer. A court of appeals<sup>(18)</sup> explained.

The statute uses the word “willfully” as a word of art to define the offense of failing to appear; “willfully” is not used with respect to a person “who having appeared, refuses to answer. . . .” The act of refusing (as distinguished from failing) to answer is a positive, affirmative act; the result is conscious and intended. Congress recognized that a failure to appear in response to a summons could well be due to other causes than willfulness or deliberate purpose to disobey the summons or the statute. . . . To decline or refuse to answer a question, however, is by its own nature a deliberate and willful act.

A committee’s failure to give a witness a clear direction to answer a question has constituted a ground on which to reverse contempt convictions.<sup>(19)</sup>

The precedents in this section illustrate particular conduct that

- 18. *Deutch v United States*, 235 F2d 858 (D.C. Cir. 1956).
- 19. *Emspak v United States*, 349 U.S. 190, 202 (1955); *Quinn v United States*, 349 U.S. 155, 165 (1955); *Bart v United States*, 349 U.S. 219, 221 (1955).

has been regarded as contumacious.

***Refusal to Appear***

**§ 20.1 A committee filed a privileged report which included a contempt citation and facts relating to the refusal of a witness to appear before it.**

On Apr. 22, 1947,<sup>(20)</sup> the Committee on Un-American Activities offered a privileged report, House Report No. 289, relating to a witness’ refusal to appear in response to a subpoena ad testificandum.

PROCEEDINGS AGAINST EUGENE DENNIS, ALSO KNOWN AS FRANCIS WALDRON

MR. [J. PARNELL] THOMAS of New Jersey: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report, which I send to the Clerk’s desk and ask to have read.

The SPEAKER:<sup>(1)</sup> The Clerk will read the report.

The Clerk read as follows:

- 20. 93 Cong. Rec. 3813, 3814, 80th Cong. 1st Sess. On the same day, the House adopted a resolution (H. Res. 193) certifying the contemptuous conduct to the appropriate U.S. attorney. See also *United States v Dennis*, 171 F2d 986 (D.C. Cir. 1948), aff’d. 339 U.S. 162 (1950), wherein defendant’s subsequent conviction was affirmed.

- 1. Joseph W. Martin, Jr. (Mass.).

REPORT CITING EUGENE DENNIS,  
ALSO KNOWN AS FRANCIS WALDRON

The Committee on Un-American Activities as created and authorized by the House of Representatives through the enactment of Public Law No. 601, section 121, subsection Q (2), caused to be issued a subpoena to Eugene Dennis, also known as Francis Waldron, who is general secretary of the Communist Party of the United States. The said subpoena directed Eugene Dennis, also known as Francis Waldron, to be and appear before the said Committee on Un-American Activities on April 9, 1947, and then and there to testify touching matters of inquiry committed to the said committee; the subpoena being set forth in words and figures as follows:

"By authority of the House of Representatives of the Congress of the United States of America, to Robert E. Stripling: You are hereby commanded to summon Eugene Dennis, also known as Francis Waldron, general secretary, Communist Party of the United States, to be and appear before the Un-American Activities Committee of the House of Representatives of the United States, of which the Honorable J. Parnell Thomas is chairman, in their chamber in the city of Washington, on the 9th day of April 1947, at the hour of 10 a.m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee. Herein fail not, and make return of this summons.

"Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 26th day of March 1947.

"J. PARNELL THOMAS, *Chairman*.  
"Attest:

"JOHN ANDREWS, *Clerk*."

The said subpoena was duly served, as appears by the return made thereon by Robert E. Stripling, chief

investigator of the Committee on Un-American Activities, who was duly authorized to serve the said subpoena and who served the said subpoena upon instructions received from the chairman of the Committee on Un-American Activities. The return of the service by the said Robert E. Stripling being endorsed thereon, which is set forth in words and figures as follows:

"Subpoena for Eugene Dennis also known as Francis Waldron before the Committee on Un-American Activities, United States House of Representatives, served at 11:35 a.m., March 26, 1947, in the committee's chambers in Washington, D.C.

"ROBERT E. STRIPLING,  
*Chief Investigator,*  
*Committee on Un-American*  
*Activities.*"

On April 7, 1947, a telegram was sent to Mr. Eugene Dennis, general secretary of the Communist party of the United States, which is set forth herein in words and figures as follows:

"April 7, 1947.

Mr. Eugene Dennis,  
*General Secretary,*  
*Headquarters, Communist Party,*  
*50 East Thirteenth Street,*  
*New York, N.Y.*

"This is to notify you that in response to the subpoena which was served upon you March 26, you are to appear before the Committee on Un-American Activities, at the committee's chambers, 225 Old House Office Building, at 10 a.m., April 9, 1947, to then and there give testimony under oath concerning matters pertinent to the committee's inquiry.

"ROBERT E. STRIPLING,  
*Chief Investigator,*  
*Committee on Un-American*  
*Activities.*"

The said Eugene Dennis, also known as Francis Waldron, failed to appear before the said Committee on

Un-American Activities on April 9, 1947, as directed by the subpoena served upon him on March 26, 1947, and the willful and deliberate refusal of the witness to appear before the Committee on Un-American Activities is a violation of the subpoena served upon him by the Committee on Un-American Activities and places the said Eugene Dennis, also known as Francis Waldron, in contempt of the House of Representatives of the United States.

**§ 20.2 The House agreed to a privileged resolution directing the Speaker to certify to the appropriate U.S. Attorney a report citing a witness in contempt for refusing to appear at an investigative hearing to which he had been subpoenaed.**

On Feb. 5, 1952,<sup>(2)</sup> the House on a roll call vote of 316 yeas to 0

2. 98 CONG. REC. 829, 832, 82d Cong. 2d Sess. See also, as a further example, 93 CONG. REC. 3806, 3811, 80th Cong. 1st Sess., Apr. 22, 1947, for the approval, on a vote of 357 yeas to 2 nays, of H. Res. 190, directing the Speaker to certify to the U.S. Attorney for the District of Columbia, H. REPT. NO. 281, citing Leon Josephson in contempt for refusing to appear before the Committee on Un-American Activities; and 93 CONG. REC. 3814, 3820, 80th Cong. 1st Sess., Apr. 22, 1947, for the approval, on a vote of 196 yeas to 1 nay, of H. Res. 193, directing the Speaker to certify to the U.S. Attorney for the District of Columbia H. REPT. NO. 289, citing Eugene Den-

nays approved a resolution directing the Speaker to certify a report.

MR. [JOHN S.] WOOD of Georgia: Mr. Speaker, I offer a privileged resolution (H. Res. 517) 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 Committee on Un-American Activities of the House of Representatives as to the willful default of Sidney Buchman in failing to appear before the Committee on Un-American Activities in response to a subpoena duly served upon him, together with all the facts in connection therewith, under seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said Sidney Buchman may be proceeded against in the manner and form provided by law. . . .

THE SPEAKER:<sup>(3)</sup> The question is on the resolution.

MR. WOOD of Georgia: On that, Mr. Speaker, I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 316, nays 0, not voting 115, as follows: . . .

So the resolution was agreed to.

***Refusal to Be Sworn***

**§ 20.3 A committee files a privileged report which includes**

nis, also known as Francis Waldron, in contempt for refusing to appear before the Committee on Un-American Activities.

3. Sam Rayburn (Tex.).

**a contempt citation and facts relating to the refusal of a witness to be sworn.**

On Sept. 10, 1973,<sup>(4)</sup> the Committee on Armed Services filed a privileged report relating to the refusal of G. Gordon Liddy to be sworn.

PROCEEDINGS AGAINST GEORGE  
GORDON LIDDY

MR. [LUCIEN N.] NEDZI [of Michigan]: Mr. Speaker, I rise to a question of the privilege of the House, and, by direction of the Committee on Armed Services, I submit a privileged report (H. Rept. No. 93-453).

The Clerk read as follows:

REPORT CITING GEORGE GORDON  
LIDDY

INTRODUCTION

On Friday, July 20, 1973, during an executive session of the Special Subcommittee on Intelligence of the House Committee on Armed Services, Mr. George Gordon Liddy, who was called as a witness, pursuant to a Writ of Habeas Corpus, refused to be sworn prior to offering any testimony or claiming his privilege under the Fifth Amendment. A quorum being present, the subcommittee voted to report the matter to the full House Committee on Armed Services with a recommendation for reference to the House of Representatives

4. 119 CONG. REC. 28951, 28952, 93d Cong. 1st Sess. On the same date, the House considered the report and adopted a resolution certifying the matter to the appropriate U.S. attorney. See also *U.S. v Liddy*, Crim. No. 74-117 (D.D.C. 1974).

under procedures which could ultimately result in Mr. Liddy being cited for contempt of Congress. [See Appendix 1.] On July 26, 1973 the House Committee on Armed Services met to receive the report of the Special Subcommittee on Intelligence with regard to the refusal of Mr. Liddy to be sworn. On July 31, 1973, the full committee, a quorum being present, on a record vote of 33-0, recommended the adoption of a resolution as follows:

"RESOLUTION

*Resolved*, That the Speaker of the House of Representatives, certify the report of the Committee on Armed Services of the House of Representatives as to the refusal of George Gordon Liddy to be sworn or to take affirmation to testify before a duly authorized subcommittee of the said Committee on Armed Services on July 20, 1973, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said George Gordon Liddy may be proceeded against in the manner and form provided by law."

[See Appendix 2.]

BACKGROUND

At the time of the subcommittee hearings, Mr. Liddy was in confinement in the District of Columbia Jail as the result of his conviction on the Watergate breakin. Accordingly, the subcommittee petitioned Chief Judge John J. Sirica of the United States District Court for the District of Columbia for a Writ of Habeas Corpus Ad Testificandum as the only means of obtaining Mr. Liddy's presence before the subcommittee. In his discretion Judge Sirica signed that petition and an order was delivered to the United States Marshal for Mr. Liddy's appearance before the sub-

committee on July 20, 1973. [See Appendix 1, pp. 16-17.] Mr. Liddy appeared as ordered.

In his appearance Mr. Liddy was asked to rise and take the oath. He refused to take the oath as a witness. Subsequently, his counsel presented an extensive brief after which Mr. Liddy again refused to take the oath. The witness claimed he had the absolute right under the Fifth Amendment to remain completely silent with regard to any offering before the subcommittee. He sought to establish that contention based upon his current conviction on the Watergate breakin which is under appeal, and the possibility of future indictments being brought against him. He further argued a Sixth Amendment right to avoid what he claims to be prejudicial publicity in the media should he claim his Fifth Amendment rights. Mr. Liddy agreed that his refusal to be sworn was not based on any religious grounds.

#### AUTHORITY

The Special Subcommittee on Intelligence is a duly constituted subcommittee of the House Committee on Armed Services pursuant to House Resolution 185, 93d Congress, and the appointment made during the organization meeting of the Committee on Armed Services on February 27, 1973. [See Appendix 1, pp. 11-16.] In addition, the chairman of the subcommittee was given an order directing an inquiry into any CIA involvement in Watergate-Ellsberg matters. The subcommittee recommended those hearings on May 11, 1973, and in sixteen sessions since that date has had before it some twenty-four witnesses bearing on the subject of the inquiry. Prior to his appearance on July 20, 1973, Mr. Liddy, through his attorney, was advised by telephone of the purpose of the investigation and was asked to acknowledge that information by letter. That was done by Mr. Liddy's at-

torney on June 20, 1973. [See Appendix 1, pp. 17-18]. As indicated above, Mr. Liddy was properly before the subcommittee on a valid, duly executed Writ of Habeas Corpus Ad Testificandum [See Appendix 1, p. 16.]

#### CONCLUSION

The position of the committee is that all substantive and procedural legal prerequisites have been satisfied to date and that the House of Representatives should adopt the resolution to refer the matter to the appropriate U.S. Attorney. Title 2, United States Code, Sections 192 and 194 provide the necessary vehicles for taking this action. Section 192 provides the basis for indictment should a witness before either House of Congress refuse to answer any question pertinent to the inquiry. Section 194 provides the vehicle for certifying such a result to the appropriate U.S. Attorney. The central question is whether failure to take the oath constitutes a refusal to give testimony. We believe it does.

Accordingly, it is the position of the committee that the proceedings to date are in order and we recommend that the House adopt the resolution to report the fact of the refusal of George Gordon Liddy to be sworn to testify at a meeting of the Special Subcommittee on Intelligence on July 20, 1973 together with all the facts in connection therewith to the end that he may be proceeded against as provided by law.

A memorandum of law is contained in Appendix 3.<sup>(5)</sup>

### § 20.4 The House agreed to a privileged resolution direct-

5. Appendices 1, 2, and 3, the hearings of the subcommittee, meetings of the committee, and a legal memorandum, respectively, on pp. 28952-59, are omitted.

**ing the Speaker to certify to the appropriate U.S. Attorney a report citing a witness in contempt for refusing to be sworn or make affirmation to testify at an investigative hearing.**

On Sept. 23, 1970,<sup>(6)</sup> the House by a vote of 337 yeas to 14 nays approved House Resolution 1220, authorizing the Speaker to certify a report on a witness' refusal to testify to a U.S. Attorney.

MR. [RICHARD H.] ICHORD [of Missouri]: Mr. Speaker, by direction of the

6. 116 CONG. REC. 33269, 33278, 91st Cong. 2d Sess. See also, as examples, 119 CONG. REC. 28960, 28962, 28963, 93d Cong. 1st Sess., Sept. 10, 1973, for the approval, by a vote of 334 yeas to 11 nays, of H. Res. 536, directing the Speaker to certify to the U.S. Attorney for the District of Columbia, H. REPT. No. 93-453, from the Committee on Armed Services, citing G. Gordon Liddy for contempt for his refusal to be sworn or take affirmation to testify before the Special Subcommittee on Intelligence; and 93 CONG. REC. 1128, 1129, 1137, 80th Cong. 1st Sess., Feb. 18, 1947, for the approval by 370 yeas to 1 nay of H. Res. 104, directing the Speaker to certify to the U.S. Attorney for the District of Columbia the report [H. REPT. No. 43] citing Gerhart Eisler for contempt for his refusal to be sworn and testify before the Committee on Un-American Activities. Counsel for Mr. Liddy filed a memorandum outlining the English common law background of the fifth amendment. See 119 CONG. REC. 28952, 28953, 93d Cong. 1st Sess., Sept. 10, 1973.

House Committee on Internal Security, I offer a privileged resolution (H. Res. 1220) and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1220

*Resolved*, That the Speaker of the House of Representatives certify the report of the Committee on Internal Security of the House of Representatives as to the refusal of Arnold S. Johnson to be sworn or to make affirmation to testify before a duly authorized subcommittee of the said Committee on Internal Security, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States Attorney for the District of Columbia, to the end that the said Arnold S. Johnson may be proceeded against in the manner and form provided by law. . . .

MR. ICHORD: Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

THE SPEAKER PRO TEMPORE:<sup>(7)</sup> The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

THE SPEAKER PRO TEMPORE: Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

7. Neal Smith (Iowa).

The question was taken; and there were—yeas 337, nays 14, not voting 78, as follows: . . .

So the resolution was agreed to.

The result of the vote was announced as above recorded.

The doors were opened.

A motion to reconsider was laid on the table.

***Refusal to Answer Questions***

**§ 20.5 A committee filed a privileged report which included a contempt citation and facts relating to the refusal of a witness to answer questions.**

On May 11, 1954,<sup>(8)</sup> the Committee on Un-American Activities offered a privileged report relating to the refusal of Francis X. T. Crowley to testify.<sup>(9)</sup>

PROCEEDINGS AGAINST FRANCIS X. T. CROWLEY

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report (H. Rept. No. 1586).

The Clerk read the report, as follows:

The Committee on Un-American Activities, as created and authorized by the House of Representatives,

- 8. 100 CONG. REC. 6400, 6401, 83d Cong. 2d Sess.
- 9. This citation was rescinded after Mr. Crowley answered questions before the committee. See §21.1, *infra*, for the report of his purgation.

through the enactment of Public Law 601, section 121, subsection (q)(2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, caused to be issued a subpoena to Francis X. T. Crowley, 226 Second Avenue, Apartment 15, New York, N.Y. The said subpoena directed Francis X. T. Crowley to be and appear before said Committee on Un-American Activities on May 4, 1953, at the hour of 10:30 a.m., then and there to testify touching matters of inquiry committed to said committee, and not to depart without leave of said committee. The subpoena served upon said Francis X. T. Crowley is set forth in words and figures, as follows:

“By authority of the House of Representatives of the Congress of the United States of America, to George C. Williams: You are hereby commanded to summon Francis X. T. Crowley to be and appear before the Committee on Un-American Activities, or a duly authorized subcommittee thereof, of the House of Representatives of the United States, of which the Honorable Harold H. Velde is chairman, in their chamber in the city of New York, room 110, Federal Building, on Monday, May 4, 1953, at the hour of 10:30 a.m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

“Herein fail not, and make return of this summons.

“Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 9th day of April, 1953.

“HAROLD H. VELDE,  
“Chairman.

“Attest: LYLE O. SNADER,  
“Clerk.”

The said subpoena was duly served as appears by the return made thereon by George C. Williams, in-

investigator, who was duly authorized to serve the said subpoena. The return of the service by the said George C. Williams, being endorsed thereon, is set forth in words and figures, as follows:

"Subpoena for Francis X. T. Crowley, before the Committee on Un-American [Activities]. Served at home, 226 2d Avenue, Apt. 15, N.Y.C. on 4-24-53 at 6:32 p.m.

"GEORGE C. WILLIAMS,  
"Investigator, House of  
Representatives."

On May 4, 1953, a telegram was sent to Francis X. T. Crowley by Harold H. Velde, chairman of the House Committee on Un-American Activities, which is set forth in words and figures, as follows:

"NEW YORK, N.Y., May 4, 1953.

"FRANCIS X. CROWLEY, 226 Second Ave., New York City:

"Your appearance before Committee on Un-American Activities is hereby postponed to Monday, June 8, 1953, 10:30 a.m., 226 House Office Building, Washington, D.C.

"HAROLD H. VELDE,  
"Chairman."

The said Francis X. T. Crowley, pursuant to said subpoena and in compliance therewith, appeared before the said committee on June 8, 1953, to give such testimony as required under and by virtue of Public Law 601, section 121, subsection (q)(2) of the 79th Congress, and under House Resolution 5 of the 83d Congress. The said Francis X. T. Crowley, having appeared as a witness and having been asked questions, namely:

"When you were in Boston, Mass. . . . were you a member of the West End Club of the Communist Party?"

"Have you ever been associated with any members of the West End Club of Boston?"

"Have you ever at any time been a member of the Communist Party?"

which questions were pertinent to the subject under inquiry, refused to answer such questions; and as a result of Francis X. T. Crowley's refusal to answer the aforesaid questions, your committee was prevented from receiving testimony and information concerning a matter committed to said committee in accordance with the terms of the subpoena served upon the said Francis X. T. Crowley.

The record of the proceedings before the committee on June 8, 1953, during which Francis X. T. Crowley refused to answer the aforesaid questions pertinent to the subject under inquiry is set forth in fact as follows:

"UNITED STATES HOUSE  
OF REPRESENTATIVES,  
"SUBCOMMITTEE OF  
THE COMMITTEE  
ON UN-AMERICAN ACTIVITIES,  
"Washington, D.C.,  
Monday, June 8, 1953.

"EXECUTIVE SESSION

The subcommittee of the Committee on Un-American Activities met, pursuant to call, at 10:43 a.m. in room 226 of the Old House Office Building, Hon. Bernard W. Kearney, presiding.

Committee member present: Representative Bernard W. Kearney (presiding).

\* \* \* \* \*

"MR. KEARNEY. The committee will be in order.

"Let the record show that, for the purpose of the hearing this morning, a subcommittee has been set up composed of Mr. Kearney from New York. The hearing will be conducted under the authority granted for subcommittee by the chairman of the committee, Mr. Velde.

\* \* \* \* \*

“Will you stand and be sworn?

“Do you solemnly swear the testimony you shall give before this subcommittee will be the truth, the whole truth, and nothing but the truth, so help you God?

“MR. CROWLEY. I do.

“TESTIMONY OF FRANCIS XAVIER THOMAS CROWLEY

“MR. KUNZIG. Mr. Crowley, are you accompanied by counsel here this morning?

“MR. CROWLEY. No; I am by myself.

“MR. KUNZIG. You understand, of course, your right to be accompanied by counsel if you so desire?

“MR. CROWLEY. I do.

“MR. KUNZIG. And it is your wish to be here present at this hearing today without counsel?

“MR. CROWLEY. Yes.

“MR. KUNZIG. Would you give your full name, please?

“MR. CROWLEY. Francis Xavier Thomas Crowley. The Thomas was a confirmation.

“MR. KUNZIG. And your present address, Mr. Crowley?

“MR. CROWLEY. 226 Second Avenue, New York.

“MR. KUNZIG. And what is your age at the present time?

“MR. CROWLEY. Twenty-seven.

\* \* \* \* \*

“MR. KUNZIG. Mr. Crowley, when you were in Boston, Mass., that period of time prior to going to the University of Michigan that you have just told us about, were you a member of the West End Club of the Communist Party?

“MR. CROWLEY. Well, I can't answer that.

“MR. KEARNEY. What do you mean—you can't answer it?

“MR. CROWLEY. I won't answer it.

“MR. KEARNEY. On what grounds?

“MR. CROWLEY. It goes against my conscience to speak about it. I don't believe I should be in a position where I have to speak about anyone except my priest, and I have spoken to him about it. . . .

“MR. KEARNEY. . . . Have you ever been associated with any members of the West End Club of Boston?

“MR. CROWLEY. That comes to the same thing. I won't answer that either.

“MR. KEARNEY. You won't answer it?

\* \* \* \* \*

“MR. CROWLEY. No.

“MR. KEARNEY. As I understand your testimony, you just refuse to answer any questions concerning your activities with communism?

“MR. CROWLEY. Yes, sir.

“MR. KEARNEY. Are you now a member of the Communist Party?

“MR. CROWLEY. No.

“MR. KEARNEY. Do you have any other questions?

“MR. KUNZIG. I think we better follow it up by asking: Have you ever at any time been a member of the Communist Party?

“MR. CROWLEY. I refuse to answer that.”

\* \* \* \* \*

Because of the foregoing, the said Committee on Un-American Activities was deprived of answers to pertinent questions propounded to said Francis X. T. Crowley relative to the subject matter which, under Public Law 601, section 121, subsection (q)(2) of the 79th Congress, and under House Resolution 5 of the 83d Congress, the said committee was instructed to investigate, and the refusal of the witness to answer questions, namely:

“When you were in Boston, Mass. . . . were you a member of

the West End Club of the Communist Party?

"Have you ever been associated with any members of the West End Club of Boston?

"Have you ever at any time been a member of the Communist Party?" which questions were pertinent to the subject under inquiry, is a violation of the subpoena under which the witness had previously appeared, and his refusal to answer the aforesaid questions deprived your committee of necessary and pertinent testimony, and places the said witness in contempt of the House of Representatives of the United States.

**§ 20.6 The House agreed to a privileged resolution directing the Speaker to certify to the U.S. Attorney a report citing a witness in contempt for refusing to answer questions at an investigative hearing.**

On Sept. 3, 1959,<sup>(10)</sup> the House by voice vote approved a resolu-

10. 105 CONG. REC. 17934, 17935, 86th Cong. 1st Sess. See also, for example, 101 CONG. REC. 11521, 84th Cong. 1st Sess., July 26, 1955, for the voice vote approval of H. Res. 315, directing the Speaker to certify to the U.S. Attorney for the District of Columbia H. REPT. No. 1406, citing John T. Gojack, in contempt for refusing to testify before the Committee on Un-American Activities; and 100 CONG. REC. 11613, 83d Cong. 2d Sess., July 23, 1954, for the voice vote approval of H. Res. 666, directing the Speaker to certify to the U.S. Attorney for the District of

tion directing the Speaker to certify a report citing a witness in contempt.

PROCEEDINGS AGAINST MARTIN POPPER

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, I offer a privileged resolution (H. Res. 374) 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 Committee on Un-American Activities of the House of

Columbia H. REPT. No. 2457, citing Lloyd Barenblatt in contempt for refusing to testify before the Committee on Un-American Activities.

For related court proceedings, see *Gojack v United States*, 280 F2d 678 (D.C. Cir. 1960), rev'd sub nom., *United States v Russell*, 369 U.S. 749 (1962), wherein the court, in reversing defendant's conviction, held that a grand jury indictment under the contempt statute, 2 USC §192, must state the subject matter under inquiry at the time of defendant's refusal to answer the committee's questions, so as to enable courts to determine the pertinency of the questions. See also *Popper v United States*, 306 F2d 290 (D.C. Cir. 1962), wherein the defendant's conviction was reversed because the indictment had insufficiently set forth the question under inquiry. And see *Barenblatt v United States*, 240 F2d 875 (D.C. Cir. 1957), vacated and rem'd, 354 U.S. 930, 252 F2d 129 (1958), aff'd., 360 U.S. 109 (defendant's conviction upheld).

Representatives as to the refusal of Martin Popper to answer questions before a duly constituted subcommittee of the Committee on Un-American Activities, together with all of the facts in connection therewith, under the seal of the House of Representatives, to the United States attorney for the District of Columbia, to the end that the said Martin Popper may be proceeded against in the manner and form provided by law. . . .

THE SPEAKER:<sup>(11)</sup> The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

***Refusal to Answer Questions and Departure Without Leave***

**§ 20.7 A committee filed a privileged report citing a witness in contempt for his failure to answer questions and his departure without leave.**

On Oct. 18, 1966,<sup>(12)</sup> the Committee on Un-American Activities offered a privileged report citing Dr. Jeremiah Stamler in contempt for his refusal to answer questions and his departure without leave.

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I rise to a ques-

11. Sam Rayburn (Tex.).

12. 112 CONG. REC. 27500, 27501, 89th Cong. 2d Sess. The House adopted a resolution (H. Res. 1062) certifying the contempt on the following day. *Id.* at pp. 27641, 27642. See also *Stamler v Willis*, 415 F2d 1365 (7th Cir. 1969), cert. denied, 399 U.S. 929 (1970).

tion of the privilege of the House and by direction of the Committee on Un-American Activities I submit a privileged report (Rept. No. 2306).

The Clerk read as follows:

PROCEEDINGS AGAINST JEREMIAH STAMLER

[Pursuant to Title 2, United States Code, Sections 192 and 194]

The Committee on Un-American Activities, as created and authorized by the House of Representatives, through the enactment of Public Law 601 of the 79th Congress, section 121, subsection (q)(2), and under House Resolution 8 of the 89th Congress, duly authorized and issued a subpoena to Jeremiah Stamler. The subpoena directed Jeremiah Stamler to be and appear before the said Committee on Un-American Activities, of which the Honorable Edwin E. Willis is chairman, or a duly appointed subcommittee thereof. . . .

This subpoena was duly served as appears by the return thereon made by Neil E. Wetterman, who was duly authorized to serve it. The return of service of said subpoena is set forth in words and figures as follows: . . .

The said Jeremiah Stamler, summoned as aforesaid, appeared and was called as a witness on May 27, 1965, to give testimony, as required by the said subpoena, at a meeting of a duly authorized subcommittee of the Committee on Un-American Activities at the Old U.S. Court of Appeals Building in Chicago, Ill. He was accompanied by his counsel, Albert E. Jenner, Jr., and co-counsel, Thomas P. Sullivan, Esquires.

Having been sworn as a witness, he was asked to state his full name and residence for the record, to which he responded, giving same.

Thereafter, the witness was asked the question, namely: "Would you state the place and date of your birth, Dr. Stamler?" which question

was pertinent to the subject under inquiry. He refused to answer said question and, in addition, stated that he would not answer any further questions that might be put to him touching matters of inquiry committed to said subcommittee.

The witness then departed the hearing room without leave of said subcommittee.

The foregoing refusals by Jeremiah Stamler to answer the aforesaid question and to answer any further questions, and his willful departure without leave, deprived the Committee on Un-American Activities of pertinent testimony regarding matters which the said committee was instructed by law and House resolution to investigate, and place the said Jeremiah Stamler in contempt of the House of Representatives of the United States.

Pursuant to resolution of the Committee on Un-American Activities duly adopted at a meeting held January 13, 1966, the facts relating to the aforesaid failures of Jeremiah Stamler are hereby reported to the House of Representatives, to the end that the said Jeremiah Stamler may be proceeded against for contempt of the House of Representatives in the manner and form provided by law.

The record of the proceedings before the said subcommittee, so far as it relates to the appearance of Jeremiah Stamler, including the statement by the chairman of the subject and matter under inquiry, is set forth in Appendix I, attached hereto and made a part hereof.

Other pertinent committee proceedings are set forth in Appendix II, and made a part hereof.<sup>(13)</sup>

### § 20.8 The House agreed to a privileged resolution directing the Speaker to certify a

13. The appendices have been omitted.

### report citing a witness in contempt for refusal to testify and his departure without leave.

On Oct. 18, 1966,<sup>(14)</sup> the House by voice vote approved a resolution directing the Speaker to certify a report citing a witness in contempt.<sup>(15)</sup>

#### PROCEEDINGS AGAINST MILTON MITCHELL COHEN

MR. [EDWIN E.] WILLIS [of Louisiana]: Mr. Speaker, I offer a privileged resolution (H. Res. 1060) from the Committee on Un-American Activities and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 1060

*Resolved*, That the Speaker of the House of Representatives certify the

14. 112 CONG. REC. 27448, 27484, 27485, 89th Cong. 2d Sess. See also, for example, 112 CONG. REC. 27495, 27500, 89th Cong. 2d Sess., for the voice vote approval of H. Res. 1061, directing the Speaker to certify to the U.S. Attorney for the Northern District of Illinois H. REPT. No. 2305, citing Yolanda Hall in contempt for her refusal to testify and her departure without leave before the Committee on Un-American Activities.
15. Prior to approving the resolution, the House by a vote of 90 yeas to 181 nays rejected the motion of Mr. Silvio O. Conte (Mass.), to recommit this resolution to a select committee of seven members to examine the sufficiency of the citations. See § 17.2, *supra*, for the text of this motion to recommit.

report of the Committee on Un-American Activities of the House of Representatives as to the refusals of Milton Mitchell Cohen to answer questions pertinent to the subject under inquiry before a duly authorized subcommittee of the said Committee on Un-American Activities, and his departure without leave, together with all the facts in connection therewith, under the seal of the House of Representatives, to the United States attorney for the northern district of Illinois, to the end that the said Milton Mitchell Cohen may be proceeded against in the manner and form provided bylaw. . . .

THE SPEAKER:<sup>(16)</sup> The question is on the adoption of the resolution.

The question was taken, and the Speaker announced that the ayes appeared to have it.

***Refusal to Produce Materials***

**§ 20.9 A committee filed a privileged report which included a contempt citation and facts relating to the refusal of a witness to produce subpoenaed materials.**

On Aug. 23, 1960,<sup>(17)</sup> the Committee on the Judiciary filed a privileged report relating to the refusal of a witness to produce subpoenaed materials.

MR. [EMANUEL] CELLER [of New York]: Mr. Speaker, I send to the desk

- 16. John W. McCormack (Mass.).
- 17. 106 CONG. REC. 17313-15, 86th Cong. 2d Sess. A resolution certifying the contemptuous conduct was acted on immediately after the report was filed and considered.

a privileged report (Reps. No. 2120) from the Committee on the Judiciary in relation to the conduct of S. Sloan Colt.

THE SPEAKER:<sup>(18)</sup> The Clerk will read the report.

The Clerk read as follows:

PROCEEDINGS AGAINST S. SLOAN COLT

Subcommittee No. 5 of the Committee on the Judiciary, as created and authorized by the House of Representatives through the enactment of Public Law 601, section 121, of the 79th Congress, and under House Resolution 27 and House Resolution 530, both of the 86th Congress, caused to be issued a subpoena duces tecum to S. Sloan Colt, chairman, board of commissioners of the Port of New York Authority, 111 Eighth Avenue, New York, N.Y. The subpoena directed S. Sloan Colt to be and appear before Subcommittee No. 5 of the Committee on the Judiciary, at 10 a.m. on June 29, 1960, in their chamber in the city of Washington, and to bring with him from the files of the Port of New York Authority certain specified documents, and to testify touching matters of inquiry committed to the subcommittee.

The subpoena was duly served as appears by the return made thereon by counsel for the committee who was duly authorized to serve the subpoena.

S. Sloan Colt, pursuant to the subpoena duly served upon him, appeared before Subcommittee No. 5 of the Committee on the Judiciary on June 29, 1960, to give testimony as required by Public Law 601, section 121, of the 79th Congress, and by House Resolutions 27 and 530 of the 86th Congress. However, S. Sloan Colt, having appeared as a witness and having complied in part with the

- 18. Sam Rayburn (Tex.).

subpena duces tecum served upon him by bringing with him part of the documents demanded therein, (1) failed and refused to produce certain other documents in compliance with the subpena duces tecum, which documents are pertinent to the subject matter under inquiry, and (2) failed and refused to produce certain documents as ordered by the subcommittee, which documents are pertinent to the subject matter under inquiry.

At those proceedings the subcommittee chairman explained in detail the authority for the subcommittee's inquiry, the purpose of the inquiry, and its scope. The subcommittee also gave to the witness a lengthy and detailed explanation of the pertinence to its inquiry of each category of documents demanded in the subpena served upon the witness. Notwithstanding these explanations and notwithstanding a direction by the subcommittee to produce the documents required by the subpena, S. Sloan Colt contumaciously refused to produce the following categories of documents under his control and custody:

(1) Internal financial reports, including budgetary analyses, postclosing trial balances, and internal audits; and management and financial reports prepared by outside consultants;

(2) All agenda of meetings of the board of commissioners and of its committees; all reports to the commissioners by members of the executive staff; and

(3) All communications in the files of the Port of New York Authority and in the files of any of its officers and employees including correspondence, interoffice and other memorandums, and reports relating to:

(a) The negotiation, execution, and performance of construction contracts; negotiation, execution, and performance of insurance contracts, policies, and arrangements; and ne-

gotiation, execution, and performance of the public relations contracts, policies, and arrangements;

(b) The acquisition, transfer, and leasing of real estate;

(c) The negotiation and issuance of revenue bonds;

(d) The policies of the authority with respect to the development of rail transportation.

The subcommittee was thereby deprived by S. Sloan Colt of information and evidence pertinent to matters of inquiry committed to it under House Resolutions 27 and 530, 86th Congress. His persistent and illegal refusal to supply the documents as ordered deprived the subcommittee of necessary and pertinent evidence and places him in contempt of the House of Representatives.

Incorporated herein as appendix I is the record of the proceedings before Subcommittee No. 5 of the Committee on the Judiciary on the return of the subpoenas duces tecum served upon S. Sloan Colt and others. The record of proceedings contains, with respect to Mr. Colt:

(1) The full text of the subpoena duces tecum (appendix, pp. 21-22);

(2) The return of service of the subpoena by counsel for the committee, set forth in words and figures (appendix, p. 26);

(3) The failure and refusal of the witness to produce documents required by the subpoena issued to and served upon him (appendix, pp. 23-25);

(4) The explanation given to the witness as to the authority for, purpose and scope of, the subcommittee's inquiry (appendix, pp. 1-20);

(5) The explanation given the witness of the pertinence of each category of requested documents (appendix, pp. 48-52);

(6) The subcommittee's direction to the witness to produce the required documents (appendix, pp. 52-53);

(7) The failure and refusal of the witness to produce the documents pursuant to direction (appendix, pp. 53-54);

(8) The ruling of the chairman that the witness is in default (appendix, p. 55).

OTHER PERTINENT COMMITTEE  
PROCEEDINGS

At the organizational meeting of the Committee on the Judiciary for the 86th Congress, held on the 27th day of January 1959, Subcommittee No. 5 was appointed and authorized to act upon matters referred to it by the chairman. On June 8, 1960, at an executive session of Subcommittee No. 5 of the Committee on the Judiciary, at which Chairman Emanuel Celler, Peter W. Rodino, Jr., Byron G. Rogers, Lester Holtzman, Herman Toll, William M. McCulloch, and George Meader were present, Subcommittee No. 5 formally instituted an inquiry into the activities and operations of the Port of New York Authority under the interstate compacts approved by Congress in 1921 and 1922. At that meeting the subcommittee also unanimously resolved to request the following specified items from the files of the Port of New York Authority by letter and to subpoena the same documents from the appropriate officials in the event this information was not voluntarily supplied:

(1) All bylaws, organization manuals, rules, and regulations;

(2) Annual financial reports; internal financial reports, including budgetary analyses, postclosing trial balances, and internal audits; and management and financial reports prepared by outside consultants;

(3) All agenda and minutes of meetings of the board of commissioners and of its committees; all reports to the commissioners by members of the executive staff;

(4) All communications in the files of the Port of New York Authority and in the files of any of its officers or employees including correspondence, interoffice and other memorandums, and reports relating to-

(a) The negotiation, execution, and performance of construction contracts; negotiation, execution, and performance of insurance contracts, policies, and arrangements; and negotiation, execution, and performance of public relations contracts, policies, and arrangements;

(b) The acquisition, transfer, and leasing of real estate;

(c) The negotiation and issuance of revenue bonds;

(d) The policies of the authority with respect to the development of rail transportation.

On June 29, 1960, following the appearance of the aforesaid witness, Subcommittee No. 5 of the Committee on the Judiciary, at an executive session at which all members of the subcommittee were present, unanimously resolved to report the contumacious conduct of S. Sloan Colt and others to the Committee on the Judiciary with the recommendation that the committee report this conduct to the House of Representatives together with all particulars and recommend that the House cite S. Sloan Colt for contempt of the House of Representatives.

At an executive session on June 30, 1960, the Committee on the Judiciary approved the recommendations of Subcommittee No. 5 to report to the House all details concerning the contumacious conduct of S. Sloan Colt and others, and resolved to recommend that S. Sloan Colt be cited for contempt of the House of Representatives.

MINORITY VIEWS OF REPRESENTATIVE  
JOHN V. LINDSAY

I cannot agree with the majority recommendations in the committee

report. The committee proceeding, calculated to form a basis for contempt citations under title 2, United States Code, section 192, in my opinion constitutes an unprecedented, unlawful, and unconstitutional exercise of Federal authority over a bistate agency, which can and should be avoided. The Port of New York Authority was created by the States of New York and New Jersey with the consent of Congress to exercise delegations of State, not Federal, powers.

My objections are threefold: (1) The committee acted without legal authority and exceeded its jurisdiction; (2) the committee lacked a legislative purpose in inquiring into the internal affairs of a bistate agency; and (3) the committee inadvisably and without caution initiated an unprecedented exercise of Federal control in the delicate area of State sovereignty despite the pleas of the two interested Governors to be accorded a hearing before the return fate of the subpoenas. As a result, and I emphasize this point, the documentary material, which the witnesses did not produce, was withheld pursuant to written instructions from Governors Rockefeller and Meyner. The witnesses were damned if they complied with the subpoenas and damned if they didn't. . . .

MINORITY VIEWS OF REPRESENTATIVE  
JOHN H. RAY

The majority of the Judiciary Committee recommends that contempt citations under title 2, United States Code, section 192, be issued against the chairman, the executive director, and the secretary of the Port of New York Authority. In my opinion the action so recommended by the majority would not only be unprecedented and unwise as a matter of Federal and State relations, it is not sanctioned by law and should and would be held unconstitutional.

**§ 20.10 The House agreed to a privileged resolution directing the Speaker to certify to the appropriate U.S. Attorney a report citing a witness in contempt for refusing to produce subpoenaed materials.**

On Aug. 2, 1946,<sup>(19)</sup> the House by voice vote approved a resolu-

19. 92 CONG. REC. 10748, 79th Cong. 2d Sess. See also, for example, 112 CONG. REC. 1754, 1763, 89th Cong. 2d Sess., Feb. 2, 1966, for the approval, on a vote of 344 yeas to 28 nays, of H. Res. 699, directing the Speaker to certify to the U.S. Attorney for the District of Columbia, H. REPT. No. 1241, citing Robert M. Shelton, allegedly of the Ku Klux Klan, in contempt for refusal to produce subpoenaed materials to the Committee on Un-American Activities (resolutions against other alleged Klan members follow the Shelton resolution. In *Shelton v United States*, 404 F2d 1292 (D.C. Cir. 1968), cert. denied, 393 U.S. 1024 (1969), the defendant's conviction was upheld by the appellate court. The same defendant had earlier been convicted of contempt of Congress following an appearance before the Senate Judiciary Committee's Subcommittee on Internal Security. *United States v Shelton*, 148 F Supp 926 (D.D.C. 1957), aff'd., 280 F2d 701, rev'd and rem'd, 369 U.S. 749 (1962), 211 F Supp 829, aff'd., 327 F2d 601 (D.C. Cir. 1963).

See 106 CONG. REC. 17313, 86th Cong. 2d Sess., Aug. 23, 1960, for

tion citing a witness in contempt for refusal to produce subpoenaed materials.

PROCEEDINGS AGAINST RICHARD MORFORD

THE SPEAKER:<sup>(20)</sup> The Clerk will read the resolution.

The Clerk read as follows:

HOUSE RESOLUTION 752

*Resolved*, That the Speaker of the House of Representatives certify the foregoing report of the House Committee on Un-American Activities as to the willful and deliberate refusal of the following person to produce before the said committee for its inspection certain books, papers, and records which had been duly subpoenaed, and to testify under oath concerning all pertinent facts relating thereto; under seal of the House of

the approval, on a vote of 190 yeas to 60 nays, of H. Res. 606, directing the Speaker to certify to the U.S. Attorney for the District of Columbia H. REPT. No. 2117, citing Austin J. Tobin, of the Port of New York Authority in contempt for refusal to produce subpoenaed materials to Subcommittee No. 5, of the Committee on the Judiciary (resolutions against other Port Authority officials follow the Tobin resolution).

In *United States v Tobin*, 195 F Supp 588 (D.D.C. 1961), rev'd 306 F2d 270, cert. denied, 371 U.S. 902 (1962), defendant's conviction was reversed on appeal, the court holding that certain documents demanded by the committee were not within the scope permitted by the pertinent congressional resolution.

20. Sam Rayburn (Tex.).

Representatives to the United States attorney for the District of Columbia to the end that the said person named below may be proceeded against in the manner and form provided by law; Richard Morford, 114 East Thirty-second Street, New York, N.Y. . . .

The previous question was ordered.

THE SPEAKER: The question is on the resolution.

The question was taken; and on a division (demanded by Mr. Marcantonio) there were—ayes 166, noes 17.

So the resolution was agreed to.

A motion to reconsider was laid on the table.<sup>(21)</sup>

**Senate Precedents**

**§ 20.11 The Senate agreed to a resolution directing its President to certify to a U.S. Attorney a report citing a witness in contempt for failing to appear before an investigative hearing.**

On May 6, 1953,<sup>(22)</sup> the Senate approved a resolution directing its

21. See also *Morford v United States*, 72 F Supp 58 (D.D.C. 1947), aff'd., 176 F2d 54 (1949), rev'd 339 U.S. 258 (1950), rem'd, 184 F2d 864, cert. denied, 340 U.S. 878 (1950). The Supreme Court initially reversed defendant's conviction because defendant had not been permitted to question four government employees on the jury panel as to the impact of Executive Order No. 9835 (the "Loyalty Order") on their ability to render a just and fair verdict. On retrial, defendant waived a jury and was convicted again.

22. 99 CONG. REC. 4603, 83d Cong. 1st Sess.

President to certify to a U.S. Attorney a contempt citation.

THE PRESIDING OFFICER:<sup>(23)</sup> Is there objection to the consideration of the resolution? There being no objection, the resolution (S. Res. 103) was considered and agreed to, as follows:

*Resolved*, That the President of the Senate certify the report of the Committee on Government Operations of the United States Senate as to the willful default of Russell W. Duke in failing to appear to testify before the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations of the United States Senate in response to a subpoena, together with all the facts in connection therewith, under the seal of the United States Senate, to the United States attorney for the District of Columbia, to the end that the said Russell W. Duke may be proceeded against in the manner and form provided by law.

**§ 20.12 The Senate agreed to a resolution directing its President to certify to a U.S. Attorney a report citing a witness in contempt for refusing to answer questions at an investigative hearing.**

On Feb. 4, 1955,<sup>(24)</sup> the Senate approved a resolution directing its

23. Alvin R. Bush (Pa.).

24. 101 CONG. REC. 1159, 84th Cong. 1st Sess. See also, for example, 101 CONG. REC. 11678, 84th Cong. 1st Sess., July 27, 1955, for the voice vote approval of S. Res. 129, citing Joseph Starobin in contempt for refusing to answer questions before the Senate Subcommittee to Investigate

President to certify to a U.S. Attorney a contempt citation.

CITATION OF DIANTHA D. HOAG FOR CONTEMPT OF THE SENATE

MR. [EARLE C.] CLEMENTS [of Kentucky]: Mr. President, I move that the Senate proceed to the consideration of Calendar No. 3, Senate Resolution 31.

THE PRESIDING OFFICER:<sup>(1)</sup> The resolution will be stated by title for the information of the Senate.

THE LEGISLATIVE CLERK: A resolution (S. Res. 31) citing Diantha D. Hoag for contempt of the Senate.

THE PRESIDING OFFICER: The question is on agreeing to the motion of the Senator from Kentucky.

The motion was agreed to, and the Senate proceeded to consider the resolution which was read as follows:

*Resolved*, That the President of the Senate certify the report of the Committee on Government Operations of the United States Senate as to the refusal of Diantha D. Hoag to answer questions before the Senate Permanent Subcommittee on Investigations, said refusal to answer being pertinent to the subject matter under inquiry, together with all the facts in connection therewith, under

the Administration of the Internal Security Act and other Internal Security Laws of the Committee on the Judiciary; and 98 CONG. REC. 1311, 82d Cong. 2d Sess., Feb. 25, 1952, for the voice vote approval of S. Res. 281 and 282, citing Roger Simkins and Emmitt Warring, respectively, in contempt for refusing to answer questions before the Committee on the District of Columbia.

1. William S. Hill (Colo.).

the seal of the United States Senate to the United States attorney for the District of Columbia, to the end that the said Diantha D. Hoag may be proceeded against in the manner and form provided by law.

MR. [GEORGE H.] BENDER [of Ohio]: Mr. President, the Senator from Wisconsin [Mr. McCarthy], who reported the resolution to the Senate, is absent, and he asked me to pursue it for him. However, I am sure there is no need for any speech on the subject.

THE PRESIDING OFFICER: The question is on agreeing to the resolution.

The resolution (S. Res. 31) was agreed to.<sup>(2)</sup>

**§ 20.13 The Senate agreed to a resolution directing its President to certify to the appropriate U.S. Attorney a report citing a witness in contempt for his refusal to answer questions and his departure without leave at an investigative hearing.**

On July 19, 1968,<sup>(3)</sup> the Senate approved a resolution directing its

2. See also *United States v Hoag*, 142 F Supp 667 (D.D.C. 1956). The defendant was found not guilty, the court ruling that by answering a limited number of the committee's questions, she did not waive her privilege against self-incrimination under the fifth amendment. Thus, defendant's subsequent refusal to answer questions regarding possible activities on behalf of the Communist Party did not constitute violation of the statute making it an offense for a person to refuse to testify (2 USC § 192).
3. 114 CONG. REC. 22351, 22361, 22362, 90th Cong. 2d Sess. See also

**President to certify to a U.S. Attorney a report citing a witness in contempt.**

CITATION FOR CONTEMPT OF THE SENATE

MR. [ROBERT C.] BYRD of West Virginia: Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Senate Resolution 379.<sup>(4)</sup>

THE PRESIDING OFFICER:<sup>(5)</sup> The resolution will be stated by title.

THE ASSISTANT LEGISLATIVE CLERK: A resolution (S. Res. 379) citing Jeff Fort for contempt of the Senate.

THE PRESIDING OFFICER: Is there objection to the present consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution, as follows:

S. RES. 379

*Resolved*, That the President of the Senate certify the report of the Com-

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*United States v Fort*, 443 F2d 670, cert. denied, 403 U.S. 932 (1971), wherein the defendant's conviction was upheld. The right to confront witnesses was not applicable, in the court's view, because a legislative inquiry is not the same as a criminal proceeding.

4. *Parliamentarian's Note*: A resolution citing a person for contempt for refusing to answer questions is privileged under Senate rules. This particular resolution was called up by unanimous consent because it was not controversial and was considered out of the regular order of business.
5. Joseph D. Tydings (Md.).

mittee on Government Operations of the United States Senate on the appearance of Jeff Fort before the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations on July 9, 1968, in Washington, District of Columbia, at which he—

(1) refused to answer one question,

(2) refused to answer any and all questions that were to be put to him by the subcommittee,

(3) departed the hearing without leave, such conduct and refusals to answer questions being pertinent to the subject matter under inquiry, together with all the facts in connection therewith, under the seal of the United States Senate, to the United States Attorney for the District of Columbia, to the end that the said Jeff Fort may be proceeded against in the manner and form provided by law. . . .<sup>(6)</sup>

THE PRESIDING OFFICER: All time has been yielded back. The question is on agreeing to Senate Resolution 379. On this question, the yeas and nays have been ordered, and the clerk will call the roll. . . .

The result was announced—yeas 80, nays 0, as follows: . . .

So the resolution (S. Res. 379) was agreed to.

**§ 20.14 The Senate agreed to a resolution directing its President to certify to a U.S. Attorney a report citing witnesses in contempt for refusing to produce subpoenaed materials.**

6. The excerpts from the report are omitted.

On May 5, 1969,<sup>(7)</sup> the Senate agreed to a resolution directing its President to certify to a U.S. Attorney a contempt citation.

CITATION OF ALAN AND MARGARET MCSURELY FOR CONTEMPT OF CONGRESS

The resolution (S. Res. 191) citing Alan and Margaret McSurely for contempt of Congress was considered and agreed to, as follows:

S. RES. 191

*Resolved*, That the President of the Senate certify the report of the Com-

7. 115 CONG. REC. 11278, 91st Cong. 1st Sess. See *United States v McSurely*, 473 F2d 1178 (D.C. Cir. 1972), wherein defendant's conviction was reversed, the trial court having erred in receiving in evidence subpoenas which were based ultimately on the fruits of an illegal search and seizure.

See also 101 CONG. REC. 10916, 84th Cong. 1st Sess., July 19, 1955, for the voice vote approval of S. Res. 135, citing Eugene C. James in contempt for refusing to produce subpoenaed materials and answer questions; and 99 CONG. REC. 8883, 8884, 83d Cong. 1st Sess., July 15, 1953, for the voice vote approval of S. Res. 139, citing Timothy J. O'Mara in contempt for refusing to produce subpoenaed materials and answer questions.

In *United States v O'Mara*, 122 F Supp 399 (1954), the defendant was convicted, the court having found, in part, that information sought was pertinent to the inquiry.

mittee on Government Operations of the United States Senate on the appearance of Alan McSurely and Margaret McSurely before the Senate Permanent Subcommittee on Investigations of the Committee on Government Operations on March 4, 1969, in Washington, District of Columbia, at which they—

(1) refused to produce books and records lawfully subpoenaed to be produced before the said subcommittee, and

(2) failed to appear or to produce the said books and records pursuant to the order and direction of the chairman with the approval of the subcommittee before noon on March 7, 1969, together with all the facts in connection therewith, under the seal of the United States Senate, to the United States Attorney for the District of Columbia, to the end that the said Alan McSurely and Margaret McSurely may be proceeded against in the manner and form provided by law.

## § 21. Purging Contempt

As the following precedents reveal, a witness may be purged of, or freed from, contempt under procedures parallel to those used in citing for contempt: submission of a report of the committee and approval of a resolution authorizing the Speaker to notify the U.S. Attorney to drop the prosecution.<sup>(8)</sup>

Courts have not been sympathetic to witnesses' contentions

8. See 3 Hinds' Precedents §§1670, 1682, 1684, 1686, 1687, 1689, 1692, 1694, 1701, 1702, for earlier precedents relating to purgation.

that they have purged themselves. For example, an argument that an unexcused withdrawal from a hearing did not obstruct a committee's inquiry because the witness returned later and answered all questions put to him was held irrelevant, because a witness does not have a legal right to dictate the conditions under which he will testify.<sup>(9)</sup> In fact, a witness' offer of proof that he had purged himself by testifying freely before another Senate committee and by opening union files to its scrutiny was rejected on the ground that the defense of purging in criminal contempt has been abolished in the federal courts.<sup>(10)</sup> A court may, however, suspend the sentence of a witness convicted of violating 2 USC § 192 and give him an opportunity to avoid punishment by giving testimony before a committee whose questions he had refused to answer.

### Report

#### § 21.1 The Committee on Un-American Activities reported

9. *United States v Costello*, 198 F2d 200 (2d Cir. 1952), cert. denied, 344 U.S. 874 (1952).
10. *United States v Brewster*, 154 F Supp 126, 135 (D.D.C. 1957), reversed on other grounds, 255 F2d 899 (D.C. Cir. 1958), cert. denied, 358 U.S. 842 (1958).