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 subpenaed 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.[8]

Courts have not been sympathetic to witnesses' contentions 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.[9] 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.[10] 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

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

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).

to the House testimony purging a witness who had been cited for his previous refusal to testify and recommended that legal proceedings against the witness be terminated.

On July 23, 1954,[11] a report purging a witness of contempt was presented and read.[12]

IN THE MATTER OF FRANCIS X. T. CROWLEY

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, by direction of the Committee on Un-American Activities, I submit a privileged report (Rept. No. 2472).

The Clerk read as follows:

IN THE MATTER OF FRANCIS X. T. CROWLEY

Mr. Velde, from the Committee on Un-American Activities, submitted the following report:

The Committee on Un-American Activities, as created and authorized by the House of Representatives, 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 subpena to Francis X. T. Crowley, 226 Second Avenue, apartment 15, New York, N. Y. The said subpena directed Francis X. T. Crowley to be and appear before said Committee on Un-American Activities, of which the Honorable Harold H. Velde is chairman, 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 said Francis X. T. Crowley did appear before said committee and did refuse to answer questions pertinent to the subject under inquiry, and his refusal to answer said pertinent questions deprived your committee of necessary and pertinent testimony and placed the said witness in contempt of the House of Representatives of the United States.

In Report No. 1586, 83d Congress, 2d session, your committee reported to the House of Representatives the said actions of Francis X. T. Crowley. On May 11, 1954, the House of Representatives adopted by vote of 346 to 0, House Resolution 541, which is set forth in words and figures 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 refusal of Francis X. T. Crowley to answer questions before the said Committee on Un-American Activities, 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 Francis X. T. Crowley may be proceeded against in the manner and form provided by law."

On June 28, 1954, the said Francis X. T. Crowley did appear voluntarily before your committee in public session in Washington, D.C., and did

11. 100 CONG. REC. 11650, 83d Cong. 2d Sess.

12. See § 21.2, infra, for the resolution purging Mr. Crowley, and 100 CONG. REC. 6400, 6401, 83d Cong. 2d Sess., May 11, 1954, for the texts of H. REPT. No. 1586, relating to the refusal of Mr. Crowley to testify, and H. Res. 541, authorizing the Speaker to certify that report to the U.S. Attorney for legal action.

answer all questions which he had previously refused to answer. In addition, the said Francis X. T. Crowley voluntarily did give your committee extensive information concerning the operation of the Communist conspiracy in the United States of America.

At the conclusion of the testimony of the said Francis X. T. Crowley before your committee on June 28, 1954, the chairman, Hon. Harold H. Velde, made a statement which is set forth in words as follows: . . .

"MR. VELDE. May I say that we certainly do appreciate the information you have given here voluntarily to the committee.

"As I mentioned before the committee would not be authorized as a body to ask for immunity from prosecution for you. However, I do feel that many of the members of the committee, probably a big majority, feel that you have performed a service to your country by giving us the information that you have, and that would possibly be a good reason why the Attorney General should drop prosecution in your particular case for contempt.

* * * * *

"MR. VELDE. The witness is excused with the committee's thanks."

Because of the foregoing, on July 16, 1954, your committee voted that it was the sense of the committee that the said Francis X. T. Crowley, because of his voluntary answers to pertinent questions before the committee and the extensive voluntary information he offered concerning the operation of the Communist conspiracy in the United States of America, did purge himself of contempt of the House of Representatives of the United States.

Resolution

§ 21.2 The House debated and approved a resolution purging the contempt of a witness who had previously refused to testify before the Committee on Un-American Activities.

On July 23, 1954,[13] the House debated and approved a resolution authorizing the Speaker to certify to the U.S. Attorney a report purging a witness of contempt.[14]

MR. [HAROLD H.] VELDE [of Illinois]: Mr. Speaker, I offer a resolution (H. Res. 681) 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 concerning the action of Francis X. T. Crowley in

13. 100 CONG. REC. 11650–52, 83d Cong. 2d Sess. See also § 21.3, infra, for the Speaker's announcement that he had certified the purgation and § 21.4, infra, for the U.S. Attorney's statement that the prosecution would be dropped.

14. See § 21.1, supra, for the report on this matter and 100 CONG. REC. 6400, 6401, for the texts of H. REPT. NO. 1586, relating to the refusal of Mr. Crowley to testify, and H. Res. 541, authorizing the Speaker to certify the report to the U.S. Attorney for legal action.

purging himself of contempt of the House of Representatives of the United States, 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 legal proceedings based upon the matter certified by the Speaker pursuant to H. Res. 541, 83d Congress, second session, against the said Francis X. T. Crowley may be withdrawn and dropped in the manner and form provided by law.

MR. VELDE: Mr. Speaker, I yield such time as he may desire to the gentleman from California [Mr. Jackson].

MR. [DONALD L.] JACKSON [of California]: Mr. Speaker, on May 11, 1954, the House adopted by a vote of 346 to 0, House Resolution 541 citing Francis X. T. Crowley for contempt of Congress. On June 28, 1954, Mr. Crowley again appeared before the House Committee on Un-American Activities at his own request and answered all questions, giving the Congress and the committee extensive information relative to his activities and those of others in the Communist Party.

The action here proposed, while not without precedent, is most unusual, in that the House Committee on Un-American Activities is today asking the House to concur in a committee recommendation that a witness who was previously cited by the House for contempt, and in the light of subsequent cooperation with the committee, be purged of that contempt.

It is the sense of the committee that Mr. Crowley should be purged of contempt. However, Mr. Speaker, I should like to emphasize one important point relative to Francis X. T. Crowley. When the witness refused originally to testify before the committee and later came back to testify, it is our clear understanding that he was acting upon his own initiative. He came back to testify on his own volition. He was not acting in furtherance of any conspiracy. He was not attempting to impede legitimate congressional investigations, in the opinion of the committee.

The committee wants it clearly understood that its unusual action today in recommending that Francis X. T. Crowley be considered as having purged himself of contempt must not be considered as a precedent for any witness to commit contempt on one day and attempt to purge himself of the charge on the next. In such case, a witness would thereby be able to select the time and place of giving his testimony. A congressional committee is entitled to testimony when and where it deems it necessary and proper to have that testimony. The power to decide when and where one shall testify is not properly, under the law, in the hands of a witness. The Crowley case is no precedent for any such interpretation.

It must further be remembered that Mr. Crowley came back voluntarily before the committee, and was promised nothing in the way of any remuneration, reward, or forgiveness. He understood that he was promised nothing and that he testified freely of his own will because he desired strongly so to testify.

It is the hope of the committee that the House will accept the recommendation that Mr. Crowley be purged of contempt in this instance.

MR. [JAMES G.] FULTON [of Pennsylvania]: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Pennsylvania.

MR. FULTON: If the House adopts this recommendation as a practice, and leaving this particular case out of it, will it not weaken the Committee on Un-American Activities? Will not witnesses who become the defendants in these citations for contempt proceedings feel that they have up until the time they are brought into court to change their minds? If the committee adheres to a rule that the witnesses are required to come before the Un-American Activities Committee in the beginning and testify, will it not expedite the committee's hearings, instead of waiting for the defendant to turn milk toast later on?

MR. JACKSON: It would simplify matters a great deal if we could adopt a rule that would require them to testify in their first appearance. If that could be achieved, there would be no need for contempt proceedings in the House. However, there are instances where it is believed that a witness in good faith, through misunderstanding of the circumstances, or upon poor advice, refuses to testify. Mr. Crowley, following his appearance here, went to a priest, who recommended that he return to the committee and tell the full truth. He did so. I have tried to point out in my remarks, I will say to the gentleman from Pennsylvania, that the committee is not establishing, and wants it clearly understood that this is not to be considered as establishing, any precedent relative to purge of contempt.

MR. FULTON: Would the gentleman permit me to ask another question?

MR. JACKSON: Surely.

MR. FULTON: When a person is cited and becomes a defendant in a case before the United States district court, is it within our power, our discretion, or our jurisdiction in the House then to withdraw the citation? Why does not the gentleman who has been cited by the Un-American Activities Committee for contempt, and who refused to answer questions on his subversive activities for the overthrow of the United States Government, go to the proper authorities on the judicial side and say that he has now changed, although he committed the offense, and ask that this later repentance and change of mind be taken in mitigation of what the penalty might be? The point is this: Are we in the House responsible for relieving such a cited individual of all penalty, or should he go to the Attorney General, to whom this citation has been referred, and the judiciary, to get the penalty mitigated, now that he has changed his mind?

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Pennsylvania.

MR. WALTER: I think it is important to understand that in this particular case we are just where we were after the vote to cite this man was taken. No further steps have been taken. The matter has not been presented to the grand jury. There has been no indictment, so that we are still in control of this entire situation.

MR. FULTON: Then will the committee at this juncture limit this type of case to the jurisdiction where it has still the actual control of the citation as in this situation? Once the citation

is handed over into the hands of a United States attorney, I believe it should be the United States attorney that goes before the court and asks for the mitigation or the dismissal.

MR. WALTER: I am quite certain that the United States attorney does not know anything about this case. It has been referred to the Department of Justice, but I do not believe the matter has gone to the United States attorney. Further, this is an unusual case in this, that this man realized after he searched his soul and conscience that he had done something injurious to his country, and he convinced us that he was willing and anxious to cooperate with the work the Congress of the United States has imposed upon this committee. It is entirely a bona fide, genuine action on the part of this man. I do not believe in the light of these circumstances he should be put to the trouble and expense of defending an action even though ultimately the United States attorney would recommend leniency.

MR. JACKSON: May I say to the gentleman it is my understanding that the Attorney General's office and the United States attorney's office are in accord with the action that is here proposed.

MR. VELDE: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Illinois.

MR. VELDE: Let me point out, too, that this witness was not a vicious and physically contemptuous witness. He felt within his conscience, at least we members of the committee felt that he had it within his conscience, that he should refuse to answer certain questions. I certainly would not indiscriminately recommend that all these witnesses who come forward after being cited be purged by the House of Representatives. I think you can depend upon the members of our Committee on Un-American Activities, who voted unanimously to submit this resolution, to take those cases where it seems it is proper to make the purge or to ask for a purging resolution.

MR. JACKSON: I thank the gentleman. I might say that we are frequently belabored in some quarters for being unduly harsh. I believe the adoption of this resolution will indicate that the committee is trying its best to be fair and just

MR. [KIT] CLARDY [of Michigan]: Mr. Speaker, will the gentleman yield?

MR. JACKSON: I yield to the gentleman from Michigan.

MR. CLARDY: Is it not true that this witness when he came before us was a more or less confused young man who did not raise the fifth amendment, did not raise any of the amendments, but merely had a mistaken belief that by cooperating with the committee he would be violating something that was within his conscience, unlike most of those who come before the committee, and that we thought the spirit of Christian charity ought to prevail in this case because it was perhaps the first and maybe the last and only instance in which we would find a man of that character coming before us?

MR. JACKSON: Yes. I sensed that to be the feeling of the committee in this connection.

MR. CLARDY: After he had appeared the first time he became married, he consulted with his wife, he consulted

with his priest, he consulted with his friends, and finally he came back before us, because he was in his conscience convinced he could do his country a service. I would hate to see the House turn down this one case.

MR. JACKSON: I am inclined to think, if we give the House a chance, it will vote this resolution.

MR. FULTON: If the gentleman will yield, I want to ask the chairman of the Un-American Activities Committee a question. I may be pressing the point, but this is establishing a precedent which will be followed hereafter. I cannot accept the ground that maybe a member of the committee thought this was being done in charity. I would therefore ask the chairman of the Committee on Un-American Activities to state expressly the rule that will be followed by the Un-American Activities Committee in cases where there is a change of mind and the witness decides he will purge himself of this contempt after he has been cited by the House in accordance with the Un-American Activities Committee's own recommendations. I would like that stated right here for a precedent on the first one that comes up, so that there is a precedent and a rule for future cases.

MR. VELDE: The gentleman knows it is impossible for me to say what the committee will do under any of these circumstances. I am sure they will be reasonable. On top of that the House of Representatives is not establishing a precedent in the sense that it is a legal precedent established by the Supreme Court. The House of Representatives can vote on any of these resolutions as they see fit.

Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER:[15] The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Certification of Purgation

§ 21.3 The Speaker informed the House when he had, pursuant to authority granted him by resolution, certified purgation of contempt to the U.S. Attorney.

On July 26, 1954,[16] Speaker Joseph W. Martin, Jr., of Massachusetts, informed the House that he had certified to the U.S. Attorney for the District of Columbia the report, House Report No. 2472, purging Francis X. T. Crowley of contempt.

CITATIONS FOR CONTEMPT

THE SPEAKER: The Chair desires to announce that pursuant to sundry resolutions of the House he did, on Friday, July 23, 1954, make certifications to the United States attorney, District of Columbia, the United States attorney, southern district of California, the United States attorney, eastern district of Michigan, the United States attorney for the district of Oregon, and the United States attorney, western district of Washington, as follows:

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15. Joseph W. Martin, Jr. (Mass.).

16. 100 CONG. REC. 12023, 12024, 83d Cong. 2d Sess.

TO THE UNITED STATES ATTORNEY
DISTRICT OF COLUMBIA: . . .

House Resolution 681, concerning the action of Francis X. T. Crowley in purging himself of contempt of the House of Representatives.[17]

U.S. Attorney's Response

§ 21.4 The Speaker laid before the House the U.S. Attorney's affirmative response to a resolution requesting withdrawal of contempt proceedings against a person who had purged himself of contempt by cooperating with a committee.

On Aug. 9, 1954,[18] Speaker Joseph W. Martin, Jr., of Massachusetts, laid before the House a letter from the U.S. Attorney for the District of Columbia.[19]

PROCEEDINGS AGAINST FRANCIS X. T. CROWLEY

The Speaker laid before the House the following communication:

AUGUST 5, 1954.

Hon. JOSEPH W. MARTIN, Jr.,
Speaker of the House of Representatives, Washington, D.C.

In re Francis X. T. Crowley, cited for contempt of the House by House Resolution 541, 83d Congress.

DEAR MR. SPEAKER: On May 12, 1954, pursuant to House Resolution 541, 83d Congress, you certified to me the contempt of the above individual for refusing to answer questions before the Committee on Un-American Activities on June 8, 1953.

On July 23, 1954, that committee by Report No. 2472, reported that Crowley on June 28, 1954, appeared voluntarily before it in public session and answered all questions which he had previously refused to answer and, in addition, voluntarily gave extensive information concerning the operation of the Communist conspiracy in this country. That committee further reported that it was the sense of the committee that Crowley had thereby purged himself of his previous contempt of the House of Representatives.

House Resolution 681 of July 23, 1954, resolved that the Speaker certify to the United States attorney House Report No. 2472, referred to above, "to the end that legal proceedings based upon the matter certified by the Speaker pursuant to House Resolution 541, 83d Congress, 2d session, against the said Francis X. T. Crowley may be withdrawn and dropped in the manner and form provided by law."

In my opinion this action by the committee and by the House has the effect of withdrawing the original citation of Crowley to my office and of relieving me of the statutory duty to put the matter before the grand jury, as provided by title 2, United States Code, section 194.

Inasmuch as Crowley has purged himself, and in view of the wish of the House, expressed in House Reso-

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17. See § 21.2, supra, for the text of H. Res. 681, and § 21.4, infra, for the response of the U.S. Attorney.

18. 100 CONG. REC. 13734, 83d Cong. 2d Sess.

19. See §§ 21.1 and 21.2, supra, for the texts, respectively, of H. REPT. NO. 2472, purging Mr. Crowley of contempt, and H. Res. 681, authorizing the Speaker to certify the report. See also 100 CONG. REC. 6400, 6401, for the texts of H. REPT. NO. 1586, relating to the original refusal to testify, and H. Res. 541, authorizing the Speaker to certify that report to the U.S. Attorney.

lution 681, that contempt proceedings against Crowley be dropped, I shall not present the matter to the grand jury and I shall close the prosecution on my records.

Sincerely,

LEO A. ROVER,
United States Attorney.

(Copy to Hon. Harold H. Velde, chairman Committee on Un-American Activities, House of Representatives, Washington, D.C.)

§ 21.5 The U.S. Attorney, in response to a letter received during an adjournment informing him that a witness who had been cited by the House for contempt had later purged himself, advised the Speaker by letter that he would not present the contempt to the grand jury and would close the prosecution on his records.

On Mar. 10, 1955,[20] the following item appeared in the *Congressional Record*.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

527. A letter from the United States Attorney, District of Columbia, Department of Justice, relative to a letter addressed to Hon. Francis Walter, chairman, committee on Un-American Activities of the House of Representatives, relating to the case of Wilbur Lee Mahaney, Jr., cited for contempt of the House of Representatives by House Resolution 535, 83d Congress; to the Committee on Un-American Activities.[1]

Parliamentarian's Note: In a letter dated Mar. 3, 1955, the U.S. Attorney for the District of Columbia, Leo A. Rover, informed the Chairman of the Committee on Un-American Activities of the 84th Congress, Francis E. Walter, of Pennsylvania, that he would drop legal action against Wilbur Lee Mahaney, Jr., because the former chairman, Harold H. Velde, of Illinois, had by letter indicated that it was the sense of the committee that the witness had purged himself. The body of

20. 101 CONG. REC. 2659, 84th Cong. 1st Sess.

1. See 100 CONG. REC. 6386–89, 83d Cong. 2d Sess., May 11, 1954, for the texts of H. REPT. NO. 1580, citing Mr. Mahaney for contempt for refusal to testify, and H. Res. No. 535, authorizing the Speaker to certify to the U.S. Attorney the report, respectively.

Parliamentarian's Note: This letter was not laid before the House; an adjournment prevented action on a resolution certifying the purgation.

See §§ 21.1, 21.2, and 21.4, supra, for the texts of a report purging a witness, a resolution authorizing the Speaker to certify the purging report to the U.S. Attorney, and the response of the U.S. Attorney in the case of Francis X. T. Crowley, respectively, when the House was able to receive and act on the committee report because it was in session.

the U.S. Attorney's letter to Chairman Walter follows:

By letter dated December 30, 1954, the Honorable Harold H. Velde, Chairman, Committee on Un-American Activities of the House of Representatives, informed me that on November 28, 1954, the Committee voted that it was the sense of the Committee that Mahaney, on July 30, 1954, had purged himself of the contempt theretofore committed by him in refusing to answer questions on February 16, 1954, for which refusals Mahaney had been cited for contempt by the House of Representatives on May 11, 1954.

In the letter of December 30, 1954, Chairman Velde stated that the report and statement of Mahaney's purge were being forwarded to this office to the end that legal proceedings on the contempt citation against Mahaney may be withdrawn and dropped.

Mr. Velde further stated that the report and statement were being forwarded directly by the Chairman of the Committee inasmuch as the House of Representatives was adjourned. It is my understanding that the Speaker of the House was out of the city and unavailable to receive and transmit the report and statement to this office as is provided by 2 U.S.C. 194 for citations of contempt when Congress is not in session.

It appears, under these circumstances, that this action by the Committee may be regarded as having the effect of withdrawing the original citation of Mahaney to my office and of relieving me of the statutory duty to put the matter before the grand jury, as provided by 2 U.S.C. 194.

Inasmuch as Mahaney has been considered by the Committee as having purged himself, and in view of the wish of the Committee expressed by Committee in the aforementioned letter of its Chairman, that contempt proceedings against Mahaney be dropped, I shall not present the matter to the grand jury and I shall close the prosecution on my records.

For your information, I do not propose to give notification of this action to Mahaney.

§ 22. Certification to U.S. Attorney

A statute[2] imposes a duty on the Speaker of the House or President of the Senate to certify to the appropriate U.S. Attorney statements of facts relating to contumacious conduct of witnesses. The statute requires a committee to report such facts to the House or Senate when Congress is in session, or to the Speaker or President of the Senate when Congress is not in session.

When either the House or Senate receives a report of contumacious conduct from a committee, it routinely considers a resolution offered by a committee member authorizing the Speaker or President of the Senate to certify the facts to the U.S. Attorney. By reviewing this resolution, the body checks the action of the committee.

2. 2 USC § 94. See 3 Hinds' Precedents §§ 1672, and 1691 for earlier precedents relating to certification.