

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were being forwarded to this office to the end that legal proceedings on the contempt citation against Mahaney may be withdrawn and dropped.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.

Although the necessity of a certification as a prerequisite to prosecution has long been assumed,⁽³⁾ some conflict has arisen among different jurisdictions with respect to such requirement. One district court held that an indictment which failed to set forth compliance with the procedure outlined in 2 USC § 194 was not fatally defective and should not be dismissed;⁽⁴⁾ another, in a habeas corpus proceeding, held that a person charged with a violation of the contempt statute, 2 USC § 192, for refusal to testify before a committee could not legally be held under a warrant issued by a U.S. Commissioner which was based on an affidavit of the secretary of the Committee on Un-American Activities and not on a certification from the Speaker.⁽⁵⁾

The portion of the statute which authorizes the Speaker or President of the Senate, without action

of the House or Senate, to certify statements of facts he receives while Congress is not in session—a procedure designed to avoid delay in prosecuting contumacious witnesses—was interpreted in one case to be not automatic but discretionary.⁽⁶⁾ Thus, it was held that, in order to furnish the protection afforded by legislative review of contempt citations, the Speaker or President of the Senate must act in place of the full House or Senate in such circumstances, by examining the merits of the citation. The Speaker, stated the three-judge court, in a two to one opinion, erred in interpreting the statute to prohibit him from exercising his independent judgment notwithstanding any reservations he had about the validity of the committee's contempt citation. Accordingly, the court reversed the contempt convictions in the case.⁽⁷⁾

Failure to make a report or issue a certificate has been held to be a matter to be raised by way of defense.⁽⁸⁾

3. *In re Chapman*, 166 U.S. 661, 667 [1897] (see 2 Hinds' Precedents §§ 1612–1614 for a discussion of this case); *United States v Costello*, 198 F2d 200, 204 (2d Cir. 1952), cert. denied, 344 U.S. 374 (1952); and *Wilson v United States*, 369 F2d 198 (D.C. Cir. 1966).
4. *Ex Parte Frankfeld*, 32 F Supp 915 (D.D.C. 1940).
5. *United States v Josephson*, 74 F Supp 958 (S.D. N.Y. 1947), aff'd., 165 F2d 82 (2d Cir. 1947); cert. denied, 333 U.S. 838 (1948).

6. *Wilson, et al. v United States*, 369 F2d 198 (D.C. Cir. 1966). See § 22.8, *infra*, for further discussion.
7. This ruling would not affect the principle (§ 22.2, *infra*) that no action of the House is necessary when the Speaker certifies a statement of facts to the U.S. Attorney, inasmuch as the ruling deals only with the duty of the Speaker.
8. *In re Chapman*, 166 U.S. 661, 667 (1897), discussed at 2 Hinds' Prece-

During Congressional Session**§ 22.1 A contempt citation reported while Congress is in session is certified to the appropriate U.S. Attorney by the Speaker by authority of a privileged resolution.**

On Sept. 3, 1959,⁽⁹⁾ the House by voice vote approved a resolution authorizing the Speaker to certify to U.S. Attorney a report citing a witness in contempt.⁽¹⁰⁾

MR. [FRANCIS E.] WALTER [of Pennsylvania]: Mr. Speaker, I offer a privileged resolution (H. Res. 375) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

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

dents § 1614; *United States v Dennis*, 72 F Supp 417, 422 (D.D.C. 1947), aff'd. 171 F2d 986 (D.C. Cir. 1948), aff'd. 339 U.S. 162 (1950), and *United States v Shelton*, 211 F Supp 869 (D.D.C. 1962).

9. 105 CONG. REC. 17945, 86th Cong. 1st Sess.; see also, for example, §§ 20.2, 20.4, 20.6, 20.8, and 20.10, supra, for other resolutions authorizing the Speaker to certify reports to the U.S. Attorney.
10. See 22.2, infra, which states that no action of the House is necessary to authorize the Speaker to certify a statement of facts relating to a witness' contumacy received when Congress is not in session. In such a case authority for certification is 2 USC 194, rather than a resolution.

report of the Committee on Un-American Activities of the House of Representatives as to the refusal of Edwin A. Alexander 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 seal of the House of Representatives, to the United States Attorney for the Northern District of Illinois, to the end that the said Edwin A. Alexander may be proceeded against in the manner and form provided by law. . . .

MR. WALTER: Mr. Speaker, I move the previous question.

The previous question was ordered.

THE SPEAKER:⁽¹¹⁾ The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

During Adjournment**§ 22.2 The statute, 2 USC § 194, provides that when Congress is not in session, the Speaker shall certify to a U.S. Attorney reports and statements of facts submitted by investigating committees describing refusals of individuals to testify or produce subpoenaed materials; consequently, no action by the House is necessary.**

On Nov. 14, 1944,⁽¹²⁾ Speaker Sam Rayburn, of Texas, explained

11. Sam Rayburn (Tex.).

12. 90 CONG. REC. 8163, 78th Cong. 2d Sess. See *United States v Rumely*,

the procedure for certifying reports to the U.S. Attorney under 2 USC § 194.⁽¹³⁾

EDWARD A. RUMELY AND JOSEPH P. KAMP

THE SPEAKER: The Chair desires to announce that during the past recess of the Congress the Special Committee to Investigate Campaign Expenditures authorized by House Resolution 551, Seventy-eighth Congress, reported to and filed with the Speaker statements of facts concerning the willful and deliberate refusal of Edward A. Rumely of the Committee for Constitutional Government and Joseph P. Kamp of the Constitutional Educational League, Inc., to testify and to produce the books, papers, records, and documents of their respective organizations before the said Special Committee of the House, and the Speaker, pursuant to the mandatory provisions of [2 USC § 194] certified to the United States attorney, District of Columbia, the state-

197 F2d 166 (D.D.C. 1952), cert. granted, 344 U.S. 812, aff'd., 345 U.S. 41 (1953), in which defendant's conviction for contempt of Congress was reversed on grounds that his first amendment rights superseded the congressional investigative power in this instance. See also *United States v Kamp*, 102 F Supp 757 (D.D.C. 1952) [defendant found not guilty, as government failed to prove default beyond a reasonable doubt].

13. See §22.1, supra, for the procedure for authorizing a certification of a report received when Congress is in session.

ment of facts concerning the said Edward A. Rumely on September 26, 1944, and the statement of facts concerning the said Joseph P. Kamp on November 2, 1944.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, a parliamentary inquiry.

THE SPEAKER: The gentleman will state it.

MR. RANKIN: Mr. Speaker, what is necessary to dispose of the document which the Speaker has just read? Will it require a resolution by the House or will it be referred to some committee?

THE SPEAKER: That is not necessary under the statute. It is before the court now.

MR. RANKIN: I understand, but in order to call for court action it will be necessary, as I understand it, to have a resolution from the House.

THE SPEAKER: The Chair thinks not, under the law.

Announcement of Certification

§ 22.3 The Speaker informs the House when he has, pursuant to authority granted him by resolution, certified contempt cases to U.S. Attorneys.

On Feb. 7, 1936,⁽¹⁴⁾ Speaker John W. McCormack, of Massa-

14. 112 CONG. REC. 2290, 89th Cong. 2d Sess. See also, for example, 105 CONG. REC. 18175, 86th Cong. 1st Sess., Sept. 4, 1959, for an announcement by Speaker Sam Rayburn (Text), that he had, pursuant to H. Res. 374 and 375, certified to the

chusetts, announced that he had certified to the U.S. Attorney for the District of Columbia contempt cases against alleged members of the Ku Klux Klan who had refused to testify.⁽¹⁵⁾

U.S. Attorney for the District of Columbia and the Northern District of Illinois reports regarding refusals of Martin Popper and Edwin W. Alexander, respectively, to testify before the Committee on Un-American Activities; 98 CONG. REC. 886, 82d Cong. 2d Sess., Feb. 6, 1952, for an announcement by Speaker Rayburn that he had, pursuant to H. Res. 517, certified to the U.S. Attorney for the District of Columbia a report regarding the refusal of Sidney Buchman to appear before the Committee on Un-American Activities; and 92 CONG. REC. 10782, 79th Cong. 2d Sess., Aug. 2, 1946, for an announcement by Speaker Rayburn that he had, pursuant to H. Res. 752 and 749, certified to the U.S. Attorney for the District of Columbia reports regarding refusals of Richard Morford and George Marshall to produce materials to the Committee on Un-American Activities.

15. When the House is in session the Speaker certifies reports of contumacy of witnesses pursuant to authority of the House granted by approval of a simple resolution. When the House is not in session, however, the Speaker certifies a statement of facts of the contumacy pursuant to authority granted by 2 USC §194. See §22.2, *supra*, in which the Speaker indicated that no action of the House was necessary to author-

CERTIFICATIONS TO THE U.S. ATTORNEY
FOR THE DISTRICT OF COLUMBIA—
ANNOUNCEMENT

THE SPEAKER: The Chair desires to announce that, pursuant to sundry resolutions of the House agreed to on February 2, 1966, he did on February 3, 1966 make certifications to the U.S. attorney, District of Columbia, as follows:

House Resolution 699: The refusal of Robert M. Shelton to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 700: The refusal of Calvin Fred Craig to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 701: The refusal of James R. Jones to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 702: The refusal of Marshall R. Kornegay to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 703: The refusal of Robert E. Scoggin to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 704: The refusal of Robert Hudgins to produce certain pertinent papers before the Committee on Un-American Activities.

House Resolution 705: The refusal of George Franklin Dorsett to produce certain pertinent papers before the Committee on Un-American Activities.

ize him to certify a statement of facts as to a witness' refusal to testify or produce materials received while the Congress was not in session.

§ 22.4 At the next meeting of the House the Speaker announces that he has, during an adjournment to a day certain and pursuant to statute, certified to the U.S. Attorney of the District of Columbia statements of facts regarding the refusal of individuals to testify and produce subpoenaed materials before a special committee authorized to make investigations.

On Nov. 14, 1944,⁽¹⁶⁾ the first day after an adjournment to a day certain, Speaker Sam Rayburn, of Texas, announced certification of reports and statements of facts to the U.S. Attorney for the District of Columbia.

EDWARD A. RUMELY AND JOSEPH P.
KAMP

THE SPEAKER: The Chair desires to announce that during the past recess of the Congress the Special Committee to Investigate Campaign Expenditures authorized by House Resolution 551, Seventy-eighth Congress, reported to and filed with the Speaker statements of facts concerning the willful and deliberate refusal of Edward A. Rumely of the Committee for Constitutional Government and Joseph P. Kamp of the Constitutional Educational League, Inc., to testify and to produce the books, papers, records, and documents of their respective organizations before

16. 90 CONG. REC. 8163, 78th Cong. 2d Sess.

the said Special Committee of the House, and the Speaker, pursuant to the mandatory provisions of Public Resolution No. 123, Seventy-fifth Congress, certified to the United States attorney, District of Columbia, the statement of facts concerning the said Edward A. Rumely on September 26, 1944, and the statement of facts concerning the said Joseph P. Kamp on November 2, 1944.

Parliamentarian's Note: Public Law No. 123, to which the Speaker referred, has been codified as 2 USC § 194.⁽¹⁷⁾

§ 22.5 On one occasion, where the Speaker, during a sine die adjournment and pursuant to statute, had certified to a U.S. Attorney a contempt case arising from a committee and reported to him, he notified the House at its next meeting through its new Speaker, who laid the communication before the House.

On Jan. 5, 1955,⁽¹⁸⁾ Speaker Sam Rayburn, of Texas, laid be-

17. See §22.2 supra, which states that no action of the House is necessary in this situation.

18. 101 CONG. REC. 11, 84th Cong. 1st Sess. See also *United States v Russell*, 280 F2d 688 (D.C. Cir. 1960), rev'd, 369 U.S. 749 (1962) [defendant's conviction reversed, the court stating that a grand jury indictment must state the question which was under inquiry at time of defendant's default or refusal to answer].

fore the House a communication from the Speaker of the 83d Congress.⁽¹⁹⁾

MATTER OF LEE LORCH, ROBERT M. METCALF, AND NORTON ANTHONY RUSSELL

The Speaker laid before the House the following communication.

The Clerk read the communication, as follows:

JANUARY 5, 1955.

The SPEAKER,
House of Representatives,
United States, Washington, D.C.

DEAR MR. SPEAKER: I desire to inform the House of Representatives that subsequent to the sine die adjournment of the 83d Congress the Committee on Un-American Activities reported to and filed with me as Speaker a statement of facts concerning the refusal of Lee Lorch, Robert M. Metcalf, and Norton An-

thony Russell to answer questions before the said committee of the House, and I, pursuant to the mandatory provisions of Public Resolution 123, 75th Congress, certified to the United States attorney, southern district of Ohio, the statement of facts concerning the said Lee Lorch and Robert M. Metcalf on December 7, 1954, and certified to the United States attorney, District of Columbia, the statement of facts concerning the said Norton Anthony Russell on December 7, 1954.

Respectfully,
JOSEPH W. MARTIN, Jr. ⁽²⁰⁾

§ 22.6 At the opening meeting of the new Congress, the Speaker announces to the House that he has during the adjournment sine die, as Speaker of the prior Congress, certified to the U.S. Attorney statements of facts regarding the refusal of individuals to testify, before investigating committees.

On Jan. 7, 1959,⁽¹⁾ the opening day of the 86th Congress, Speaker Sam Rayburn, of Texas, notified the House that he had certified statements of facts to U.S. Attorneys.⁽²⁾

19. See also 93 CONG. REC. 39, 40, 80th Cong. 1st Sess., Jan. 3, 1947, in which the Speaker of the 80th Congress, Joseph W. Martin, Jr. (Mass.), laid before the House a letter from the Speaker of the 79th Congress, Sam Rayburn (Tex.), relating to his certification subsequent to the *sine die* adjournment of the 79th Congress and pursuant to 2 USC 194, to the U.S. Attorney for the District of Columbia of a statement of facts relating to the refusal of Benjamin J. Fields to produce materials before the Select Committee to Investigate the Disposition of Surplus Property. See also *Fields v United States*, 164 F2d 97 (D.C. Cir. 1947), cert. denied, 332 U.S. 851 [defendant's conviction affirmed].

20. Mr. Martin was the Minority Leader of the 84th Congress.

1. 105 CONG. REC. 17, 86th Cong. 1st Sess. See *Wheedlin v United States* 283 F2d 535 (9th Cir. 1960), in which the defendant's subsequent conviction for contempt of Congress was affirmed.

2. See also 111 CONG. REC. 25, 89th Cong. 1st Sess., Jan. 4, 1965, for an

COMMITTEE ON UN-AMERICAN
ACTIVITIES

THE SPEAKER: The Chair desires to announce that subsequent to the sine die adjournment of the 85th Congress, the Committee on Un-American Activities reported to and filed with the Speaker statements of fact concerning the refusal of Donald Wheedlin and Harvey O'Connor to appear in response to subpoenas and to testify before duly constituted subcommittees of the Committee on Un-American Activities of the House of Representatives, and that he did, on January 1, 1959, pursuant to the mandatory provisions of Public Resolution 123, 75th Congress, certify to the U.S. attorney, southern district of California, the statement of facts concerning the said Donald Wheedlin, and to the U.S. attorney, district of New Jersey, the statement of facts concerning the said Harvey O'Connor.

§ 22.7 The Speaker informed the House when he had, pursuant to authority granted

announcement by Speaker John W. McCormack (Mass.), that he had, on Dec. 11, 1964, during an adjournment *sine die* of the 88th Congress and pursuant to 2 USC § 194, certified to the U.S. Attorney for the District of Columbia statements of facts regarding refusals of Russell Nixon, Dagmar Wilson, and Donna Allen to testify before the Committee on Un-American Activities. The named defendant's convictions were reversed in *Wilson v United States*, 369 F2d 198 (D.C. Cir. 1966). See § 22.8, *infra*, for discussion of the Wilson case.

him by resolution, certified purgation of contempt to the U.S. Attorney.

On July 26, 1954,⁽³⁾ 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 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:

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.

Certification of Contempt as Discretionary

§ 22.8 A divided three-judge federal court has held that the statute (2 USC § 194) au-

3. 100 CONG. REC. 12023, 12024, 83d Cong. 2d Sess.

thorizing the Speaker to certify to a U.S. Attorney any contempt reported by a House committee between legislative sessions is not mandatory, but requires the Speaker to renew the contempt charge and exercise his discretion with respect thereto.

In *Wilson v United States*,⁽⁴⁾ the court reviewed convictions of Russell Nixon, Dagmar Wilson, and Donna Allen for contempt of Congress based on refusals to answer questions at an executive session conducted by a subcommittee of the House Committee on Un-American Activities. The court reversed the convictions, holding that the alleged contempts had been improperly certified to the U.S. Attorney under the following statute:⁽⁵⁾

Whenever a witness summoned as mentioned in section 192 . . . fails . . . or . . . refuses to answer any question pertinent to the subject under inquiry before either House . . . or any committee or subcommittee of either House of Congress [and] when Congress is not in session, a statement of fact constituting such failure is reported to . . . the Speaker of the House, it shall be the duty of the . . . Speaker . . . to certify, and he shall so certify, the statement of facts . . . to the appropriate United States attorney, whose duty it shall be to bring

the matter before the grand jury for its action.

In the view of the court, the Speaker had erred in construing the statute to be mandatory and therefore to prohibit any inquiry by him; accordingly, his "automatic certification" was held to be invalid. In reaching this conclusion, the court stressed the legislative history of the provision and the established practice of the House, both of which, in the court's view, indicated a congressional intention that reports of contempt of Congress be reviewed on their merits by the House involved if in session, or by the Speaker when Congress is not in session.

A dissenting opinion, relying in part on the principle that statutory language is to be interpreted wherever possible in its ordinary, everyday sense, stressed the unambiguous language of the statute itself. The dissent further emphasized the importance of committee reports in studying the legislative history of provisions, and indicated that the reports on the provisions regarding the Speaker's duty to certify contempt charges between sessions revealed an intent to facilitate prompt action in cases of contempt reported at such times. The practice of Congress when in session was not, in the dissenting view, considered to be

4. 369 F2d 198 (D.C. Cir. 1966).

5. 2 USC §194.

instructive in determining the | duty of the Speaker between sessions.