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(Mr. Dominick), the Senator from Maryland (Mr. Mathias), and the Senator from Ohio (Mr. Saxbe).

§ 18. From Arrest

Article I, section 6, clause 1 of the Constitution states of Senators and Representatives that "they shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same."[6] Unlike the Speech and Debate Clause, which was not judicially defined until the 20th century,[7] issues relating to the immunity from arrest were litigated soon after the adoption of the Constitution.[8]

The immunity from arrest has been extensively discussed on the floor of the House, since subpenas, summonses, and arrests of Members while the House is in session are presented to the House as questions of privilege. The House has decided that a summons or subpena to a Member to appear in court, or before a grand jury, while the House is in session invades the rights and privileges of the House.[9] The permission of the House is required for a Member to attend upon a court during sessions of Congress; the House usually by resolution permits

6. See, in general, *House Rules and Manual* § 90 (1973) (comment to the constitutional provision). For Jefferson's comments, see *House Rules and Manual* §§ 287–292, 300–309 (1973). See also, for early commentary, Story, *Commentaries on the Constitution of the United States,* §§ 856–862, Da Capo Press (N. Y. repute. 1970). Story attributed to Congress the power of contempt to punish those who unlawfully arrest Members, *id.* at § 860, but the House has no such general contempt power. See *Kilbourn* v *Thompson,* 103 U.S. 189 (1881) and *Marshall* v *Gordon,* 243 U.S. 521 (1917).

7. See § 16, supra.

8. The first cases on the constitutional privilege were *Coxe* v *M'Clenachen,* 3 Dall. 478 (Sup. Ct. Pa. 1798) and *U.S.* v *Cooper,* 4 Dall. 341 (U.S. Cir. Ct. D. Pa. 1800).

9. See § 18.1, infra.

Subpenas, summonses, and arrests are presented as questions of House privilege and not personal privilege, since they affect the rights of the House collectively, its safety, dignity, and integrity of proceedings. See Rule IX, *House Rules and Manual* § 661 (1973). And resolutions proposing action by the House are called up under a question of the privileges of the House.

The personal privilege of the Member may also be involved, however, since that privilege rests primarily on the constitutional immunities. See *House Rules and Manual* § 663 (1973). For an instance where a grand jury summons was raised as a question of personal privilege, see 6 Cannon's Precedents § 586.

court appearance at such time as the Congress is not actually in session.[10] On most occasions, Representatives and Senators seek accommodation between their duty to appear in court and their duty to attend upon the sessions of Congress,[11] since the purpose of the clause is not for the benefit or convenience of individual legislators but is to prevent interference with the legislative process by the courts and by grand juries.[12]

The Constitutional Convention adopted a privilege from arrest with substantially the same scope as the English parliamentary privilege.[13] Under the common law, the privilege did not apply to any indictable offenses.[14] The words "treason, felony, and breach of the peace" have been construed by the Supreme Court to remove from the operation of the privilege all criminal offenses.[15] Criminal offenses are those in which fine and/or imprisonment are imposed as punishment.[16] Therefore, the immunity applies only to arrest in civil cases, which was a common procedure at the time of the Constitutional Convention.[17] Since

10. See Ch. 11, infra.

11. See §§ 18.1, 18.3, 18.5, infra.

12. See *U.S.* v *Brewster,* 408 U.S. 501, 507 (1972); *James* v *Powell,* 274 N.Y.S. 2d 192, 26 App. Div. 2d 295 (1966); *U.S.* v *Cooper,* 4 Dall. 341 (U.S. Cir. Ct. D. Pa. 1800).

13. Although the parliamentary privilege from arrest may date from the sixth century, the first legislative recognition appeared in 1603 in the statute of 1 James I, C. 13. See Taswell-Longmead, *English Constitutional History,* 324–332 and note 5 (2d ed. 1881).

The arrest immunity, like the speech and debate immunity, was included in the U.S. Constitution with little debate or discussion. See vol. 2, *Records of the Federal Convention* 140, 141, 156, 166, 180, 246, 254, 256, 267, 567, 593, 645; vol. 3, 148, 312, 384; vol. 4, 40–43 (Farrand ed. 1911).

14. Story, *Commentaries on the Constitution of the United States,* § 862, Da Capo Press (N.Y. repute. 1970); *Williamson* v *U.S.,* 207 U.S. 425 (1908).

15. *Williamson* v *U.S.,* 207 U.S. 425 (1908). The Court relied on parliamentary precedents, and upon the meaning of the clause at the time of the Constitutional Convention.

16. See 21 Am Jur 2d Criminal Law 1.

17. *Long* v *Ansell,* 293 U.S. 76, 82 (1934) noted that "when the Constitution was adopted, arrests in civil suits were still common in America. It is only to such arrests that the provision applies."

For an early case where a Member had been arrested in a civil suit and released on bail, and his surety agreed to surrender him four days after the close of the congressional session, see *Coxe* v *M'Clenachen,* 3 Dall. 478 (Sup. Ct. Pa. 1798).

arrests seldom attach in contemporary practice to civil suits, the clause has been described as virtually obsolete.[18]

Questions have arisen, however, whether subpenas and summonses directed to Members of Congress, either as defendants in court cases, or as witnesses in civil and in criminal cases, constitute prohibited arrest. The rulings of the courts, both state and federal, have uniformly expressed the principle that a summons or subpena is not an arrest, and is not precluded by the Constitution.[19]

Likewise, a Senator or Representative is not exempt from service of civil process and attachment of a bank account,[20] may not have a civil suit postponed as a matter of right,[1] and is not immune from orders relating to the taking of a deposition.[2]

The courts have recognized, however, that Congressmen sought to be summoned or subpenaed have a duty to be present at the sessions of Congress. Therefore, Congressmen have been allowed to accommodate their court appearance with their congressional duties.[3]

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18. See U.S. Constitution Annotated, Library of Congress, S. Doc. No. 92–82, p. 117, 92d Cong. 2d Sess. (1972).

19. "Senator Long [served with summons as defendant in civil suit for libel] contends that article I, section 6, clause 1 of the Constitution, confers upon every Member of Congress, while in attendance within the District, immunity in civil cases not only from arrest, but also from service of process. Neither the Senate, nor the House of Representatives, has ever asserted such a claim in behalf of its Members. Clause 1 defines the extent of the immunity. Its language is exact and leaves no room for a construction which would extend the privilege beyond the terms of the grant." *Long* v *Ansell,* 293 U.S. 76, 82 (1934).

For other cases holding that Congressmen named as parties in civil cases are not immune from summonses and service of process, see § 18.4, infra.

For cases holding that Congressmen are not immune from grand jury subpenas, to testify as witnesses, see §§ 18.1, 18.2, infra.

For cases holding that Congressmen are not immune from subpenas to testify as witnesses in criminal cases, when called either by the defendant or by the government, see § 18.3, infra.

20. *Howard* v *Citizen Bank & Trust Co.,* 12 App. D.C. 222 (1898).

1. *Nones* v *Edsall,* 1 Wall. 189, 18 F. Cases No. 10, 290 (U.S. Cir. Ct. D.N.J. 1848). The court did grant the continuance as a matter of judicial discretion.

2. *Yuma Greyhound Park, Inc.* v *Hardy,* 472 P.2d 47 (Ariz. 1970).

3. In *James* v *Powell,* 274 N.Y.S. 2d 192, 26 App. Div. 2d 295 (1966), the court stated in reference to subpenas

In at least one case, a Member who did not seek such accommodation was adjudged after the close of the session in contempt and ordered fined and imprisoned.[4]

If a Member were to be arrested in a civil suit during a session of Congress, Congress could free him through a writ of habeas corpus.[5]

The immunity from arrest applies not only while Congress is in session, but also while a Member is en route to or from the session. The time spent traveling must be a reasonable time, and the journey must not be abandoned through substantial deviations.[6] If a Member-elect with credentials travels to a session,[7] and is de-

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served upon Members that where actual interference with the legislative process is shown the courts will make suitable provision by way of adjournment or fixing of a time and place of examination which will obviate any real conflict.

In *U.S.* v *Cooper,* 4 U.S. (4 Dall.) 341 (U.S. Cir. Ct. D. Pa. 1800) the court stated that Members were not exempt from a subpena to testify in a criminal case, but that nonattendance would not necessarily result in an attachment for arrest. A satisfactory reason could appear to the court to excuse attendance.

In *Respublica* v *Duane,* 4 Yeates 347 (Sup. Ct. Pa. 1807), the court refused an attachment against Members for not obeying a subpena, where it was alleged they were not in attendance upon Congress. The court stated that a reasonable time to respond must be given, and that the failure of a Member to attend upon sessions must be proved.

4. See *James* v *Powell,* 274 N.Y.S. 2d 192, 26 App. Div. 2d 295 (1966), aff'd, 277 N.Y.S. 2d 135, 18 N.Y. 2d 931, 223 N.E. 2d 562 (1966), motion to modify order granted, 279 N.Y.S. 2d 972, 19 N.Y. 2d 813, 226 N.E. 2d 705 (1967). The court stated that interference with the duties of congressional attendance had neither been alleged nor shown. The order for appearance later became mooted in the case.

An attachment during a session for willful failure to obey a subpena might involve a civil arrest, prohibited by the immunity from arrest. See 6 Cannon's Precedents § 588.

5. Jefferson's Manual, *House Rules and Manual* § 288 (1973). On one occasion an arrested Member was freed by a House officer (see 3 Hinds' Precedents § 2676).

6. See *Hoppin* v *Jenckes,* 8 R.I. 453 (1867) (court stated that 40 days before and after session was unreasonably long); *Lewis* v *Elmendorf,* 2 Johnson's Cases 222 (Sup. Ct. N.Y. 1801) (arrest upheld, Member 10 days en route after leaving home); *Miner* v *Markham,* 28 F 387 (E.D. Wisc. 1886) (deviation to Milwaukee, while traveling from California to Washington, D.C., allowable).

For commentary on a reasonable time for travel and unallowable deviations while in transit, see Jefferson's Manual, *House Rules and Manual* § 289 (1973).

7. Jefferson's Manual states that the privilege from arrest takes place by

nied a seat because of an election contest, he is entitled to the privilege until a reasonable time for his journey home has elapsed.[8] Several state court decisions have held that if a Member of Congress is absent from a session and his absence is not for official but for private business, the privilege does not apply to him.[9]

Delegates and Resident Commissioners are entitled to the immunity as well as Members.[10]

Collateral References

Congressional Immunity from Arrest, 70 U.S. L. Rev. 306 (June 1936).

Constitutional Privilege of Legislators: Exemption from Arrest and Action for Defamation, 9 Minn. L. Rev. 442 (1925).

Legislative Immunity, Arrest Under Motor Vehicle Code, Limits of the Legislative Immunity, 7 U. Pitt. L. Rev. 486 (1951).

Redfield, The Immunities of Congress from Process, 10 Geo. Wash. L. Rev. 513 (Mar. 1942).

Whether a Member of Congress may, during a session of Congress, be subpenaed as a witness in judicial proceedings (Memo of Legislative Counsel, U.S. Senate), 103 CONG. REC. 4203–05, 85th Cong. 1st Sess., Mar. 22, 1957.

Grand Jury Summons

§ 18.1 The House has determined that a summons issued to a Member to appear and testify before a grand jury while the House is in session invades the rights and privileges of the House.[11]

On Nov. 17, 1941, the House authorized by resolution Mr. Hamilton Fish, Jr., of New York, to appear and testify before a grand jury of the United States District Court for the District of Columbia at such time as the House was not sitting in ses-

force of election. *House Rules and Manual* § 300 (1973).

8. *Dunton & Co.* v *Halstead,* 2 Clark 236 (Diet. Ct. Phil. 1840) (after loss of seat, excluded Member-elect delayed departure from Washington pending granting of per diem allowance for return; immunity from arrest upheld).

9. *Worth* v *Norton,* 56 S.C. 56 (1899); compare *Respublica* v *Duane,* 4 Yeates 347 (Sup. Ct. Pa. 1807).

10. *Doty* v *Strong,* 1 Pinn. 84 (Sup. Ct. Wisc. Territ. 1840).

11. But see *Gravel* v *U.S.,* 408 U.S. 606 (1972) in which the Supreme Court, in holding a legislative aide not immune from questioning by a grand jury about alleged illegal acts related to the activities of a Senator, implied that the Senator himself would not be immune from a grand jury subpena, and ruled that no constitutional or other privilege shielded the aide or "any other witness" from questioning by a grand jury about alleged illegal activities not implicating legislative conduct. 408 U.S. at 628.

sion.[12] The authorizing resolution was adopted pursuant to the report of a committee that the service of a summons to a Member to appear and testify before a grand jury while the House is in session does invade the rights and privileges of the House of Representatives, as based on article I, section 6 of the Constitution, providing immunities to Members against arrest and against being questioned for any speech and debate in either House.[13] The report indicated, however, that in each case the House may waive its privileges, attaching such conditions to its waiver as it may determine.

After the resolution authorizing Mr. Fish to testify was adopted, there ensued debate on the scope of the immunities of Members.[14] The wording of the subpena in question was drawn into issue, since the subpena stated that once the Member appeared to testify he would not be permitted to depart from the court without leave of the court or of the District Attorney. The House determined by the adoption of the resolution that when the Congress is in session it is the duty of the House to prevent a conflict between the duty of a Member to represent his people at its session and his duty as a citizen to give court testimony.[15]

Similarly, on Feb. 16, 1942,[16] the House authorized Mr. Steven A. Day, of Illinois, to appear and testify before a grand jury of the U.S. District Court for the District of Columbia when the House was not sitting in session. The summons to Mr. Day was raised as a question of personal privilege in the House.

§ 18.2 A Member, having received a subpena to testify for the government before a

12. H. Res. 340, from the Committee on the Judiciary, 87 CONG. REC. 8933, 8934, 77th Cong. 1st Sess.

13. The report, from the Committee on the Judiciary, was read into the Record at 87 CONG. REC. 8933. The committee has been empowered by H. Res. 335, 77th Cong. 1st Sess., to "investigate and consider whether the service of a subpena or any other process by a court or a grand jury purporting to command a Member of this House to appear and testify invades the rights and privileges of the House of Representatives."

14. 87 CONG. REC. 8934, 8949–58.

15. H. REPT. NO. 1415, 87 CONG. REC. 8933 and the remarks of Mr. Emanuel Celler (N.Y.), 87 CONG. REC. 8935, 8936.

For a critical analysis of the resolution adopted in relation to the grand jury appearance of Mr. Fish, see Redfield, The Immunities of Congress from Process, 10 Geo. Wash. L. Rev. 513 (Mar. 1942).

16. 88 CONG. REC. 1267, 77th Cong. 2d Sess.

grand jury, refused to answer the subpena under his privilege as a Member of the House, but stated he would make an effort to meet with the grand jury when the House was not in session.

On May 3, 1949,[17] Mr. Harold H. Velde, of Illinois, informed the House that he had been served with a subpena issued by a federal grand jury sitting in New York City demanding that he appear to testify in relation to an alleged violation of a conspiracy statute. He further stated:

> Mr. Speaker, most of the Members of the House are more familiar than I with the procedure of grand juries and other courts in subpenaing Members of Congress while it is in session. It appears at this time that the debate and discussion and vote on labor legislation here will continue during the time I am called to appear before the grand jury; therefore I shall use my prerogative as a Member of Congress and refuse to answer this subpena. For the record, however, I want to say that I shall make every attempt to meet with the grand jury in New York City and give it any information I may have concerning the matters they are now investigating.[18]

Parliamentarian's Note: Mr. Velde did appear before the grand jury in New York City the following weekend after having made telephonic arrangements with the foreman of the grand jury.

Subpena of Member as Witness

§ 18.3 Certain Members having been subpenaed by the defendant to appear as witnesses in a contempt of Congress case, the House adopted a resolution authorizing them to appear at such time when the House was not sitting in session.[19]

On Feb. 23, 1948, Mr. John S. Wood, of Georgia, arose to state a question of the privilege of the House, and laid before the House subpenas to testify, obtained by the defendant, in a contempt of Congress case, addressed to himself and to three other Members of

17. 95 CONG. REC. 5544, 5545, 81st Cong. 1st Sess.

18. *Id.* at p. 5544.

19. In *U.S.* v *Cooper,* 4 U.S. (4 Dall.) 341 (Cir. Ct. D. Pa. 1800), it was held that there is no privilege such as to exempt Members of Congress from the service, or obligation, of a subpena obtained by a defendant in a criminal case. Justice Chase stated that every man charged with an offense was entitled to compulsory process to secure the attendance of his witnesses.

See also *Gravel* v *U.S.,* 408 U.S. 606, 615 (1972) (dicta that Members of Congress not immune from service of process as witness in a criminal case).

the House.[20] After some debate, the House agreed to Resolution No. 477, authorizing the Members to appear in court at such time as the House was not sitting in session:

> Whereas Representatives John S. Wood, J. Hardin Peterson, John R. Murdock, and Gerald W. Landis, Members of this House, have been subpenaed to appear as witnesses before the District Court of the United States for the District of Columbia to testify at 10 a.m. on the 24th day of February 1948, in the case of the *United States* v. *Richard Morford,* Criminal No. 366–47; and
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> Whereas by the privileges of the House no Member is authorized to appear and testify but by the order of the House: Therefore be it
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> *Resolved,* That Representatives John S. Wood, J. Hardin Peterson, John R. Murdock, and Gerald W. Landis are authorized to appear in response to the subpenas of the District Court of the United States for the District of Columbia in the case of the *United States* v. *Richard Morford* at such time as when the House is not sitting in session; and be it further
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> *Resolved,* That a copy of these resolutions be transmitted to the said court as a respectful answer to the subpenas of the said court.[1]

In explanation of the resolution, Mr. Earl C. Michener, of Michigan, referred to the precedent set on Nov. 17, 1941, when the House adopted a similar resolution, in reference to grand jury subpenas.[2] He further stated:

> First, the Constitution lodges a discretion in the House. This resolution simply exercises that discretionary power. This privilege can only be waived by the House, and not by the individual Member. It seems that Members of some committees have been voluntarily appearing in response to subpenas to appear in court. No question was raised. The right of the House to function and the right of Members to be present and vote must not be interfered with.[3]

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20. 94 CONG. REC. 1557, 1558, 80th Cong. 2d Sess.

1. For similar resolutions adopted by the House upon the service of subpenas to Members in congressional contempt cases, see 99 CONG. REC. 1658, 83d Cong. 1st Sess., Mar. 5, 1953; 97 CONG. REC. 11571, 82d Cong. 1st Sess., Sept. 18, 1951; 97 CONG. REC. 6084, 82d Cong. 1st Sess., June 4, 1951; 94 CONG. REC. 4347, 80th Cong. 2d Sess., Apr. 12, 1948; 94 CONG. REC. 4264, 80th Cong. 2d Sess., Apr. 8, 1948; and 94 CONG. REC. 2224, 80th Cong. 2d Sess., Mar. 5, 1948.

2. See § 18.1, supra.

3. 94 CONG. REC. 1559, 80th Cong. 2d Sess.

When Members are subpenaed to appear as witnesses in civil cases, where they are named as parties, the House may adopt resolutions authorizing them to appear when the House is not sitting in session (see 100 CONG. REC. 10904, 83d Cong. 2d Sess., July 19, 1954; 100 CONG. REC. 1675–77, 83d Cong. 2d Sess., Feb. 12, 1954).

§ 18.4 Where Members and employees of the House were subpenaed to testify in a private civil suit alleging damage from acts committed in the course of their official duties, the House referred the matter to the Committee on the Judiciary to determine whether the rights of the House were being invaded.[4]

On Mar. 26, 1953,[5] the House was informed of the subpena of members and employees of the Committee on Un-American Activities in a civil suit contending that acts committed in the course of an investigation of the committee had injured the plaintiffs. The House by resolution (H. Res. 190) referred the matter to the Committee on the Judiciary to investigate whether the rights and privileges of the House, as based upon the immunities from arrest and of speech and debate, were being invaded:

> Whereas Harold H. Velde, of Illinois; Donald L. Jackson, of California; Francis E. Walter, of Pennsylvania; Morgan M. Moulder, of Missouri; Clyde Doyle, of California; and James B. Frazier, Jr., of Tennessee, all Representatives in the Congress of the United States; and Louis J. Russell and William Wheeler, employees of the House of Representatives, have been by subpenas commanded to appear on Monday and Tuesday, March 30 and 31, 1953, in the city of Los Angeles, Calif., and to testify and give their depositions in the case of *Michael Wilson et al.* v *Loew's Incorporated et al.*, an action pending in the Superior Court of the State of California in and for the County of Los Angeles; and
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> Whereas the complaint in the aforesaid case of *Michael Wilson et al.* v *Loew's Incorporated et al.*, lists among the parties defendant therein John S. Wood, Francis E. Walter, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Harold E. Velde, Barnard W. Kearney, Donald L. Jackson, Charles E. Potter, Louis J. Russell, and William Wheeler; and

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4. Congressmen are not immune from the service or obligation of summonses or subpenas when named as defendants in civil cases, *Long* v *Ansell*, 293 U.S. 76 (1934). Contempt may lie against a Congressman for refusing to obey a subpena when named as a defendant in a civil case. *James* v *Powell*, 274 N.Y.S. 2d 192, 26 App. Div. 2d 295 (1966), aff'd, 277 N.Y.S. 2d 135, 18 N.Y. 2d 931, 223 N.E. 2d 562 (1966), motion to modify order granted, 279 N.Y.S. 2d 972, 19 N.Y. 2d 813, 226 N.E. 2d 705 (1967). See also *Yuma Greyhound Park, Inc.* v *Hardy*, 472 P.2d 47 (Ariz. 1970); *James* v *Powell*, 250 N.Y.S. 2d 635, 43 Misc. 2d 314 (1964); *People on Complaint of James* v *Powell*, 243 N.Y.S. 2d 555, 40 Misc. 2d 593 (1963); *Worth* v *Norton*, 56 S.C. 56 (1899); *Howard* v *Citizen Bank & Trust Co.*, 12 App. D.C. 222 (1898); *Bartlett* v *Blair*, 68 N.H. 232 (1894).

5. 99 CONG. REC. 2356–58, 83d Cong. 1st Sess.

Whereas part III of said complaint reads as follows:

"At all times herein mentioned defendant John S. Wood was the chairman of the Committee on Un-American Activities, United States House of Representatives; defendants Francis E. Walter, Morgan M. Moulder, Clyde Doyle, James B. Frazier, Harold E. Velde, Barnard W. Kearney, Donald L. Jackson, and Charles E. Potter were members of the said committee; Louis J. Russell was senior investigator of said committee; William Wheeler was an investigator of said committee and 41 Doe, 42 Doe, 43 Doe, 44 Doe, 45 Doe, 46 Doe, 47 Doe, 48 Doe, 49 Doe, and 50 Doe were representatives of said committee.

"At all times mentioned herein and with respect to the matters hereinafter alleged the defendants named in the preceding paragraph acted both in their official capacity with relation to said House Committee on Un-American Activities and individually in nonofficial capacities"; and

Whereas part V of said complaint contains an allegation that "on and prior to March 1951 and continuously thereafter defendants herein and each of them conspired together and agreed with each other to blacklist and to refuse employment to and exclude from employment in the motion picture industry all employees and persons seeking employment in the motion-picture industry who had been or thereafter were subpenaed as witnesses before the Committee on Un-American Activities of the House of Representatives . . ."; and

Whereas article I, section 6, of the Constitution of the United States provides: "They (the Senators and Representatives) shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same . . . and for any speech or debate in either House, they (the Senators and Representatives) shall not be questioned in any other place"; and

Whereas the service of such process upon Members of this House during their attendance while the Congress is in session might deprive the district which each respectively represents of his voice and vote; and

Whereas the service of such subpenas and summons upon Members of the House of Representatives who are members of a duly constituted committee of the House of Representatives, and the service of such subpenas and summons upon employees of the House of Representatives serving on the staff of a duly constituted committee of the House of Representatives, will hamper and delay if not completely obstruct the work of such committee, its members, and its staff employees in their official capacities; and

Whereas it appears by reason of allegations made in the complaint in the said case of *Michael Wilson, et al.* v *Loew's Incorporated, et al.,* and by reason of the said processes hereinbefore mentioned the rights and privileges of the House of Representatives may be infringed:

Resolved, That the Committee on the Judiciary, acting as a whole or by subcommittee, is hereby authorized and directed to investigate and consider whether the service of the processes

aforementioned purporting to command Members, former Members, and employees of this House to appear and testify invades the rights and privileges of the House of Representatives; and whether in the complaint of the aforementioned case of *Michael Wilson, et al.* v *Loew's Incorporated, et al.,* the allegations that Members, former Members, and employees of the House of Representatives acting in their official capacities as members of a committee of the said House conspired against the plaintiffs in such action to the detriment of such plaintiffs, and any and all other allegations in the said complaint reflecting upon Members, former Members, and employees of this House and their actions in their representative and official capacities, invade the rights and privileges of the House of Representatives. The committee may report at any time on the matters herein committed to it, and until the committee shall report and the House shall grant its consent in the premises the aforementioned Members, former Members, and employees shall refrain from responding to the subpenas or summons served upon them.

The committee or any subcommittee thereof is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, and to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued over the signature of the chairman or by any member designated by him, and may be served by any person designated by such chairman or member. The committee is authorized to inure all expenses necessary for the purposes hereof, including but not limited to expenses of travel and subsistence, employment of counsel and other persons to assist the committee or subcommittee, and if deemed advisable by the committee, to employ counsel to represent any and all of the Members, former Members, and employees of the House of Representatives named as parties defendant in the aforementioned action of *Michael Wilson, et al.* v *Loew's Inc., et al.,* and such expenses shall be paid from the Contingent Fund of the House of Representatives on vouchers authorized by said committee and signed by the chairman thereof and approved by the Committee on House Administration; and be it further

Resolved, That a copy of these resolutions be transmitted to the Superior Court of the State of California in and for the county of Los Angeles as a respectful answer to the subpenas of the said court addressed to the aforementioned Members, former Members, and employees of the House of Representatives, or any of them.

Mr. John W. McCormack, of Massachusetts, stated in reference to the resolution that "for the House to take any other action would be fraught with danger, for otherwise there is nothing to stop any number of suits being filed against enough Members of the House, and in summoning them, to impair the efficiency of the House of Representatives or the Senate to act and function as leg-

islative bodies." He also stated that the fact that the Members and employees subpenaed were presently in California in the performance of their official duties was immaterial, as they were "out there on official business, and committees of this body are the arms of the House of Representatives." [6]

Summons to Member as Defendant

§ 18.5 The receipt by a Member of a summons to appear before a court for a traffic violation gave rise to a question of privilege of the House, and the House authorized the Member to appear when the House was not in session.[7]

On Apr. 13, 1953,[8] Mr. Clare E. Hoffman, of Michigan, stated a question of the privilege of the House when he informed the House that he had been summoned to appear before a court in Maryland in connection with an alleged traffic violation. Mr. Hoffman stated that under the precedents of the House, he was unable to comply with the summons without the consent of the House. He then submitted a resolution authorizing him to appear when the House was not sitting in session and stated that he would at some future time which suited the convenience of the court appear and submit to its decision.

The House agreed to the resolution.[9]

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6. *Id.* at p. 2357.

7. For the proposition that the clause granting Congressmen immunity from arrest does not apply to criminal cases and proceedings, see *Williamson* v *U.S.,* 207 U.S. 425 (1908) (constitutional words "treason, felony and breach of the peace" except from the privilege all criminal offenses); *Gravel* v *U.S.,* 408 U.S. 606 (1972) (applies only to arrests in civil suits) (dictum); *Long* v *Ansell,* 293 U.S. 76 (1934) (applies only to arrests in civil suits) (dictum); *Burton* v *U.S.,* 169 U.S. 283 (1905) (no application to felonies) (dictum); *U.S.* v *Wise,* 1 Hayward and Hazleton 82, 28 F Cases 16,746a (1848) (no application to breach of the peace); *State* v *Smalls,* 11 S.C. 262 (1878) (no application to criminal indictment in state court).

8. 99 CONG. REC. 3013, 3014, 83d Cong. 1st Sess.

9. See Legislative Immunity, Arrest Under Motor Vehicle Code, Limits of the Legislative Immunity, 7 U. Pitt. L. Rev. 150 (Jan. 1941).