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after a hearing on July 22, 1953, at which all members of the Committee on Government Operations were invited to be present. The resolution was declared to be ". . . a solution of a situation which was described as intolerable by a considerable number of the members of the Committee on Government Operations."[23]

The resolution allotted specific funds to all but one of the regular subcommittees, to be drawn on the voucher of the subcommittee chairman, and allotted the remainder for committee expenses, expenses of special subcommittees and the expenses of one regular subcommittee.[24] (Note: Under H. Res. 150, which was amended by H. Res. 339, provision had been made for having all vouchers signed by the committee chairman.)[25]

§ 13. Expulsion

The House has the power to expel a Member under article I, section 5, clause 2 of the U.S. Constitution. It provides that each House may "with the concurrence of two thirds, expel a Member."[26]

Expulsion is the most severe sanction that can be invoked against a Member. The Constitution provides no explicit grounds for expulsion, but the courts have set forth certain guidelines that may be applied in such cases. Thus, the U.S. Supreme Court has remarked: "The right to expel extends to all cases where the offense is such as [to be] inconsistent with the trust and duty of a Member."[27]

One judge of the United States Court of Appeals for the District of Columbia said in describing the elements of an analogous proceeding: "That action was rooted in the judgment of the House as to what was necessary or appropriate for it to do to assure the integrity of its legislative performance and its institutional acceptability to the people at large as a serious and responsible instrument of government."[28]

23. 99 CONG. REC. 10360, remarks of Mr. Karl M. LeCompte, of Iowa.

24. 99 CONG. REC. 10360, H. Res. 339.

25. Mr. Hoffman had raised a question of personal privilege and had addressed the matter prior to House consideration of H. Res. 339. See 99 CONG. REC. 10351–59, July 29, 1953.

26. See *House Rules and Manual* §§ 62 et seq. (1973). See also *Powell* v *McCormack,* 395 U.S. 486, 507, footnote 27 (1969).

27. *In re Chapman,* 166 U.S. 661, 669 (1897).

28. *Powell* v *McCormack,* 395 F2d 577, concurring opinion of Judge McGovan, p. 607 (C.A., D.C. 1968), reversed on other grounds, 395 U.S. 486.

Expulsion is described by Cushing as ". . . in its very nature discretionary, that is, it is impossible to specify beforehand all the causes for which a member ought to be expelled and, therefore, in the exercise of this power, in each particular case, a legislative body should be governed by the strictest justice; for if the violence of party should be let loose upon an obnoxious member, and a representative of the people discharged of the trust conferred on him by his constituent, without good cause, a power of control would thus be assumed by the representative body over the constituent, wholly inconsistent with the freedom of election." (29)

Expulsion is generally administered only against Members, i.e., those who have been sworn in.(30) However, in one case, at the beginning of the Civil War, a Member-elect to the House who did not appear and who had taken up arms against the United States, was "expelled," no one having raised the point that he had not been sworn in.(1)

"[A Member might be expelled] for that behavior which renders him unfit to do his duties as a Member of the House or that present conditions of mind or body which makes it unsafe or improper for the House to have him in it." 2 Hinds' Precedents § 1286.

In the 63d Congress (1913) the House Committee on Elections No. 1 stated in its report (H. REPT. NO. 185; 6 Cannon's Precedents § 78) that the power of the House to expel one of its Members is unlimited—a matter purely of discretion to be exercised by a two-thirds vote from which there is no appeal. However, in 1900, the majority report of the House special committee in the exclusion case of Brigham H. Roberts, Member-elect from Utah, 56th Cong., H. REPT. NO. 85, Pt. II, 1 Hinds' Precedents § 476 stated: "1. Neither House of Congress has ever expelled a Member for acts unrelated to him as a Member or inconsistent with his public trust and duty as such. 2. Both Houses have many times refused to expel where the guilt of the Member was apparent; where the refusal to expel was put upon the ground that the House or Senate, as the case might be, had no right to expel for an act unrelated to the Member as such, or because it was committed prior to his election."

29. Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America,* 2d ed., 1866, § 625.

30. See *Powell* v *McCormack,* 395 U.S. 486, 507 (1969) in which the court said: "Powell was 'excluded' from the 90th Congress, i.e., he was not administered the oath of office and was prevented from taking his seat. If he had been allowed to take the oath and subsequently had been required to surrender his seat, the House's action would have constituted an 'expulsion'."

1. 2 Hinds' Precedents § 1262. For a discussion of the power to expel a

The House has expelled only two Members and one Member-elect. All instances occurred during the Civil War and in each the person was in rebellion against the United States or had taken up arms against it.[2]

The constitutional power of expulsion has been applied to the conduct of Members during their terms of office and not to action taken by them prior to their election.[3]

Where a Member of Congress has been convicted of a crime, neither the House nor the Senate will normally act to consider expulsion until the judicial processes have been exhausted.[4]

Expulsion proceedings are initiated by the introduction of a resolution containing explicit charges[5] and which may provide for a committee to investigate and report on the matter.[6] While referral has been to the Committee on the Judiciary or to a select committee,[7] such a resolution now would be referred to the Committee on Standards of Official Conduct [see Rule XI clause 19, *House Rules and Manual* (1973)].

In proceedings for expulsion, the House, having declined to permit a trial at the bar, may allow a Member to be heard on his own defense by unanimous consent, or through time yielded by the Member calling up the resolution, and to present a written defense, but not to appoint another Member to speak on his behalf.[8]

A resolution of expulsion should be limited in its application to one

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Member-elect, see 1 Hinds' Precedents § 476.

2. 2 Hinds' Precedents §§ 1261, 1262.

The Senate has expelled 15 Senators, most of them for activities related to the Civil War.

Senator William Blount (Tenn.) was expelled in 1797 on charges of conspiracy. 2 Hinds' Precedents § 1263. For the Civil War cases, see 2 Hinds' Precedents §§ 1266–1270.

In 1877, the Senate annulled its action in expelling a Senator during the Civil War. 2 Hinds' Precedents § 1243.

3. 6 Cannon's Precedents §§ 56, 238; 2 Hinds' Precedents §§ 1284–1286, 1288; 1 Hinds' Precedents § 481. See also *Powell* v *McCormack*, 395 U.S. 486, 508, 509 (1969).

4. *Burton* v *U.S.*, 202 U.S. 344 (1906); 2 Hinds' Precedents § 1282; 6 Cannon's Precedents § 258.

5. 2 Hinds' Precedents §§ 1261, 1262.

6. 2 Hinds' Precedents §§ 1649, 1650; 3 Hinds' Precedents § 2653; 6 Cannon's Precedents § 400.

7. 2 Hinds' Precedents §§ 1621, 1656; 3 Hinds' Precedents §§ 1831, 1844.

In one recent Congress, however, a resolution to expel was referred to the Committee on the Judiciary, 115 CONG. REC. 41011, 91st Cong. 1st Sess., Dec. 23, 1969 [H. Res. 772].

8. 2 Hinds' Precedents §§ 1273, 1275 1286.

Member only, though several may be involved. Separate resolutions (and separate reports) should be prepared on each Member.[9]

The expulsion of a Member gives rise to a question of privilege.[10] Floor debate is under the hour rule.[11]

Where a Member resigns while expulsion proceedings against him are being considered, the committee may be discharged from further action thereon, the proceedings discontinued,[12] or the House may adopt a resolution censuring the resigned Member.[13]

The penalty for conviction under certain statutes applicable to Members sometimes includes a prohibition against holding any office of honor, trust, or profit under the United States.[14] Conviction does not automatically result in loss of office for a Member, however; he must be expelled by the House or Senate, as the case may be.[15]

In re Hinshaw

§ 13.1 A resolution (H. Res. 1392) calling for the expulsion of a Member was reported adversely by the Committee on Standards of Official Conduct where the Member had been convicted of bribery under California law for acts occurring while he served as a county tax assessor and before his election to the House, and where his appeal from the conviction was still pending; the committee found that although the conviction related to Mr. Hinshaw's moral turpitude, it did not relate to his official

9. 2 Hinds' Precedents § 1275.

10. 3 Hinds' Precedents § 2648; 6 Cannon's Precedents § 236.

11. 8 Cannon's Precedents § 2448.

12. 6 Cannon's Precedents § 238; 2 Hinds' Precedents § 1275.

13. 2 Hinds' Precedents §§ 1239, 1273.

14. See, for example, the statutes listed below:

18 USC § 201—Soliciting or receiving a bribe or anything of value for or because of any official act performed or to be performed.

18 USC § 203—Soliciting or receiving any outside compensation for particular services.

18 USC § 204—Prohibition against practice in Court of Claims by Member.

18 USC § 2381—Treason.

18 USC § 2385—Advocating overthrow of government.

18 USC § 2387—Activities adversely affecting armed forces.

15. U.S. Const. art. I, § 5, clause 2; see *Burton* v *U.S.*, 202 U.S. 344 (1906). It is questionable under the doctrine of *Powell* v *McCormack*, 395 U.S. 486 (1969), that such conviction could prevent a person from running for the House or Senate, subsequently.

conduct while a Member of Congress.

On Sept. 7, 1976, the Committee on Standards of Official Conduct submitted its report (H. Rept. 94–1477), *In the Matter of Representative Andrew J. Hinshaw*. The report was referred to the House Calendar and ordered printed. Excerpts from the report are set out below:

The Committee on Standards of Official Conduct, to which was referred the resolution (H. Res. 1392), resolving that Representative Andrew J. Hinshaw be expelled from the House of Representatives, having considered the same, reports adversely, thereupon, and recommends that the resolution be not agreed to.

PART I.—SUMMARY OF REPORT

House Resolution 1392 seeks the expulsion of Representative Andrew J. Hinshaw of California from the U.S. House of Representatives pursuant to article I, section 5, clause 2 of the Constitution. Representative Hinshaw has been convicted of bribery under California law for acts occurring while he served as assessor of Orange County, such acts having been committed prior to his election to Congress. An appeal of the conviction is currently pending before the Fourth Appellate District, Court of Appeal, State of California.

Since his conviction, Representative Hinshaw has complied with House Rule XLIII, paragraph 10 and has not participated in voting either in committee or on the floor of the House.

* * * * *

The committee believes that the House of Representatives, when considering action against a Member who is currently involved in an active, nondilatory, criminal proceeding against him, such as the Hinshaw case, ordinarily should follow a policy of taking no legislative branch action until the conviction is finally resolved. The committee wishes to express clearly, however, that in this case its conclusion is based entirely on the instant set of facts and in no way implies that different circumstances may not call for a different conclusion.

Having considered the facts of this particular case and recognizing that Representative Hinshaw has been convicted under a State law that, while reflecting on his moral turpitude, does not relate to his official conduct while a Member of Congress, it is the recommendation of the Committee on Standards of Official Conduct that House Resolution 1392 be not agreed to.

* * * * *

PART III.—COMMITTEE ACTION

On September 1, 1976, the committee met in executive session to consider House Resolution 1392. This report was adopted on that date by a vote of 10 to 2, a quorum being present.

PART IV.—STATEMENT OF FACTS

Andrew J. Hinshaw is a Member of the House of Representatives representing the 40th District of California. He was first elected to Congress on November 7, 1972, and was sworn in as a Member of the 93d Congress in January 1973. He was reelected in No-

vember 1974 to the 94th Congress and assumed the seat he now occupies on January 14, 1975. Prior to his first election to Congress, Representative Hinshaw served for 8 years as the elected assessor of Orange County, Calif.

Public accusations that Representative Hinshaw had taken bribes while assessor of Orange County first appeared in local newspapers in May 1974. However, it was not until May 6, 1975, that a California State grand jury returned an 11-count indictment against Representative Hinshaw charging him with various felonies, all relating to his official conduct as assessor for Orange County. Eight of the eleven counts were dismissed upon motion prior to trial. A jury trial was had on Representative Hinshaw's "not guilty" plea to the three remaining counts.

On January 26, 1976, a jury found Representative Hinshaw guilty of two of the remaining counts and not guilty of the third. The jury found as true that on May 18, 1972, Representative Hinshaw, then the duly elected assessor for Orange County, Calif., and a candidate for Congress in a primary election, solicited and received a campaign contribution of $1,000 for the purpose of influencing his official conduct as assessor of Orange County; and that on December 13, 1972, after Representative Hinshaw's election to Congress but prior to being seated as a Member thereof, he solicited and received certain stereo equipment as consideration for official action theretofore taken by him as assessor of Orange County. The two acts proved constitute the crime of bribery under California law.

On February 25, 1976, Representative Hinshaw was sentenced to the term provided by law on each count, the terms to run concurrently. California law provides that the crime of bribery is punishable by imprisonment in the State prison for a term of 1 to 14 years and, if an elected official be convicted of bribery, the additional penalty of forfeiture of office and permanent disqualification from holding other elective office in California may be imposed. The trial judge refused to impose the forfeiture and disqualification penalty in Representative Hinshaw's case, holding that it applied only to State officials.

Representative Hinshaw has appealed his conviction, and the appeal is now pending before the Fourth Appellate District, Court of Appeal of California. The time for filing of appellant's brief has been extended until September 12, 1976. No date has yet been set for oral argument. After his conviction, Representative Hinshaw filed for reelection to Congress. In the primary election held on June 8, 1976, Representative Hinshaw was defeated.

PART V.—ANALYSIS OF PRECEDENTS AND POLICIES

The right to expel may be invoked whenever in the judgment of the body a Member's conduct is inconsistent with the public trust and duty of a Member. But, the broad power of the House to expel a Member has been invoked only three times in the history of Congress, all three cases involving treason.

Historically, when a criminal proceeding is begun against a Member, it has been the custom of the House to

defer action until the judicial proceeding is final. The committee recognized the soundness of this course of action when it reported House Resolution 46 (94th Cong. 1st Sess., H. Rept. No. 94–76) adopting rule XLIII, paragraph 10.

In its report, the committee stated it would act "where an allegation is that one has abused his direct representational or legislative position—or his 'official conduct' has been questioned"—but where the allegation involves a violation of statutory law, and the charges are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course.

A "crime," as defined by statutory law, can cover a broad spectrum of behavior, for which the sanction may vary. Due to the divergence between criminal codes, and the judgmental classification of crimes into misdemeanors and felonies, no clear-cut rule can be stated that conviction for a particular crime is a breach of "official conduct." Therefore, rather than specify certain crimes as rendering a Member unfit to serve in the House, the committee believes it necessary to consider each case on facts alone.

Due process demands that an accused be afforded recognized safeguards which influence the judicial proceedings from its inception through final appeal. Although the presumption of innocence is lost upon conviction, the House could find itself in an extremely untenable position of having punished a Member for an act which legally did not occur if the conviction is reversed or remanded upon appeal.

Such is the case of Representative Hinshaw. The charges against him stem from acts taken while county assessor, and allege bribery as defined by California statute. The committee, while not taking a position on the merits of this case, concludes that no action should be taken at this time. We cannot recommend that the House risk placing itself in a constitutional dilemma for which there is no apparent solution.

We further realize that resolution of the appeal may extend beyond the adjournment sine die of the 94th Congress. In fact, no future action may be required since Representative Hinshaw's electorate chose not to renominate him and he has stated, in writing, that he will resign if the appeal goes against him.

This committee cannot be indifferent to the presence of a convicted person in the House of Representatives; it will not be so. The course of action we recommend will uphold the integrity of the House while affording respect to the rights of the Member accused. We recognize that under another set of circumstances other courses of action may be in order; but, in the matter of Representative Andrew Hinshaw, we believe we have met the challenge and our recommendation is well founded.

When House Resolution 1392 was called up as privileged on Oct. 1, 1976, by its sponsor, Mr. Charles E. Wiggins, of California, it was laid on the table without debate.

§ 14. Exclusion

The power of the House to exclude a Member rests upon Article