

priations for terminal-leave pay, and for automobiles for amputees—and I see no reason why this resolution should be given preference.

THE SPEAKER: It would not be given preference if it were an ordinary resolution, but this is a resolution of high privilege.

***Calendar Wednesday***

**§ 18.6 A report of a committee citing a witness for contempt was considered on Calendar Wednesday.**

On June 26, 1946,<sup>(3)</sup> Calendar Wednesday, the House considered a privileged report from the Committee on Un-American Activities, House Report No. 2354, citing Corliss G. Lamont, chairman of the National Council of American-Soviet Friendship, Inc., for contempt for his refusal to produce subpoenaed materials.<sup>(4)</sup>

**§ 19. Matters Decided by House**

***Content of Report***

**§ 19.1 The House, not the Chair, determines whether a report citing an individual**

- 3. See 92 CONG. REC. 7589–91, 79th Cong. 2d Sess., for the text of the report.
- 4. This report is discussed at §19.1, *infra*.

**for refusal to produce subpoenaed materials must contain the full testimony or only selected portions thereof.**

On June 26, 1946,<sup>(5)</sup> Speaker Sam Rayburn, of Texas, responded to a point of order regarding the sufficiency of a hearing transcript in a committee report citing a I witness for contempt.

PROCEEDINGS AGAINST CORLISS G. LAMONT

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report and ask that it be read.

The Clerk read as follows:

The Committee on Un-American Activities, as created and authorized by the House of Representatives by House Resolution 5 of the Seventy-ninth Congress, caused to be issued a subpoena to Corliss G. Lamont, chairman of the National Council of American-Soviet Friendship, Inc., with offices at 114 East Thirty-second Street, New York City, N.Y. The said subpoena required the said person to produce books, papers, and records of the organization for the inspection of your committee. The subpoena is set forth as follows: . . .

In response to the said subpoena the said Corliss Lamont appeared before your committee on February 6, 1946, and your committee then

- 5. 92 CONG. REC. 7589–91, 79th Cong. 2d Sess. See §18.6, *supra*, for a discussion of this instance as it relates to consideration on Calendar Wednesday.

and there demanded the production of the said books, papers, and records, and the said Lamont refused to produce as required by the said subpoena. The said Lamont was duly sworn by the chairman and gave his testimony under oath. The material parts of his testimony follow: . . .

MR. [VITO] MARCANTONTO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, I make the point of order against the report on the ground that it does not contain all of the transcript of what transpired before the committee with respect to this witness. On page 2 of the report, at the end of the first paragraph, the committee concedes that this is not a full transcript. It states: "The material parts of his testimony follow." In other words, the House has before it only that portion of the testimony which the committee conceives to be material. This deprives the House of having the full proceedings before it; consequently, the House will be asked to vote on whether or not this witness is to be cited for contempt and whether or not the House is to recommend prosecution of this witness, without having the full story before it, without having all of the testimony before it. All that is given is part of the testimony which the committee describes as material.

I respectfully submit in support of my point of order, Mr. Speaker, that what is material and what is not material should be determined by the House, because the House has to pass on this question and the majority of the Members of this House must vote in the affirmative in order to recommend these contempt proceedings.

To do so it must have the entire transcript before it. Consequently I submit that the report is defective and that the report should be referred back to the committee by the Speaker, directing it to produce the full transcript of what transpired so that the House may have the entire proceedings before it before the House Members cast their votes.

THE SPEAKER: The Chair thinks that the gentleman from New York [Mr. Marcantonio] has stated the point exactly, and that is that this is not a matter for the Chair to pass upon but is a matter for the House to pass upon. The Chair overrules the point of order.

### *Authority of Committee*

#### **§ 19.2 Whether a committee exceeded its authority in making a report citing certain recalcitrant witnesses in contempt was held to be a matter for the House to decide, and not a matter to be decided on the basis of a point of order raised against submission of the report.**

On May 28, 1936,<sup>(6)</sup> Speaker Joseph W. Byrns, of Tennessee, responded to a point of order regarding authority to report contemptuous conduct.

#### THE TOWNSEND OLD-AGE PENSION PLAN

MR. [C. JASPER] BELL [of Missouri]: Mr. Speaker, by direction of the Select

6. 80 CONG. REC. 8219-22, 74th Cong. 2d Sess.

Committee Investigating Old Age Pensions, I present a privileged report (Reps. No. 2857) and send it to the Clerk's desk, and ask that the Clerk read it. . . .<sup>(7)</sup>

MR. [JOSEPH P.] MONAGHAN [of Montana]: . . . Mr. Speaker, I wish to make a point of order.

THE SPEAKER: The gentleman will state his point of order.

MR. MONAGHAN: Mr. Speaker, my point of order goes to the fact that this report is completely out of order.

THE SPEAKER: The gentleman will state his point of order. . . .

MR. MONAGHAN: The point of order I make is that the committee has exceeded its function in the process of the inquiry that the House authorized it to proceed under.

THE SPEAKER: Let the Chair make this statement. That is not under consideration now. This is simply a report of the select committee, and the question as to whether or not the committee has exceeded its authority cannot arise at this time.

MR. MONAGHAN: But the question that the committee has exceeded its authority is involved in the question of whether or not it shall be permitted to make a report of this sort.

THE SPEAKER: The committee is within its right in submitting its re-

7. This report citing Dr. Francis E. Townsend, president and founder, and Clinton Wunder and John B. Kiefer, members of the national board of directors of the Old Age Revolving Pensions, Ltd., for contempt for failure to provide subpoenaed testimony and documents to the select committee is omitted.

port; it is its duty to report what it has done in order that the House may take such action as it determines to take. Therefore, the Chair overrules that point of order.

An appeal from the decision of the Chair was laid on the table.

***Need to Read Testimony***

**§ 19.3 The House, not the Chair, determines whether a report summarizing the testimony of witnesses and minutes of proceedings of investigative hearings is sufficient on which to base a contempt citation.**

On Apr. 16, 1946,<sup>(8)</sup> Speaker Sam Rayburn, of Texas, responded to a point of order regarding reading of investigative hearing testimony before the House.

JOINT ANTI-FASCIST REFUGEE  
COMMITTEE

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, by direction of the Committee on Un-American Activities, I present a privileged report and ask that it be read.

The Clerk read as follows:

PROCEEDING AGAINST THE JOINT  
ANTI-FASCIST REFUGEE COMMITTEE

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

8. 92 CONG. REC. 3761, 3762, 79th Cong. 2d Sess.

The Committee on Un-American Activities, created and authorized by the House of Representatives by House Resolution 5 of the Seventy-ninth Congress, caused to be issued subpoenas to the Joint Anti-Fascist Refugee Committee, an unincorporated organization, with offices at 192 Lexington Avenue, New York, N. Y., service being made upon Helen R. Bryan, executive secretary, and to the members of the executive board of the said organization whose names are listed below. The said subpoena required the said persons to produce books, papers, and records for inspection by your committee. The form of the subpoenas follows:

Your committee has caused to be printed the testimony of each and every one of the persons named herein given on April 4, 1946, and the said testimony will be filed with the Clerk of the House as an appendix to this report. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, prefacing my point of order, I would like to make a parliamentary inquiry. Must not a resolution of this nature contain the testimony, or at least a pertinent part of the testimony? It is related in the statement that the testimony is appended, but that testimony has not been read to the House, and for that reason I make the point of order that the resolution is defective.

THE SPEAKER: No resolution has been offered as yet. This is simply the report of the committee.

MR. MARCANTONIO: Very well; in the report we have before us it merely says that the testimony is appended. I submit the House should have that testi-

mony before it. As I understand it, the Members of the House have received, what I hold in my hand, the hearings of April 4. That was received only yesterday. It contains over 100 pages of testimony. This case is very important, and I maintain that the testimony or the relevant portion of the testimony should be read to the House.

THE SPEAKER: The testimony has already been printed, and reference to it is made in this report. The other matter that the gentleman refers to is a question for the House to pass upon, and not the Speaker.

MR. MARCANTONIO: Mr. Speaker, on that point, this is most unusual. Heretofore every report that we have had upon which a resolution for contempt was based, we have read to the House the minutes of the proceedings upon which the contempt citation is requested.

MR. [JOHN E.] RANKIN [of Mississippi]: Mr. Speaker, that never has been done.

THE SPEAKER: That also is within the control of the House. The gentleman from Georgia is recognized.

### *Citation of Witnesses Absent Subpoena*

#### **§ 19.4 The House, not the Chair, determines whether persons who have not been subpoenaed may be cited for refusal to produce organizational books, records, and papers.**

On Mar. 28, 1946,<sup>(9)</sup> Speaker Sam Rayburn, of Texas, re-

<sup>9</sup> 92 CONG. REC. 2744, 2745, 79th Cong. 2d Sess.

sponded to a point of order regarding authority to entertain a resolution citing for contempt persons who had not been subpoenaed.<sup>(10)</sup>

COMMITTEE ON UN-AMERICAN  
ACTIVITIES

THE SPEAKER: The Clerk will read the report of the Committee on Un-American Activities.

The Clerk read as follows:

PROCEEDING AGAINST DR. EDWARD  
K. BARSKY AND OTHERS

Mr. Wood, 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 by House Resolution 5 of the Seventy-ninth Congress, caused to be issued a subpoena to Dr. Edward K. Barsky, chairman of the Joint Anti-Fascist Refugee Committee, an unincorporated organization with offices at 192 Lexington Avenue, New York, N.Y. The said subpoena required the said person to produce books, papers, and records of the organization for the inspection of your committee; the subpoena is set forth as follows: . . .

In his appearance before the committee, Dr. Barsky stated that he was unable to produce the subpoenaed materials because that authority had not been granted by the members of the executive

**10.** See summary and analysis in §16, supra, for a discussion which indicates that a subpoena is not a necessary prerequisite for a contempt conviction.

board. At the request of a committee member he supplied a list of names and addresses of board members. This list appeared in the report and resolution.

MR. [JOHN S.] WOOD [of Georgia]: Mr. Speaker, I offer a privileged resolution (H. Res. 573) 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 House Committee on un-American Activities as to the willful and deliberate refusal of the following persons to produce before the said committee for its inspection the books, papers, and records of an unincorporated organization known as the Joint Anti-Fascist Refugee Committee, with offices at 192 Lexington Avenue, New York, N.Y., together with all the facts relating thereto, under seal of the House of Representatives, to the United States attorney for the District of Columbia to the end that the said persons named below may be proceeded against in the manner and form provided by law:

Dr. Edward K. Barsky, 54 East Sixty-first Street, New York City.

Dr. Jacob Auslander, 286 West Eighty-sixth Street, New York City.

Prof. Lyman R. Bradley, New York University, New York City.

Mrs. Marjorie Chodorov, 815 Park Avenue, New York City. . . .

MR. [VITO] MARCANTONIO [of New York]: Mr. Speaker, a point of order.

THE SPEAKER: The gentleman will state it.

MR. MARCANTONIO: Mr. Speaker, I make a point of order against the resolution on the ground that it seeks to have cited by this House individuals

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

The SPEAKER: The Chair is ready to rule.

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

## §20. Particular Conduct as Contumacious

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

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

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

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

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