

SENSE OF THE HOUSE OF REPRESENTATIVES WITH
RESPECT TO ACTIONS BY MEMBERS CONVICTED OF
CERTAIN CRIMES

MAY 3, 1972.—Referred to the House Calendar and ordered to be printed

Mr. PRICE of Illinois, from the Committee on Standards of Official
Conduct, submitted the following

REPORT

together with

DISSENTING VIEWS

[To accompany H. Res. 933]

The Committee on Standards of Official Conduct, to whom was referred the resolution (H. Res. 933) expressing the sense of the House of Representatives with respect to actions which should be taken by Members of the House upon being convicted of certain crimes, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the resolution do pass.

PURPOSE OF THE RESOLUTION

The purpose of the proposed resolution is to express the sense of the House with respect to actions which it feels Members, who are convicted of certain serious crimes, should take during the period of any appeals process when there is no presumption of innocence.

The committee recommends that during such a period such a Member should refrain from committee activities and from voting on the floor of the House.

The proposed resolution has two positive objectives: (1) to state a specific policy so that all concerned may be on notice, and (2) to assert publicly a concern for the reputations of the individual Members and of the House itself.

BACKGROUND

The Committee on Standards of Official Conduct was established by House Resolution 418, 90th Congress, first session, on April 13, 1967,

and therein was instructed to report to the House its recommendations for changes in laws, rules, and regulations that would effectively establish and maintain standards of official conduct for Members, officers, and employees of the House of Representatives. In response to this assignment, a year later, the committee reported its recommendations, which were adopted by the House by a vote of 406 to 1.

During that organizational year, the committee spent countless hours discussing what the committee's powers should be and also what limitations should be placed on the committee's powers.

Clearly, the assignment to establish a potential disciplinary instrument that might preempt, or share, or be paramount to the already existing disciplines of statutory law and the ballot box was indeed sensitive. The question was not only what actions were appropriate for the committee to recommend but also when those actions should be taken.

To the question of what actions the committee might take, the House gave the committee broad powers of investigation but limited its disciplinary powers to recommendations to the full membership.

To the question of when to act, the committee adopted a policy which essentially is: where an allegation is that one has abused his direct representational or legislative position—or his "official conduct"—the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters—rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.

The implementation of this policy has shown, through experience, only one need for revision. For the House to withhold any action whatever until ultimate disposition of a judicial proceeding, could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period greater than the 2-year term of the Member.

Since Members of Congress are not subject to recall and in the absence of any other means of dealing with such cases short of reprimand, or censure, or expulsion (which would be totally inappropriate until final judicial resolution of the case), public opinion could well interpret inaction as indifference on the part of the House.

The committee recognizes a very distinguishable link in the chain of due process—that is the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon conviction by judge or jury. It is to this condition and only to this condition that the proposed resolution reaches.

The committee reasons that the preservation of public confidence in the legislative process demands that notice be taken of situations of this type.

COMMENT ON TERMS USED IN THE RESOLUTION

Sense of the House

A "sense-of-the-House" resolution amounts to a policy declaration by the House for the Congress in which it is passed. Like any other internal House action it is subject to repeal or change at any time. It is not incorporated into the permanent Rules of the House nor does it have any specific weight of law. However, to act contrary to it would violate an expressed position of the body and would not affect any other authority of the House with respect to the behavior and conduct of its Members.

Convicted

This condition obtains upon certification by the court of a finding of guilty by a judge or jury. Though sentencing may occur somewhat later it is at the point of conviction that the defendant loses his presumption of innocence.

Court of record

The committee feels that the purposes of the resolution would not be served if the convictions that would bring the resolution into effect were limited to any particular jurisdiction. Thus any court of record which is empowered to hear cases on charges carrying penalties of 2 or more years' imprisonment, would be of sufficient stature and jurisdiction for the House to recognize as appropriate.

Sentence of 2 or more years

Though the committee appreciates that the particular length of imprisonment is somewhat arbitrary, a possible sentence of two years or more is equal to or longer than that which constitutes a felony in most jurisdictions. However, whether the crime is a felony or not, the committee reasons that if the offense is regarded by the legislative body that enacted the law as serious enough to warrant as much as two years' imprisonment, it is likewise serious enough to warrant recognition by the House for the purposes of this resolution.

Refrain from participation in committee business

The committee in making this recommendation regards this term as encompassing active participation such as functioning as chairman of a committee or of a subcommittee, or voting in the full committee or a subcommittee. The committee does not feel this recommendation covers attendance at sessions or communication with constituents regarding matters before committees. The companion recommendation regarding voting on the floor of the House is self-explanatory.

Proceedings resulting in reinstatement of presumption of innocence

Any effect of this resolution would be reversed upon such reinstatement. As stated earlier the resolution is purposely drawn for automatic restoration of full privileges to a Member who has responded to it, upon any of numerous actions which result in the reinstatement. Without such a provision and assuming the case was subsequently remanded or reversed, the House could find itself in the extremely untenable position of having punished a Member, at least to some degree,

for an act which legally did not occur. With this provision the resolution would fully remove any implication of restraint on the Member concerned.

Reelected to the House after the date of such conviction

The same restoration that would follow the reinstatement of the presumption of innocence is provided for under the above captioned contingency. Precedents, without known exception, hold that the House will not act in any way against a Member for any actions of which his electorate had full knowledge at the time of his election. The committee feels that these precedents are proper and should in no way be altered.

Not affect any other authority of the House

As stated in the comment on "sense-of-the-House," this resolution has no specific enforcement capability. However, any Member subject to its provisions at the time of the resolution's adoption, or thereafter, who violates the clear principles it expresses, will do so at the risk of subjecting himself to the introduction of a privileged resolution relating to his conduct, in accordance with other provisions of House rules.

CONCLUSION

This committee is mindful that the recommendations it makes herein are largely unique among the traditional customs and practices of the House. It fully appreciates that any suggestion of restraint against the maximum freedom of Members to represent their constituencies would contain some element of hazard to the basic legislative process, but against this risk it felt that a policy of total inaction, which could be interpreted as indifference, more than balances the scale in favor of the proposed resolution. The committee recommends its adoption by the House.

COMMITTEE ACTION

Pursuant to rule XI, clause 27(b), the committee announces that House Resolution 933 was ordered to be reported by a vote of 10 to 2.

DISSENTING VIEWS OF CONGRESSMAN OLIN E. TEAGUE
AND CONGRESSMAN WATKINS M. ABBITT

The power and influence of the office of a Congressman stems from two sources: from the people of his district solely as the result of their choosing him to represent them and from the body itself and its institutions. The power to vote and the concomitant power to represent the district by voting arises from the former source and from that alone.

But one may earn, or may have bestowed upon him, additional power and influence. This derives from the body itself and its institutions. Thus, he may be a member of a committee or several committees, the chairman of a committee, or of a subcommittee, or may hold office in his party's caucus. Since this additional "clout" is bestowed upon him by the body itself or its institutions, it may be taken away by the bestowing authority.

But the House has no authority to tamper with those attributes of power and influence of a Congressman which flow directly from his election and which he enjoys solely by virtue of his election. No one with the least familiarity with our institutions would for a moment argue that we could deprive a Member of our body of the right to vote—at least without following the process sanctioned by the Constitution to expel a Member of a two-thirds vote.

But it will be argued that this recommended resolution only admonishes a Member who has been found guilty by a jury and convicted by a court not to exercise the right to vote pending a determination on appeal upsetting the conviction. Such an argument overlooks the basic reasoning behind the proposition that power and influence flowing from the electorate may not be taken away—and, I think, not tampered with—by the House and its institutions. The right involved here is more than the right of a Congressman. It is the right of the people of his district to enjoy equal protection of the law. Such right rests on the clear implications of Article I of the Constitution. The seminal concept of republican government is that representatives of divisions of people are to balance and reconcile viewpoints and to come to conclusions based on votes in which they each have a right to a vote counted equally with the votes of all others.

Is it conceivable that the House could constitutionally direct that one's voting potential be increased, say, by 1 percent for each year of one's service? If it is not, it is also not admissible to say that the body can dilute a Member's vote by making it count less. Is it not even more inadmissible to place pressures upon him not to vote at all? That he may not succumb to such pressures is irrelevant. The House has no right to apply them. And it cannot be said that such pressures, when applied, are impotent. They are applied by an institution which has the undeniable constitutional right to expel a Member upon a two-thirds vote. Expulsion would result in the loss of the Member's salary and good name.

Furthermore, the very fact that the Constitution gives the House a way to cause one of its Members to lose his vote implies that no other way is available. Otherwise the House by simple majority could impose *de facto* expulsion by simply stripping the Member of his perquisites of power and thus leave, as the representative of the district, an impotent figurehead. The Constitution clearly did not intend this. Such an intent would permit such an emasculated representative to play the dog in the manger, blocking other representation while drawing his pay. He dare not violate the House admonition lest he lose such preferred position. Meanwhile, the people of the district are denied representation by the representative that they would select after his expulsion. (They have the right, of course, to in effect reverse the House's expulsion order by reelecting the expelled Member.) This has happened.

By criticizing the committee's recommendation, and by dissenting from it, I do not mean to be understood as failing to recognize the dilemma of my colleagues when they were faced with the problem involved here. The committee found itself called upon to take action against Representative John Dowdy based upon the verdict of a jury

and the judgment of the court, which judgment has not become final because of the pendency of an appeal.

The committee could not judiciously recommend the final and irrevocable act of expulsion solely upon the basis of Court action which had not become final. If it had done so, there would remain the possibility of an ultimate reversal and dismissal of the criminal charge, in which event Representative Dowdy would have been expelled by the House upon the basis of a decision resting upon a faulty process. He would not then have been given the benefit of the presumption of innocence. Therefore, the committee decided upon this tentative action. Representative Dowdy was to be held in a state of limbo until such time as his appeal was acted upon.

But merely to state the dilemma illustrates the basic flaw in the committee's resolution of it. The House, as we have seen, is limited by the Constitution in any matter which involves a Member's right to vote. If expulsion upon the basis of incomplete judicial determination of guilt is improper, and if expulsion is the only way the Member's vote may be affected, then the action here is wrong.

Indeed, even were it not for such constitutional limitation, the action taken here would still be improvident and indefensible on the basis of all Anglo-American concepts of due process.

OLIN TEAGUE.
W. M. ABBITT.

