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MISBEHAVIOR IN THE PRESENCE OF CONGRESS

GOVERNMENT

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HEARINGS

BEFORE

SUBCOMMITTEE NO. 4

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

H.R. 7213

TO AMEND SECTIONS 102 AND 104 OF THE REVISED STATUTES
OF THE UNITED STATES TO PROVIDE THAT MISBEHAVIOR
IN THE PRESENCE OF EITHER HOUSE OF CONGRESS, OR ANY
COMMITTEE OR SUBCOMMITTEE THEREOF, SHALL CONSTITU-
TUTE A MISDEMEANOR

MARCH 25, 1970

Serial No. 91-15



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WASHINGTON : 1970



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MISBEHAVIOR IN THE PRESENCE OF CONGRESS

WEDNESDAY, MARCH 25, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 4 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2237, Rayburn House Office Building, Hon. Byron G. Rogers of Colorado (chairman of the subcommittee) presiding.

Present: Representatives Rogers, Waldie, Wiggins, and Coughlin.

Also present: Jerome M. Zeifman, counsel; and Paul S. Fenton, associate counsel.

Mr. ROGERS. The committee will come to order.

Today we are considering H.R. 7213, relating to misbehavior in the presence of congressional committees. This measure was introduced by Mr. Ichord, Mr. Pepper, Mr. Preyer of North Carolina, and Mr. Ashbrook.

At this time we shall put H.R. 7213 in the record, and we also have a communication from the Deputy Attorney General which we will also make a part of the record.

(The text of H.R. 7213 and letter from the Deputy Attorney General follow:)

[H.R. 7213 91st Cong. first session]

A BILL To amend sections 102 and 104 of the Revised Statutes of the United States to provide that misbehavior in the presence of either House of Congress, or any committee or subcommittee thereof, shall constitute a misdemeanor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 102 of the Revised Statutes of the United States (2 U.S.C. 192) is amended by inserting after "refuse to answer any question pertinent to the question under inquiry," the following: "and every person who misbehaves in the presence of either House of Congress, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, so as to obstruct such House, committee, or subcommittee in the performance of its duties,".

(b) Section 104 of the Revised Statutes of the United States (2 U.S.C. 194) is amended by striking out "and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure" and inserting in lieu thereof the following: "and whenever any person misbehaves in the presence of either House of Congress, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, so as to obstruct such House, committee, or subcommittee in the performance of its duties, and the fact of such failure or failures or such misbehavior is reported to either House while Congress is in session, or, when Congress is not in session, a statement of fact concerning such failure or failures or such misbehavior".

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 23, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 7213, a bill to amend sections 102 and 104 of the Revised Statutes of the United States (2 U.S.C. 192, 194) to provide that misbehavior in the presence of either House of Congress, or any committee or subcommittee thereof, shall constitute a misdemeanor.

Section 102 now provides that refusal of a witness to testify or produce papers in connection with congressional proceedings is a misdemeanor punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment for not less than one month nor more than twelve months. As amended by this legislation it would include in addition misbehavior in the presence of either house or any committee or subcommittee thereof.

A related statute is the Act of July 31, 1946, 60 Stat. 718, as amended (40 U.S.C. 193f), which proscribes disorderly or disruptive conduct upon the United States Capitol Grounds or within any of the Capitol Buildings with the intent to disrupt or disturb the orderly conduct of congressional proceedings. This misconduct is punishable by a fine not exceeding \$500, or imprisonment not exceeding six months, or both. The effect of the bill, therefore, is to afford congressional proceedings, wherever conducted, substantially the same protection now afforded to such proceedings conducted on the Capitol Grounds.

Another related statute is 18 U.S.C. 401(1), which empowers a court to punish as contempt misbehavior in its presence or so near thereto as to obstruct the administration of justice. The bill would thus put Congress substantially on a par with the courts so far as misbehavior in their presence is concerned.

The Department of Justice has no objection to the enactment of this legislation.

The Bureau of the Budget has advised that there is no objection to submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

MR. ROGERS. Our first witness will be Representative Ichord, who is the author of the bill. Mr. Ichord, you may proceed.

MR. ICHORD. Thank you, Mr. Chairman. I apologize for being several minutes late. I have a pretty efficient schedule worked out, but I got into the wrong hearing room.

I do appreciate this opportunity, Mr. Chairman. As you will recall, you originally scheduled hearings on this bill back in October. I have furnished you copies of my statement, and it might be very well to proceed by my going through the entire statement, or I could summarize, whichever way you prefer.

MR. ROGERS. I would prefer to have your full statement placed in the record at this point. Then you may summarize and we will ask you leading questions.

MR. ICHORD. Very good. I thank you. I then submit my statement for the record.

(Statement follows:)

STATEMENT OF HON. RICHARD ICHORD, A U.S. REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MISSOURI

Mr. Chairman, I thank you for this opportunity to appear before this distinguished subcommittee to urge the favorable consideration and report of the bill H. R. 7213 which I have introduced jointly with Mr. Pepper, Mr. Preyer of North Carolina, and Mr. Ashbrook. This bill would amend Title 2, U.S. Code, Sections 192 and 194 so as to include provisions making punishable, in accordance with the procedures and penalties of that Act, misbehavior committed in the

presence of committees of Congress. I am pleased to note that the Department of Justice, in its report on the bill, has found no technical or other objection to it.

The provisions of Title 2 to which I have referred presently make punishable as a contempt of the Congress refusals of witnesses to testify or to produce papers. Any misbehavior of witnesses, other than a refusal to testify or produce papers, is not within the purview of that Act, nor does the Act cover misbehavior of counsel or others committed in the presence of a committee of Congress. The bill would remedy this deficiency. I should however make clear that the bill does not vest in any committee or its members any summary power to punish such misbehavior. It in no way alters the present procedures under that title which require a report of the contempt by the committee to the House concerned, affirmative action by or on behalf of the House, a certification to the appropriate United States Attorney, grand jury presentation, and the right to trial by jury on any presentment.

The effect of the language of the amendment proposed by H. R. 7213 would be to give to committees of Congress protection similar to that afforded to Federal courts by the provisions of Title 18, U.S.C., Section 401. I refer particularly to the following provision of Section 401:

"A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—

(1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;"

It is to be observed, however, that the words "so near thereto," which would appear to authorize prosecution for "constructive" contempts, that is, contempts not committed in the actual presence of the tribunal, have not been included in the terms of my bill. As is evident, the language of the bill otherwise follows closely upon the language of Section 401, a provision which has been litigated, construed, and given effect in a vast number of cases. In view of the similarity of language, there should be no difficulty in applying the remedial provisions of the bill to the analogous situation involved.

The term "misbehavior" has become, in short, what we lawyers describe as a "word of art." It encompasses a variety of misconduct, including but not limited to, interruption of the examiner, refusal to stop talking, obscenity, swearing, opprobrious language, persistence in making statements after ordered to be quiet, resistance to orders to leave the hearing room, insults to the tribunal, attempts to influence witnesses, and acts of defiance. The use of this term, together with the qualifying provisions of the bill, to wit, "so as to obstruct such house, committee, or subcommittee in the performance of its duties," should relieve the provision of any charge of vagueness.

The absence of power to punish certain contempts of Congress through the Federal courts has long been a subject of concern. In 1953, for example, a committee of this House had an unfortunate experience with a witness named Starkovich who carefully avoided being placed in a position of refusing to answer questions propounded to him, but nevertheless was guilty in his answers of gross insolence and derision of members of the committee. The committee endeavored to make a test case and caused Starkovich to be indicted under Section 192, Title 2, U.S. Code, to which I have already referred. The District Court in an unreported case (*U.S. v. Starkovich*, 23 U.S.L. Week, 2490—W. D. Wash. 1955) dismissed the indictment for contempt and said with regard to Starkovich that:

"He could have acted in the most objectionable manner possible, used profanity, vulgarisms, vilification of the committee or anything he wanted as long as he answered the questions or rightfully claimed privilege. Misconduct of the witness at the hearing, however outrageous, however, shocking it may be to the sense of propriety or whatever, is not a violation of (Section) 192 in my judgment. Accordingly, if the Congress feels that that kind of conduct should be made punishable—and I dare say they wouldn't get much objection from anybody on that—they had better legislate on it.*** It must not be thought that the Congress is powerless to deal with misconduct of the kind referred to. Congress unquestionably has ample power to provide it. It simply has not been previously so provided."

There are, of course, no "common law" offenses against the United States. The Federal court may be utilized for the punishment of misbehavior committed in the presence of committees of the Congress only in those cases where jurisdiction to do so has been conferred by an act of Congress. In the absence of an act of Congress, misbehavior before committees may be punished, if at all, only by proceedings at the bar of the House concerned. However, this is a remedy which

must be regarded as less than satisfactory. It is at best an unwelcome intrusion upon the legislative function of the House. Nor is the House a becoming instrument for the conduct of trials to determine guilt or innocence of crime. Such trials are alien to its constitutional function and the doctrine of separation of powers. Hence, this remedy should be resorted to only in most exceptional cases.

Due to the absence of a conventional contempt statute, members of committees may now resort only to local "peace" statutes, principally disorderly conduct statutes, to secure the minimal measure of protection which they afford to the deliberations of congressional committees. I need not point out the difficulties inherent in the situation where a peace statute is tortured to do the service of a contempt statute. It is obvious that the measure of protection afforded under such statutes is very limited indeed and would not embrace the various forms of misbehavior which necessarily may be reached under a conventional contempt statute of the kind I propose.

Local peace statutes of general application, principally disorderly conduct statutes, whether of the District of Columbia or elsewhere in which a committee may sit, are geared to a different type of situation. They have a broad objective related to the maintenance of public order. They are not directed to the specific objective of securing the dignity and authority of a deliberative and fact-finding tribunal. Moreover, in prosecutions under local peace statutes, it is plain that members of Congress would encounter a number of harassments under local law, particularly state law, in coping with preliminary proceedings, in the initiation of arrests and other procedures, and the obtaining of counsel for representation. Members of Congress would be enmeshed in extraneous procedures impairing the orderly and expeditious performance of congressional duties.

We are faced with the inevitable conclusion that existing Federal statutes which bear some relevance, however remotely, are of very limited application and clearly inadequate to cope with the contempt problem. As noted, sections 192 and 194 of Title 2, U. S. Code, the principal statute relating to contempt of Congress, applies only to refusals of witnesses to testify or produce papers. Section 1505 of Title 18, U.S. Code, relates only to the intimidation of witnesses, injury to a witness on account of his attending an inquiry or investigation pending before a committee, or the corrupt or forceful obstruction of inquiry or investigation.

Nor is Public Law 90-108, which was recently enacted by the Congress, a solution to our problem. This Act had the general objective of making punishable certain disorderly or disruptive conduct upon the Capitol grounds or within any of the Capitol buildings. While to some extent remedial, it is likewise in the nature of a general "peace" statute. It has little utility as a true contempt statute. Moreover, it is confined to the limited area of prohibiting the carrying, discharge or use within Capitol buildings of weapons, explosives, or incendiary devices; engaging in any act of physical violence within the Capitol buildings; parading, demonstrating or picketing within the Capitol buildings; and two other sections to which I would like to refer more at length, and hence quote them in full. I refer particularly to paragraphs (3) and (4) of Section 6(b) which make it unlawful—

"(3) to enter or to remain in any room within any of the Capitol Buildings set aside or designated for the use of either House of the Congress or any Member, committee, subcommittee, officer, or employee of the Congress or either House thereof with intent to disrupt the orderly conduct of official business;

"(4) to utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any committee or subcommittee of the Congress or either House thereof."

It is not only clear that these provisions do not cover all varieties of misconduct embraced within the coverage of the term "misbehavior", but I foresee serious uncertainties in applying them to those acts with which they are intended to cope or prohibit. Paragraph (3) above would punish entering and remaining in a room "with intent to disrupt or disturb the orderly conduct" of official business. I do not recall any modern penal statute which purports to punish the state of mind of an individual without reference to some concomitant misconduct manifested in overt action. The entry into or remaining in a Capitol Building may be permissive, hence lawful. An attempt to punish a state of mind without reference to any trespass or other misconduct may well be invalid for due process reasons under the 5th Amendment. Moreover, it is doubtful that proof of malicious intent at time of entry can rest solely on proof of subsequent misconduct.

As to Paragraph (4), I would have trouble in construing it because of the apparent vagueness of some of its terms. While the provision against the uttering of loud, threatening, or abusive language is sufficiently specific, the alternative "disorderly or disruptive conduct" which follows as a catch-all lacks specificity and may be given content at best only by reference to what precedes on the principle of *ejusdem generis*. The expressions "disorderly" and "disruptive" are generalities which do not specify activities, but rather their *effect*. It is a fact of significance that modern disorderly conduct statutes are now usually drafted with specificity. There is, therefore, some doubt in my mind that these expressions would be construed to include certain essential misconduct embraced within the term "misbehavior" as used in Section 401. For example, would Paragraph (4) be construed to prohibit obscene gestures as distinguished from obscene language? The persistence in making statements after ordered to desist, assuming such statements to be uttered quietly, and without threatening or abusive content? Interruption of the examiner? Certain acts of defiance?

Moreover, in proving a violation of Paragraph (4), it is required that proof be made of a specific "intent to impede, disrupt, or disturb the orderly conduct" of any hearing before, or any deliberations of, any committee or subcommittee. Section 401 proceedings, on the other hand, would not require such proof in all cases, although normally there is a requirement that there be some sort of wrongful intent. The latter might, for example, include simply an intent to violate a lawful order, irrespective of any other intent.

A further deficiency in any endeavor to apply Public Law 90-108 as a "contempt" statute is that the statute is applicable only to committee or subcommittee hearings conducted within the Capitol grounds. Its provisions would have no application to Committee proceedings conducted in other places. Yet, as we know, committees of Congress frequently sit in other places in performance of their duties.

It is apparent that unless we have a statutory base for prosecuting misbehavior of counsel, witnesses, and others committed in the presence of committees or subcommittees of the Congress, there will be instances in the future, as in the past, in which committees of both the House and Senate will have to labor under unnecessary, and perhaps insuperable, handicaps. They will sustain repeated and harmful attacks having the ultimate effect of undermining the dignity and authority of the Congress. Recent experiences of investigating and other committees of the House and Senate, as well as experiences in other areas of public life, are making us increasingly aware of certain tendencies in these troubled days I believe it is necessary to enact this bill. I therefore urge its favorable report by this subcommittee.

CHANGES IN EXISTING LAW MADE BY THE BILL H.R. 7213

Changes in existing law made by the bill, H.R. 7213, to sections 192 and 194 of Title 2, U.S. Code, are shown in *italic*. Existing law proposed to be omitted is indicated by striking the language of the omitted portion.

"§ 192. Refusal of witness to testify or produce papers

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, *and every person who misbehaves in the presence of either House of Congress, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, so as to obstruct such House, committee, or subcommittee in the performance of its duties,* shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months. (R.S. §102; June 22, 1938, ch. 594, 52 Stat. 942.)

"§ 194. Certification of failure to testify; grand jury action

Whenever a witness summoned as mentioned in section 192 of this title fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, *and the*

fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure and whenever any person misbehaves in the presence of either House of Congress, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, so as to obstruct such House, committee, or subcommittee in the performance of its duties, and the fact of such failure or failures or such misbehavior is reported to either House while Congress is in session, or, when Congress is not in session, a statement of fact concerning such failure or failures or such misbehavior is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action. (R.S. § 104; July 13, 1936, ch. 884, 49 Stat. 2041; June 22, 1938, ch. 594, 52 Stat. 942.)

Mr. ICHORD. Mr. Chairman, I thank you for the opportunity to appear before this distinguished subcommittee and to urge the favorable consideration and report of H.R. 7213, which you have stated was introduced by myself, Congressman Pepper from Florida, and Mr. Preyer of North Carolina. What this measure does is to amend title 2, sections 192 and 194 of the code to make any misbehavior before a congressional committee, which is punishable as contempt before a Federal court, also punishable as contempt before a committee of Congress.

However, the contempt power of Congress would still be enforced by the judicial process.

Mr. ROGERS. Let's proceed with the first part.

What is your definition of misbehavior before a committee Mr. Ichord?

Mr. ICHORD. What we do here, Mr. Chairman, is to take the wording of the statute on the books, title 18, U.S.C. section 40, and of course our Federal courts do not have any common law powers, so the only contempt power that the Federal court possesses would be from the statutes.

There are several cases that have interpreted the term misbehavior, and it is the intention of this bill to give the same meaning to the term as section 401.

Misbehavior in short has become a "word of art." It encompasses a variety of misconduct.

Mr. ROGERS. May I interrupt you there. Section 401 that you have reference to states "Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice," and in your bill you substitute "in the performance of its duties" for obstructing the administration of justice.

Mr. ICHORD. Yes. That would be more applicable to proceedings in the Congress rather than the administration of justice.

I would point out, Mr. Chairman, that I have omitted the term "as near thereto." This embraces the matter of constructive contempt, which could be committed outside the presence of the court.

The contempt which I contemplate here is much more narrow in its application. I did not want to get into the fields of contempt that could be created outside the Halls of Congress.

Mr. ROGERS. You are talking about contempt, but you punish the contempt by prosecution rather than summary powers that a judge may have?

Mr. ICHORD. Right, I think that I should review for the benefit of the committee just how this matter of contempt has historically been handled by the Congress.

First of all, there are only two instances where a person can be held in contempt of a committee of Congress. One is where he refuses to obey a subpoena to either produce himself or certain documents and also where he refuses to answer pertinent questions that are put to the witness.

This only applies however when a subpoena is issued to him.

Now, the contempt power at the present time only applies to that subpoenaed witness. It does not cover any person who may come into the room to dispute the proceeding. It does not cover the counsel appearing to represent the witness.

Now, the way the dignity and the authority of the Congress is protected is in this manner.

First, the subcommittee before which the contempt has been committed must vote by majority vote to cite him for contempt. Then the matter goes to the full committee where it is considered by the full committee, and again by a majority vote. Then it is referred to the House for its consideration where all of the Members of the House by majority vote must vote in favor of the contempt citation. Then it is referred to the district attorney, and this is where the judicial process comes into play.

It is presented to a grand jury. There must be an indictment by the grand jury. The defendant of course is entitled to a trial by jury. All of the judicial processes to protect his rights are fully utilized.

Now, it is true that Congress being a coequal branch of Government does have the inherent power to punish for contempt, but it has not been done in the last 100 years, and, personally, I would prefer to continue to use the judicial processes to protect the authority and the dignity of the Congress.

I think it would be too disruptive to our legislative procedures to do otherwise. We would probably have to maintain a jail. I think we would be tied up continually, hearing these matters of contempt, and in these troubled times such matters might increase in the future. So I would not recommend that the Congress ever use its inherent power to punish for contempt. I might also point out, Mr. Chairman, that this is only a part of a broad effort that I have made to straighten out all of the problems surrounding the matter of contempt.

I have introduced a companion resolution, House Resolution 233, which went to the Rules Committee, as House Resolution 233 only affects the rules of the House.

I do not intend to ask the Rules Committee to consider House Resolution 233 until this committee acts upon 7213. House Resolution 233, of course, only has to be considered by the House.

What I intend in House Resolution 233 is to set up a special committee of seven members who would review all of these contempt citations coming from any particular committee of Congress, and use that committee to channel any contempt citations to the floor of the House, the idea being that another committee, away from the heat, or the passion of the particular moment, should review these matters before they are sent to the floor of the House.

Mr. ROGERS. Are you telling us that under House Resolution 233, a committee should decide that somebody has violated the provisions of HR 7213, and they so certify, then their findings would be final and be certified by the U.S. attorney?

Mr. ICHORD. No; it would still have to go before the House.

This would be a way to channel these proceedings to the House.

Note the last sentence of House Resolution 233.

Mr. ROGERS. Do you have another copy of that?

Mr. ICHORD. It is very brief. Let me read it for the benefit of the members:

Resolved, That rule XI of the Rules of the House of Representatives is amended by adding immediately after clause 27(q) the following:

(r) No report to the House, or statement of facts reported to and filed with the Speaker of the House, with respect to any alleged failure or contempt under section 104 of the Revised Statutes (2 U.S.C. 194) shall be certified by the Speaker of the House to the appropriate United States attorney under such section except following the referral of such report or statement to, and a report thereon by, the special committee created under this paragraph. At the commencement of each Congress the Speaker of the House shall appoint a special committee which shall be composed of seven members, one of whom he shall designate as chairman and not more than four of whom shall be of the same political party, to consider each such report or statement of alleged failure or contempt. It shall be the duty of the special committee to study each report or statement referred to it under this paragraph and, as soon as practicable after each such referral, to report to the House, or to the Speaker of the House when the House is not in session, the results of its study, together with such recommendations as it may deem appropriate. The report of the special committee shall include, among other things, a statement of its opinion whether the committee or subcommittee before which the alleged failure or contempt occurred exceeded the scope of its authority, violated the constitutional rights of the person alleged to be in contempt, or otherwise acted in a manner contrary to law or to any applicable legislative rules.

So it would be just a channeling committee to give this committee a chance to look at it objectively, away from the heat and passion, before it is referred to the House of Representatives.

I have not asked the Rules Committee to proceed on this measure because it is a part and parcel of H.R. 7213.

Mr. ROGERS. I assume that the passage of H.Res. 233 should have no relation whatsoever to H.R. 7213 at the present time—

Mr. ICHORD. It could be taken up, but I think this whole matter of contempt needs to be resolved by the House of Representatives. The Senate particularly, in the last few months has had considerable problems in this regard. This would make such behavior as that of the militant women's organization a few weeks ago before a Senate committee punishable as contempt.

Let me show the committee the status of the law by merely citing the decision in *United States v. Starkovich*.

This was a case where a witness came before the committee, answered all pertinent questions but grossly insolent in his answers and constantly derided the members of the committee. Such behavior was not contemptuous because the witness did answer.

At the present time any person could come before this committee and use all of the foul objectionable language he desired, and there is no statute in my opinion that could effectively be used to punish such misbehavior.

Mr. ROGERS. What about the statute we passed several years ago to take care of disruptions?

Mr. ICHORD. I covered that in detail in my statement. I do not think that Public Law 90-108 is a solution to the problem, because the act had the general objective of making punishable certain disorderly or disruptive conduct on Capitol Grounds, or within any of the Capitol Buildings.

It is to some extent remedial, but it is about the same as the general peace statutes that you have in the District of Columbia. It has little utility as a true contempt statute.

Mr. ROGERS. Are you not protected under that provision?

Mr. ICHORD. No, sir, Mr. Chairman; for several reasons. First, it only applies to a committee in Washington. This committee or any other committee might be sitting outside of Washington. That is one deficiency.

Second, I do not consider it would be sufficient to punish any witness because, first of all, it says to enter or to remain in any room within the Senate to disrupt, with the intent to disrupt.

I think you have to prove he entered the room with the intention of disrupting, and, as we know, criminal statutes are construed very strictly and should be construed very strictly, but I do not think you would have—

Mr. ROGERS. Do you not have intent in your bill?

Mr. ICHORD. No; not to commit a contempt.

A person could come into this room at this time and proceed to heap abuse upon the committee, and that would not be sufficient. He may have come into the room not with the intent to disrupt the proceedings. He may have heard one of the members of the committee make a statement, or he may hear me make a statement which excites him and proceed to disrupt the committee. Under those circumstances, I do not believe such misconduct would be punishable.

Mr. WIGGINS. Could you punish him under subsection 4 as written, assuming an innocent intent at the time of entry into the room?

Mr. ICHORD. Four reads to utter loud, threatening or abusive language, or to engage in any disorderly or disruptive conduct at any place upon the U.S. Capitol Grounds, or within any of the Capitol Buildings with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, the orderly conduct in any such building or any deliberations of any committee or subcommittee of Congress, or either House thereof.

I think you would not have to have the intent to enter the room as long as you disrupted the hearing with loud threatening or abusive language, but it does not cover all of the many contempts. There are many other ways to disrupt this proceeding.

I do not think that "disorderly or disruptive conduct" are terms which are specific enough to cover the many cases of contempt.

Mr. WIGGINS. I suppose it is as specific as the word "misbehavior," but I recognize deficiencies in this section, principally in matters of its limitation to buildings and rooms within the Capitol here in Washington.

I would like you to, if you may, answer this. Assuming disorderly conduct with the intent to disrupt in a building in the Capitol, that misconduct if proved can result in conviction under Public Law 90-108, and a sentence up to a maximum of 6 months in jail.

Why should identical conduct outside of the Capitol be punishable by a sentence of up to a year under H.R. 7213?

Mr. ICHORD. Well, actually you get into the question that is really posed in the *Kunstler* case in recent Chicago hearings of how far the contempt power extends.

We really do not hit at that problem here because you are limited under this statute to a maximum of a year in jail, and \$1,000 fine.

I think these matters are better handled through the contempt process. For example, suppose I am sitting here testifying, and everytime I talk, I particularly make an objectionable motion at you. That would certainly not be contempt under the present law.

Certainly I think you should look at the general test and the lack of specificity in this misdemeanor statute. It is not sufficient to protect the committee of Congress, and the dignity and authority of the Congress.

Mr. WIGGINS. I admit that the present statute, Public Law 90-108, is deficient in some respects, but I think it is a mistake for us to continue to enact gross inconsistencies in sentencing. Basically we are talking about the same misconduct. In fact, any act punishable under Public Law 90-108, I take it, would be punishable under your bill, but to authorize punishment of 1 year and \$1,000, in one case, and in another case, 6 months and \$500 is to perpetuate inconsistencies in the law.

Mr. ICHORD. I would make this distinction. 90-108 is a disorderly statute that has general application outside of the hearing room and outside of the proceedings of the Congress.

Mr. ROGERS. And also application in committees.

Mr. ICHORD. I do not know all the history behind the legislation, but I do not think it does the job insofar as protecting the dignity and the authority of a hearing or deliberations of Congress. I think that should best be handled by contempt power.

Mr. ROGERS. Now, as I interpret it, Public Law 90-108, was intended to get at many of the disruptions that we are having in the Congress, including disruptions in the committees.

Now, as Mr. Wiggins pointed out, the penalty in 90-108 is different from the penalty in your bill.

Suppose H.R. 7213 were enacted, and a disruption or misbehavior happened in a committee, which was covered by both of them.

Now, which one of them should be prosecuted, or should we file on both of them, that is, file with two counts.

Mr. ICHORD. You would have the choice in that case. What I am really concerned about, let's suppose a person comes into the hearing room at the present time, and he sits down in the audience, and he continues to rise and make objections that this is an unconstitutional committee, that the chairman himself was not constitutionally elected in a fair election, and he continues to do that time and time again, that would not constitute a violation of the statute.

Mr. WIGGINS. I think that is perhaps a straight conclusion. Perhaps a jury would not convict, but I think the U.S. attorney would be remiss if he did not take this conduct if certified by the Congress to the grand jury, when the language of the statute said to impede, to disrupt the orderly conduct of the House, or the orderly conduct of business within the Capitol Buildings and this would include the Senate and House Office Buildings.

Mr. ICHORD. I think you would have to broadly construe the statute. I question whether it would be sufficient. It is certainly not very specific. The language of disruptions and disorderly does not specify activities.

Mr. WALDIE. Could the chairman under the situation that you pose have that man evicted?

Mr. ICHORD. He could.

Mr. WALDIE. Could any of the gestures that you pose, any of the conduct you have described as misbehavior, be sufficient for the chairman to order the sergeant of arms or the policeman to eject that individual from the hearing room?

Mr. ICHORD. It could be done. I think the chairman has inherent authority to use the police.

Mr. WALDIE. And he could be kept out of the hearing room; could he not?

Mr. ICHORD. Right.

Mr. WALDIE. If we could evict him so that we could continue with our hearings, what is the necessity of going through this complicated process of putting him in jail?

Mr. ICHORD. Let's suppose you have a group that wants to disrupt the hearing. They send in one man at a time to do it. He is continually going to have to use this authority to end the disruptions.

Mr. WALDIE. Would he not still have to use that authority under your bill?

You would have to get the man out of the room. You would have to have the man arrested, and subject to contempt, and you would engage all of the machinery of this bill, to really accomplish only one thing, to permit the hearing to continue. Yet, you could permit the hearing to continue by simply ejecting the fellow.

Mr. ICHORD. He could, and then the committee could make the decision later on whether this was of sufficient disruption to constitute a contempt. The real question is: Is ejection a sufficient deterrent? We are trying to prevent disruptions. I do not think eviction is sufficient to deter and to protect the dignity of the committee.

Mr. ASHBROOK. I think rightly or wrongly, you gentlemen will determine what is right or wrong.

We envision the conduct that we are talking about in H.R. 7213 as being more closely akin to the conduct that would take place in a misdemeanor statute.

I think you gentlemen would probably agree that an offense, when it takes place within the presence of a chairman who is trying to conduct a meeting for the orderly business of the Congress, that that is a little different than what you might call general misdemeanor.

For example, traditionally every Christmas we have groups that come in and sing carols in the small rotunda at the Cannon Building. But say a group of militants would want to come in and generally cause a disturbance, I think that is a different class of offense than what would take place within the presence of a committee where the chairman is trying to conduct business.

There could be many, many things that could happen on the capitol grounds that would be considered offensive, and probably a general misdemeanor, but not conducted in the presence of the members themselves or trying to conduct orderly business would be a different class of offense.

We associate this statute more closely to contempt of Congress. When it comes that a committee is trying to carry out its lawfully mandated business, as against the offense which might occur on the grounds, which might occur in the office building, or the halls, or general confrontation which might be brought about by militants, possibly we are wrong, but we thought that actions right in the committee room will have a different class than that which would take place in the Cannon rotunda, or in the cafeteria, or some place like that.

Maybe we are wrong, but we thought of the matter in that light.

Mr. ROGERS. The Attorney General in response to a request said in effect that you are protected under the present law which proscribes disorderly or disruptive conduct upon the U.S. Capitol Grounds, and that all this bill actually does is to extend the protection to hearings held away from the Capitol.

Mr. ICHORD. Mr. Chairman, I would disagree. I pointed out that because of the generality of the language, I doubt that a conviction under 90-108 would be sustained in many instances.

I think I should be more specific in answer to Mr. Waldie's question a few minutes ago, Mr. Chairman.

Mr. Waldie, What you were referring to was a person coming in from outside the hearing room, a spectator, in the audience, we also have the problem of the counsel and the witness who are entitled to be heard, and, certainly, they would not be covered in that respect.

I would also point out that this bill does not really give the Chair the powers of contempt.

We are really not putting it in the committee. We are not even putting it in the House, because the contempt power that we envision here is not as arbitrary as the contempt power of the judge, because we are using the judicial proceeding to enforce the contempt power.

Mr. WALDIE. Would you be willing to limit the bill to witnesses or to counsel?

Mr. ICHORD. If the committee in its wisdom saw the desirability, I certainly would accept it, provided you cleaned up 90-108. However, I do believe it is desirable to go further. Certainly a judge is not limited to participants in a trial as such.

Mr. WALDIE. I read on page 2, and I may have missed the argument, you describe there other statutory provisions, and then you conclude with the term "misbehavior", and you say:

The term "misbehavior" has become, in short, what we lawyers describe as a "word of art".

I do not ever recall the term "misbehavior" being used in a criminal statute. Your explanation does not discuss the word "misbehavior".

Mr. ICHORD. Mr. Ichord, I would refer you to section 401 of title 18 of the United States Code.

Now, of course, the Federal courts do not have the common law power of contempt. That is the language by which we give a Federal judge contempt power, and I am borrowing that language.

Mr. WALDIE. I see that you did cite it here, and I missed it.

Mr. ICHORD. I have deleted the phrase "so near thereto," because such language would cover contempts outside the presence of the proceedings, and I did not think it was desirable to go that far.

Mr. WIGGINS. Mr. Ichord, you rightly observe that we are dealing here with several possible problems.

One is the disruptions or misbehavior or misconduct of some unspecified sort which may occur on the grounds, or within the building, but not in the presence of a proceeding of Congress, which may in fact be disrupted.

That is one type of misconduct the Congress ought to address itself to and has.

Another type of misconduct is that which occurs right in the presence of the proceedings of the Congress, either on the floor of the Congress, or in the presence of a committee during its work.

That ought to also be a subject which the Congress could regulate.

If I have to choose between them, I would say misconduct in the presence of congressional proceedings is more severe and perhaps should be dealt with more severely if there should be a distinction.

The difficulty is that Public Law 90-108 deals with both. Your bill deals only with misbehavior in the presence of a committee of Congress doing its official business.

I suspect that what we need is to reconcile these two statutes rather than to go off and permit Public Law 90-108 stand without amendment, and at the same time have as a companion piece of legislation what you put here.

We ought to deal more intelligently with these two aspects of the problem.

Mr. ICHORD. Both of them remain on the books. You could proceed under either one of them. If I had my choice, I think I would prefer to have the possibility of contempt as a device to protect the dignity and the authority of the proceeding.

Mr. WIGGINS. I think so too, I think your statute is better than Public Law 90-108, insofar as it purports to deal with misconduct before a committee, but of course it is a broader act, and it deals with misconduct outside of the committee as well; however, to permit the language of Public Law 90-108 to stand and at the same time to permit your language to stand creates confusion.

Mr. ICHORD. I do not think you have to worry about the harshness of any such power being used by a chairman, because we are using the judicial process to punish.

Mr. ROGERS. What he is trying to point out to you is that if we pass your bill, and Public Law 90-108 remains, that there is likely to be some confusion as to which one we should prosecute.

I think he made the suggestion that probably the best thing to do would be to amend the 90-108 to clarify to make sure to make reference to conduct before a committee.

Now, that is what you are trying to get at. You want to make that contempt. You want to make that a crime, and you say that 90-108 is not clear about that; otherwise, you would not be here with this bill.

His suggestion is that we rectify the mistake in 90-108 if we are going to do anything.

Mr. ICHORD. I am not as much concerned about that as perhaps Mr. Wiggins is for this reason. Every district attorney, I think, has the problem of choosing the statute under which he is going to prosecute.

We have this continually. I do not see any real inconsistency between the two.

Mr. ASHBROOK. Many times students have destroyed property, and they choose to prosecute on trespassing or just general disturbance rather than use statutes that deal with physical violence.

I think in any case the prosecutor can pick the tougher or the easier.

Mr. WIGGINS. I would like either one of you to speak to the question of why have the statute at all in view of the fact that wherever a committee may sit outside the Capitol Grounds, it is going to be within the jurisdiction of some state, which I think you can safely predict has a disorderly conduct statute.

In other words, there are existing state laws to meet the problem of any misconduct before a committee, are there not, outside of the Capitol?

Mr. ASHBROOK. Like everything else, trying to get a prosecution, or any compliance is somewhat difficult. We will say in our experience in this committee, we have almost gotten to the point where we will not meet in any place except a Federal building.

Mr. WIGGINS. If what we may stipulate as being disturbing the peace in California occurs in a Federal building in California, is not there a law applicable to that situation?

Mr. ASHBROOK. You mean disturbing the peace statute of California?

Mr. ROGERS. That depends upon——

May I interrupt.

It depends on the concession the Federal Government made to the State and the State made to the Federal Government at the time they deeded them the property to build the building.

Now, in some instances, exclusive jurisdiction has been given to the Federal Government on all Federal properties.

Mr. WIGGINS. I bet if they shot the chairman, they would find some statute.

Mr. ASHBROOK. This is a less grave offense we are talking about, Mr. Chairman.

Mr. ROGERS. But now back to the main question, why would not the State laws be adequate other than the things you pointed out?

Mr. ICHORD. They would apply. Of course the peace statutes and ordinances would apply in the jurisdictions where the hearing would be held, but I am sure they would be subject to the same limitations of 108, because they are not geared toward protecting the dignity of judicial or legislative proceedings.

In many instances I think they would be completely different.

Mr. WIGGINS. I agree. I think there are different interests to be protected; not just peace of the State, but rather the sanctity of the Federal proceedings.

Mr. ASHBROOK. We do not leave ourselves to the local officials as to what we consider to be a Federal offense. If we are to consider this a Federal offense, I think the Federal Government should be in a position to prosecute the offense, and not leave it up to the local courts, the jurisdiction of the local prosecutor.

In every case where there is a Federal interest involved, we do not want to leave it up to the states to carry out the processes that might be necessary to vindicate the Federal interest, and I do not think we should here.

Mr. WALDIE. You have probably covered this, but, as I understand, if the enacted misbehavior that you are seeking to preclude occurs, the procedure would be that the chairman would then——

Well, exactly what would happen?

Mr. ICHORD. The subcommittee first of all would have to consider whether they want to proceed——

Mr. WALDIE. I mean immediately. Now, the hearing is taking place, and you have committed this act of misbehavior and what then occurs?

Mr. ICHORD. There would have to later be a meeting of the subcommittee in this matter considering as to whether they would proceed.

Mr. WALDIE. Nothing occurs at the moment, at least under this statute?

Mr. ICHORD. Right.

Mr. WALDIE. And then if the committee decided that they would proceed with this as a contemptuous action, that would be referred to another committee under your resolution?

Mr. ICHORD. It would go to the full committee, and then it would be referred to the special committee under the resolution that would channel it.

They could look into it and see if they thought that this was of such severity that the House should take action.

Mr. WALDIE. And then it would go to the House, and then it would go to the district attorney for prosecution, and could he then decide not to prosecute?

Mr. ICHORD. The statute as I remember is directed in such terms that he is directed to lay this matter before a grand jury.

I doubt that he would have the discretion not to lay it before a grand jury.

Mr. WALDIE. The grand jury would then have a further discretion?

Mr. ICHORD. Right.

Mr. WALDIE. I must say that some of the misgivings that I would have had about this act have been somewhat alleviated by this buttressing committee you would put into effect here.

Mr. ICHORD. I appreciate the comment of the gentleman. I would point out in regard to Mr. Wiggins' question, as to whether or not we should remove 108's application, what would concern me would be that if you did not have that way to proceeding, that the committee might be forced to bring more of these matters before the House, if that were the only way you had to proceed.

It would tie down the House. That would be something that just came to my mind, and that would be a very good argument against taking the application of 108 off the books, for what application it does have.

Mr. WALDIE. You were suggesting, Mr. Wiggins, that the two offenses be brought more in order in terms of penalties and disposition?

Mr. WIGGINS. Just reconcile the language of the two, not that either should be superseded. I think that that is what should be done.

Mr. ASHBROOK. If you get a conviction, it is not too important if you get 6 months or a year.

Mr. WIGGINS. It is a matter of some importance to the person being tried.

Mr. ASHBROOK. We are saying if it is that important to you——

Mr. WIGGINS. Would you agree that the interpretation of "within the presence" of a subcommittee ought to be construed to be not

necessarily limited to its physical presence, but should extend to within the consciousness of members of the committee, and should be adequate to cover a noisy demonstration outside in the hallway that would interrupt the proceedings in the hearing room itself?

Mr. ICHORD. There may be some danger in my omitting the term "so near thereto," in that regard. But in doing so, I was thinking in terms of the power of a judge even to punish certain types of reporting. I do believe that the term misbehavior as used in this legislation should be interpreted to cover activities within hearing distance.

Mr. COUGHLIN. Under your proposal, as I understand it, there is a mandatory minimum 1-month jail term and a mandatory minimum fine of \$100?

Mr. ICHORD. The minimum is \$100 and the maximum is \$1,000.

Mr. COUGHLIN. There is a minimum mandatory fine and jail term?

Mr. ICHORD. Yes; I believe that is it.

Mr. COUGHLIN. You feel strongly about the mandatory nature of the penalties?

Mr. ICHORD. It says punishable by a fine of not more than \$1,000 and not less than \$100.

Mr. COUGHLIN. And a jail term of not less than 1 month.

Mr. ICHORD. And imprisonment for not more than 1 year.

Mr. COUGHLIN. I am concerned somewhat about the severity of the penalty.

Mr. ICHORD. I agree that that could be amended.

Mr. WIGGINS. That type of language of not less than a certain number of days is found throughout the law, and has never prevented a court from granting probation, upon a condition that the defendant spend the first 5 days in jail. That has permitted probation and conditions of probation of less than a period fixed in the statute.

Do you disagree?

Mr. COUGHLIN. I do not disagree, but I was wondering how you felt about having simply a maximum penalty, with no minimum mandatory penalty.

Mr. ICHORD. I am advised by counsel, that in one case of contempt, the court imposed a sentence, but suspended it, so they still have that power.

Mr. ASHBROOK. We do not wish a mandatory sentence, if that is what you are asking.

Mr. COUGHLIN. That is all I have.

Mr. ROGERS. Now, Mr. Ashbrook, you are scheduled here as the second witness, and you have been engaging in this.

Is there anything further you would like to add?

Mr. ASHBROOK. No. I would ask permission if my small four-page statement be considered as read.

Mr. ROGERS. And inserted in the record.

(Statement follows:)

STATEMENT OF HON. JOHN M. ASHBROOK, A U.S. REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

Mr. Chairman, I appreciate this opportunity to give my views on this legislation for which, I believe, there will be an increasing need. As Chairman Ichord has dealt with the legal aspects of HR 7213, I should like to comment briefly on the reason why such legislation should be enacted.

It would be fair to say that the sponsors of HR 7213 have, among other motivations, a selfish one in mind. All are members of the House Internal Security Committee whose predecessor, the House Committee on Un-American Activities entertained many a difficult and unruly witness. For example, several of the Chicago Seven who performed recently before Judge Hoffman in Chicago appeared before this Committee.

Several examples of contempt of Congress by radicals will illustrate the vulnerability of the House and Senate at the hands of those bent on Congressional disruption.

In 1963 and 1964 the House Committee on Un-American Activities held hearings on the issue of travel to Cuba. In 1963 the opponents of restrictions on Cuban travel disrupted the hearings in the House Caucus Room. Reporter Tom Kelly of the Washington Daily News of Sept. 13 described the technique of disruption:

"They did it by following Formula A: Laugh loudly, inanely and repeatedly at the committee; applaud noisily and endlessly each time a witness is rude; ignore requests for decorum and when, finally, the policeman comes to escort you away, throw yourself on the floor, tear your beard and shout 'brutality' at the top of your lungs."

Another excerpt from the same account by Reporter Kelly:

"The chairman told the police to escort the loudest ones from the room. The police advanced and motioned the boys. The boys refused to budge. The police edged between the chairs and took them by the arms. The boys threw themselves down kicking and shouting. The police carried them away. The other boys and girls pushed the police as they left and shouted at them." Reporter Kelly concluded his account by observing that no one was arrested.

Contrast this with the 1964 hearings by the same Committee on the same issue. In advance of the hearings instructions were issued by the Student Committee for Travel to Cuba which read in part:

"We desire an orderly hearing. To achieve this we will do everything in our power to prevent HUAC from provoking a riot as it did last year. To this end all persons attending the hearing in our support will not jeer, boo or applaud. If you are requested to leave the hearing room, we ask that you comply with this request and leave the hearing room as quickly as possible."

As you can surmise, there was no disruption from this group during the hearings. These hearings, incidentally, were not entirely normal. A member of George Lincoln Rockwell's American Nazi party vaulted onto the witness table, grappled with the witness, was carried from the room and arrested on charges of simple assault and disorderly conduct. Evidently, Rockwell's boys had not reached that degree of refinement and sophistication in disruptions for this one landed in the cooler.

Chairman Ichord mentioned in his testimony the necessity for adequate legislative protection for Congressional committees whose hearings take them away from Washington. A good case in point was the student riots against HCUA in San Francisco in 1960. Seven clergymen who attended the hearings issued a statement which stated in part:

"The students, comprising the rear third of the audience, stood up on their seats and yelled, jeered, hissed, and scoffed at the Congressmen. It was almost complete breakdown of law and order. We witnessed more violations of the law in fifteen minutes than we have seen in fifteen years! The only criticisms we have of the police authorities were of allowing this element to make such a mockery out of law and order, without jailing every one of the leaders."

Finally, I should like to quote a young lady, an interne in the office of former Congressman James Battin, who attended the riotous hearings in the Caucus Room in August of 1966 in which the lawyer, Arthur Kinoy was forcibly removed from the hearing room by U.S. marshals. She stated at one point:

"Before Kinoy's partner had left the Committee room, after delivering his protest statement, his statement had already been mimeographed and was being distributed. Seated among the gallery of spectators, made up partly of Congressional staff but in the majority by a large group of bearded, studiously disheveled young men and women, I and another member of Mr. Battin's staff watched and heard the carefully laid plans of the demonstrators. The outbursts were timed to give maximum publicity and effect in the Committee room. These were no spontaneous outbursts of outrage. The people involved were tightly organized and disciplined. They exhibited contempt and disregard for Congress, the Committee and its members, and the law."

This young interne, incidentally, had had doubts about the Committee until the spectacle in the Caucus Room. Calling it the most shocking experience of her summer in Washington, the abuse of the Committee dispelled all doubts.

At the present time when religious services, legislative bodies, court trials, meetings of private associations and groups, among others, are disrupted by radical elements, no committee of Congress is immune from the fever. I believe that the prospect of one year in jail and a thousand-dollar fine will help insure that congressional committees conduct their legislative business under the most favorable circumstances, both here and in other parts of the Nation.

Mr. ASHBROOK. I do not see anything that needs to be added unless there are other questions.

Mr. ROGERS. Any other questions?

Mr. WALDIE. Just one other question.

Do I understand that these would then be considered as a package, that other resolution you are talking about, that that would go forward with this one?

Mr. ICHORD. Yes, if this is passed, I certainly will proceed with the other, although I have not asked the Rules Committee to proceed on that at the present time, because I did introduce them as a package.

Mr. WALDIE. I do not know about the other members of the committee, but at least my present thinking of the bill is I think it is a carefully worded bill, very carefully drafted, but that it would be essential for my support of the bill that that second step go forward.

I think that is a very important step.

Mr. ICHORD. I think the second step to clear up those matters is even more important, because I think that you can relieve the House of a lot of problems that have been presented in the past by merely setting up this special committee.

Mr. ROGERS. Let me ask this question. It is intended that H.R. 7213 would apply under circumstances in which the committee itself was not actually in meeting in the form of a hearing?

In other words, if you send an investigator out, and they kick him in the pants, and spit in his face, and so forth, do you intend to cover that?

Mr. ICHORD. No, definitely not.

Let me say this, Mr. Chairman, that there is an important distinction here. Presently your contempt statute only applies to investigating proceeding when the witness is subpoenaed, and when he either refuses to appear in response to a subpoena, or refuses to produce documents in response to a subpoena *duces tecum*, or refuses to answer a pertinent and legal question that is put to him. I have amended that statute in such a way that it would apply to a legislative hearing that would be conducted by this particular subcommittee. It also would apply to your investigative subcommittee as they are presently constituted.

Mr. ROGERS. You do not intend to cover instances of where you are sending an investigator out?

Mr. ICHORD. No, Just the proceeding of Congress, but both investigative and legislative.

Mr. ROGERS. So it must be a formal proceeding?

Mr. ICHORD. That is correct.

Mr. ROGERS. And that is the intent, not to cover anything else?

Mr. ICHORD. That is correct.

Mr. ROGERS. Are there any other questions by the committee?

If not, the committee will stand in recess.

(Whereupon, at 11 a.m. the subcommittee adjourned.)



