

## CONTEMPTS

For forms involving contempt proceedings and transmittals thereof to the District Attorney for presentation to the Grand Jury for proceedings against witnesses as provided by law, both when Congress is in session and when in sine die adjournment, see "Contempt Proceedings," below.

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### Contempt Proceedings:

Law on procedure for citing a witness for contempt is found in sections 192 and 194 of Title 2 of the United States Code, which is as follows:

#### [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, 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.)

#### [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 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.)

### Employees of Senate Need Senate Consent To Comply With Subpoena *Duces Tecum*:

Rule XI reads in part as follows:

No memorial or other paper presented to the Senate \* \* \* shall be withdrawn from its files except by order of the Senate. \* \* \*

The form of a resolution used by the Senate to grant an employee permission to comply with a subpoena *duces tecum* follows:

#### *Resolution*

Whereas in the case \_\_\_\_\_  
(name of case and court of trial)  
a subpoena *duces tecum* was issued on \_\_\_\_\_,  
(date)  
upon the application of \_\_\_\_\_,  
(name of attorney) attorney for the plaintiffs, and  
addressed to \_\_\_\_\_  
(employee of senate and position) directing him to appear as  
a witness before the said court on the \_\_\_\_\_  
(date and time) and to  
bring with him certain papers in the possession and under the control  
of the Senate of the United States: Therefore, be it

*Resolved*, That by the Privileges of the Senate no evidence of a documentary character under the control and in the possession of the Senate can, by the mandate of process of the ordinary courts of justice, be taken from such control or possession but by its permission; be it further

*Resolved*, That when it appears by the order of the court or of the judge thereof, or of any legal officer charged with the administration of the orders of such court or judge, that documentary evidence in the possession and under the control of the Senate is needful for use in any court of justice or before any judge or such legal officer for the promotion of justice, the Senate will take such order thereon as will promote the ends of justice consistently with the privileges and rights of the Senate; be it further

*Resolved*, That \_\_\_\_\_,  
(name of employee, position and committee) be authorized  
to appear at the place and before the court named in the subpoena  
*duces tecum* before mentioned, but shall not take with him any  
papers or documents on file in his office or under his control or in his  
possession as \_\_\_\_\_;  
(position and committee) be it fur-

ther

*Resolved*, That when said court determines that any of the documents, papers, communications, and memoranda called for in the subpoena *duces tecum* have become part of the official transcripts of public proceedings of the Senate by virtue of their inclusion in the

official minutes and official transcripts of such proceedings for dissemination to the public upon order of the Senate or pursuant to the Rules of the Senate, and, further, that such documents, papers, communications, and memoranda are material and relevant to the issues pending before said court, then the said court, through any of its officers or agents, have full permission to attend with all proper parties to the proceeding, and then always at any place under the orders and control of the Senate, and take copies of such documents, papers, communications, and memoranda in possession or control of said \_\_\_\_\_ which the court has found to be part of the official

(employee)

transcripts of public proceedings of the Senate by virtue of their inclusion in the official minutes and official transcripts of such proceedings for dissemination to the public upon order of the Senate or pursuant to the Rules of the Senate, and, further, that such documents, papers, communications, and memoranda are material and relevant to the issues pending before said court, excepting any other documents, papers, communications, and memoranda including, but not limited to, minutes and transcripts of executive sessions and any evidence of witnesses in respect thereto which the court or other proper officer thereof shall desire as such matters are within the privileges of the Senate; and be it further

*Resolved*, That a copy of these resolutions be transmitted to the said court as a respectful answer to the subpoena aforementioned.<sup>1</sup>

### Privileged Business:

A resolution reported from a special committee of the Senate citing a person for contempt for refusing to answer pertinent questions is privileged.<sup>2</sup>

### Senate Votes Contempt Citations:

Under recent practices, contempts of the Senate have grown out of the failure of witnesses appearing before committees of the Senate to answer questions or because witnesses otherwise attempted to obstruct the legislative functions of Congress.

The form of a resolution used to cite a person in contempt of the Senate follows:

#### *Resolution*

*Resolved*, That the President of the Senate certify the report of the Committee on \_\_\_\_\_ of the United States Senate as

(name of committee)

<sup>1</sup> Nov. 16, 1954, 83-2, *Record*, p. 16052; see also Mar. 8, 1962, 87-2, *Record*, p. 3630; Feb. 22, 1961, 87-1, *Record*, pp. 2515-16; Mar. 15, 1962, 87-2, *Record*, pp. 4171-73; June 14, 1962, 87-2, *Record*, pp. 10530-31; Sept. 25, 1962, 87-2, *Record*, p. 20672; Oct. 4, 1962, 87-2, *Record*, p. 22134; Oct. 5, 1962, 87-2, *Record*, p. 22509; May 24, 1960, 86-2, *Record*, p. 10881; May 19, 1960, 86-2, *Record*, p. 10650; Nov. 10, 1954, 83-2, *Record*, pp. 15934-35; Sept. 13, 1973, 93-1, *Record*, pp. 29663-64.

<sup>2</sup> Jan. 22, 1951, 82-1, *Record*, p. 502.

to the refusal of \_\_\_\_\_,  
(name of party) (purpose of citing for contempt)  
 together with all the facts in connection therewith, under the seal of  
 the United States Senate to the United States Attorney for the  
 \_\_\_\_\_,  
(District and state) (name of party)  
 may be proceeded against in the manner and form provided by law.<sup>3</sup>  
 Attest:

\_\_\_\_\_  
*Secretary.*

The form used to transmit the citation to the District  
 Attorney follows:

The undersigned, the President of the Senate of the United States,  
 pursuant to Senate Resolution 124 (Eighty-fifth Congress, first ses-  
 sion), citing \_\_\_\_\_ for contempt of the Senate, agreed to  
(name)  
 on May 16, 1957, an official engrossed copy of which is hereto at-  
 tached, does hereby, under the seal of the Senate, certify to you, as  
 the United States attorney for the \_\_\_\_\_,  
(judicial district)  
 an official copy of Senate report No. 232, 85th Congress, 1st session, as  
 amended by the Senate on May 16, 1957, containing facts relative to  
 the refusal of said \_\_\_\_\_ to answer pertinent questions,  
(name)  
 etc., before the Committee on \_\_\_\_\_; said  
(name of committee)  
 report having been submitted to the Senate on April 15 (legislative  
 day, April 12), 1957, by \_\_\_\_\_ from the said Commit-  
(Senator)  
 tee on \_\_\_\_\_ and amended by the Senate on  
(name of committee)  
 May 16, 1957, and ordered to be reprinted.

IN TESTIMONY WHEREOF, I hereunto subscribe  
 my name and have cause to be affixed the seal  
 of the Senate of the United States of America at  
 the city of Washington, this the 20th day of  
 May A.D. 1957.

\_\_\_\_\_  
*President of the Senate of  
 the United States of America.*

Attest:

\_\_\_\_\_  
*Secretary of the Senate  
 of the United States.*

<sup>3</sup> See proceedings for Jan. 22 and 23, 1951, 82-1, *Journal*, pp. 65, 68.

### Senators May Disregard Subpoena:

"The constitutional privilege of Members in the matter of arrest has been construed to exempt them from subpoena during sessions of Congress."<sup>4</sup>

A Senator having been subpoenaed to appear before the grand jury of the District of Columbia announced in the Senate that he would disregard it.<sup>5</sup>

A Senator having declined to heed a summons to appear and testify before a Federal grand jury, the court held that if he failed to obey the subpoena voluntarily the court was without power to compel his attendance.<sup>6</sup>

A subpoena *duces tecum* issued by a United States District Court and served upon a Member of a Senate committee was referred, after the authority of the court had been challenged, to the Committee on the Judiciary for a report. The records of the Senate do not show that the matter was reported back to the Senate.<sup>7</sup>

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## CONTESTED ELECTION CASES

See "Credentials and Oath of Office," pp. 695-710.

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## CONTINGENT FUND

See also "Expenditures by," pp. 399-400; "Investigations and Inquiries," pp. 881-890; "References to Committees," pp. 1150-1169; "Reports," pp. 1176-1201; "Resolutions," pp. 1202-1213.

The Committee on Rules and Administration has jurisdiction over "Payment of money out of the contingent fund of the Senate or creating a charge upon the same (except that any resolution relating to substantive matter within the jurisdiction of any other standing committee of the Senate shall be first referred to such committee)."<sup>1</sup>

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<sup>4</sup> *Cannon*, VI, sec. 588. Senator Eastland, chairman of the Committee on the Judiciary, on Mar. 21, 1957, asked unanimous consent to be permitted to testify in the United States District Court for the District of Columbia in proceedings against Seymour Peck, to which an objection was raised. S. Res. 116 to grant permission was submitted and debated but put over for further debate on the next day. On Mar. 22, after a long debate, the resolution was indefinitely postponed. For details of arguments for and against see proceedings of Senate for Mar. 21 and 22, 1957.

<sup>5</sup> *Cannon*, VI, sec. 588.

<sup>6</sup> *Ibid.*

<sup>7</sup> Mar. 13, 1913, 62-3, *Journal*, p. 308, 63--Special Session, *Record*, p. 7.

<sup>1</sup> Rule XXV, paragraph 1(n)(1).