

WILLIAM P. MACCRACKEN, JR.
ET AL.

E X T R A C T S

FROM THE

C O N G R E S S I O N A L R E C O R D

CONTAINING THE

PROCEEDINGS AND ORDER IN THE CASE OF THE UNITED STATES *vs.* WILLIAM P. MACCRACKEN, JR., ET AL., ALLEGING THE RESPONDENTS IN CONTEMPT OF THE SENATE OF THE UNITED STATES IN CONNECTION WITH A SUBPENA TO PRODUCE CERTAIN PAPERS BEFORE A SPECIAL COMMITTEE APPOINTED TO INVESTIGATE THE AWARDDING OF AIR AND OCEAN MAIL CONTRACTS



PRESENTED BY MR. HAYDEN

February 28 (calendar day, MARCH 9), 1934.—Referred to
the Committee on Printing

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON: 1934

Office Building, then and there to testify what you may know relative to the subject matters under consideration by said committee.

Bring all books of account, bank passbooks, canceled checks, check stubs, deposit slips, papers, memorandums, correspondence, maps, copies of telegrams relating to air mail and ocean mail contracts.

Hereof fall not, as you will answer your default under the pains and penalties in such cases made and provided.

To J. A. Bradley, L. L. Rittelmeyer to serve and return.

Given under my hand, by order of the committee, this 31st day of January, in the year of our Lord one thousand nine hundred and thirty-four.

HUGO L. BLACK,

Chairman Committee on Ocean Mail and Air Mail Contracts.

Service accepted 12:20 p.m. 1/31/34, William P. MacCracken, Jr.

Mr. BLACK. Mr. President, I should like to add that since this report was drawn up, another fact has come to the attention of the committee which would have been placed in the report if it had been known earlier.

Reference is made in the report to the fact that two files have been removed. Those files, according to the evidence, or those parts of the files, were delivered to one Colonel Brittin, of the Northwest Airways, and Mr. Given, as I understand, who is connected with the Western Air Express. An instantanar subpoena was issued to these two gentlemen to bring that correspondence to the committee. Both of them have appeared at the committee room.

The investigator tells me that Colonel Brittin states that he cannot bring the correspondence because he has already destroyed it, making the claim that there was nothing in it except purely unimportant personal matters—a phrase which the committee has heard before.

The other gentleman appeared and stated that the papers he received had been mailed to New York. Of course, we do not know what will happen to the papers that have been mailed to New York. We assume that probably the gentleman who receives them will recognize, if the others have not, that they are part of the evidence which has been desired by the Senate.

The committee has very reluctantly brought this matter to the Senate after having endeavored to obtain the correspondence it desired without coming to the Senate.

In keeping with the request which has been made, I have a resolution which I send to the desk and ask to have read.

The VICE PRESIDENT. The resolution will be read.

The resolution (S.Res. 169) was read, as follows:

Whereas the select committee of the Senate, elected pursuant to Senate Resolution No. 349, Seventy-second Congress, second session, has submitted a report to the Senate; and

Whereas it appears from such report that William P. MacCracken, of Washington, D.C., was on January 31, 1934, duly served with a subpoena to appear forthwith before such committee, in Washington, D.C., and then and there to testify relative to subject matters, and to produce specified files, records, and books, pertinent to the matter under inquiry; and

Whereas it appears from such report that the said William P. MacCracken has failed, declined, and refused, in disobedience of such subpoenas, to produce all files, records, and books; and

Whereas the appearance and testimony and correspondence, records, files, and books are material and necessary in order that the committee may properly execute the functions imposed upon it and obtain information necessary as a basis for such legislation as the Senate may deem necessary concerning ocean and air mail contracts: Therefore be it

Resolved, That the President of the Senate issue his warrant, commanding the Sergeant at Arms or his deputy to take into custody the body of the said William P. MacCracken before the bar of the Senate and to bring with him the correspondence, memorandums, books, files, and records referred to, and then and there to answer such questions pertinent to the matter under inquiry with reference to facts regarding correspondence, memorandums, books, and files as the Senate may propound, and to keep the said William P. MacCracken in custody to await the further action of the Senate.

Mr. BLACK. I ask unanimous consent for the present consideration of the resolution.

The VICE PRESIDENT. Is there objection? The Chair hears none. The question is on agreeing to the resolution.

Mr. AUSTIN. Mr. President, I wish to make the record clear as to my position in this matter.

I am not persuaded that the law required this witness to obey the subpoena, in view of his testimony that the matters which he withheld were communications between him and his professional client with respect to the contracts in connection with which they employed him. Therefore I should not want to have my assent to this resolution interpreted to mean that I assent to that part of the charge upon which the resolution is based, because I believe we are making a precedent here which may guide others in the future.

However, I shall favor the resolution because I regard it a contempt of the Senate of the United States for a witness, pending the decision and action of a Senate special investigating committee upon a question raised by the witness, to interfere and impede whatever judgment might come out of the consideration of the question he presented by destroying the subject matter.

I merely desire to make this record at the present time.

Mr. WHITE. Mr. President, I desire to say a very brief word about the situation.

I think I am very closely in accord with the views expressed by the Senator from Vermont [Mr. AUSTIN]. The fact is that when this attorney raised the question of privilege, some members of the committee, at least, were in much doubt as to how far that right or that duty of privilege extended; and at the request of some of us—I do not know whether it was at my request or not—the committee gave consideration to the question of privilege. It was pending that consideration of the matter in the committee, before we had reached a settled conclusion as to whether the attorney was or was not obligated to bring the papers before the committee, that some of the papers were permitted to go out of his possession into the hands of his client, and, as I now understand, to be ultimately destroyed.

So far as I am concerned, without meaning to express an opinion as to the sound and right principle of law involved, I am free to confess that when this action by the attorney took place I lost in substantial degree my interest in the principle, and I was concerned with the fact that while the matter was under consideration the Senate and the committee of the Senate were, as I viewed it, defied. I am supporting this proceeding because of that, and without intending to indicate my belief or my disbelief as to whether or not there was a privilege.

The VICE PRESIDENT. The question is on agreeing to the resolution.

The resolution was agreed to.