

REPORT

OF THE

SELECT COMMITTEE TO STUDY
CENSURE CHARGES
UNITED STATES SENATE
EIGHTY-THIRD CONGRESS
SECOND SESSION

PURSUANT TO THE ORDER ON

S. Res. 301
AND AMENDMENTS

A RESOLUTION TO CENSURE THE SENATOR
FROM WISCONSIN, MR. McCARTHY

17



NOVEMBER 8, 1954.—Ordered to be printed

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SELECT COMMITTEE TO STUDY CENSURE CHARGES

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on Loan to the Committee***

REPORT ON RESOLUTION TO CENSURE

NOVEMBER 8, 1954—Ordered to be printed

Mr. WATKINS, from the Select Committee To Study Censure Charges, submitted the following

R E P O R T

[To accompany S. Res. 301]

The Select Committee To Study Censure Charges, consisting of—

Arthur V. Watkins (chairman)

Edwin C. Johnson (vice chairman)

John C. Stennis
Frank Carlson

Francis Case
Sam J. Ervin, Jr.

to which was referred the resolution (S. Res. 301) and amendments, having considered the same, reports thereon and recommends that the resolution be adopted with certain amendments.

INTRODUCTION

On August 2 (legislative day, July 2), 1954, Senate Resolution 301, to censure the Senator from Wisconsin, Mr. McCarthy, submitted by Senator Flanders on July 30, and amendments proposed thereto, was referred to a select committee to be composed of 3 Republicans and 3 Democrats and named by the Vice President. By said order the select committee was authorized—

- (1) To hold hearings;
- (2) To sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate;
- (3) To require by subpoena or otherwise the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to take such testimony as is deemed advisable.

The select committee was instructed to act and to make a report to the Senate prior to the adjournment sine die of the Senate in the 2d session of the 83d Congress.

The order of the Senate is set forth in the hearing record, page 1 et seq.

The Vice President, on August 5, 1954, acting on the recommendations of the majority leader and the minority leader, made the following appointments of members of the select committee: From the majority, the Senator from Utah (Mr. Watkins), the Senator from Kansas (Mr. Carlson), and the Senator from South Dakota (Mr. Case). From the minority, the Senator from Colorado (Mr. Johnson), the Senator from Mississippi (Mr. Stennis), and the Senator from North Carolina (Mr. Ervin). The select committee chose the Senator from Utah (Mr. Watkins) as chairman, and the Senator from Colorado (Mr. Johnson) as vice chairman.

The select committee, on August 24, 1954, served upon the junior Senator from Wisconsin, and other interested persons, a notice of hearings, setting forth 5 categories containing 13 specifications of charges from certain of the proposed amendments, establishing the general procedural rules for the hearings before the select committee, and formally requesting the appearance of Senator McCarthy. The notice of hearings will be found in the hearing record, page 8.

All testimony and evidence taken and received by the select committee was at public hearings attended by Senator McCarthy and his counsel, except the opinion of the Senate Parliamentarian which was obtained pursuant to Senator McCarthy's request.

The public hearings were held in accordance with said notice of hearings, on August 31, September 1, 2, 7, 8, 9, 10, 11, and 13, 1954. The entire testimony, evidence, and proceedings at said public hearings are in the printed record of the hearings.

At the commencement of the hearings, on August 31, 1954 (p. 11 of the hearings), the chairman stated:

STATEMENT OF PURPOSES OF COMMITTEE MADE AT COMMENCEMENT OF HEARING

Now, at the outset of this hearing, the committee desires to state in general terms what is involved in Senate Resolution 301 and the Senate order on it, which authorized the appointment of the select committee to consider in behalf of the Senate the so-called Flanders resolution of censure, together with all amendments proposed in the resolution.

The committee, in the words of the Senate order was "authorized to hold hearings, to sit and act at such times and places during the sessions, recesses, and adjourned periods of the Senate, to require by subpoena, or otherwise, the attendance of such witnesses and the production of such correspondence, books, papers, and documents, and to take such testimony as it deems advisable, and that the committee be instructed to act and make a report to this body prior to the adjournment sine die of the Senate in the second session of the 83d Congress."

That is a broad grant of power, carrying with it a heavy responsibility—a responsibility which the committee takes seriously. In beginning its duties, the committee found few precedents to serve as a guide. It is true that there had been other censure resolutions before the Senate in the past, but the acts complained of were, for the most part, single occurrences which happened in the presence of the Senate or one of its committees. Under such circumstances, prolonged investigations and hearings were not necessary.

It should be pointed out that some forty-and-odd alleged instances of misconduct on the part of Senator McCarthy referred to this committee are involved and complex, both with respect to matters of fact and law. With reference to the time element, the incidents are alleged to have happened within a period covering several years. In addition, 3 Senate committees already have held hearings on 1 or more phases of the alleged incidents of misconduct. Obviously, with all this in mind, the committee had good reason for concluding it faced an unprecedented situation which would require adoption of procedures, all

within the authority granted it in the Senate order, that would enable it to perform the duties assigned within the limited time given by the Senate.

The committee interprets its duties, functions, and responsibilities under the Senate order to be as follows:

1. To analyze the charges set forth in the amendments and to determine—
 - (a) If there were duplications which could be eliminated.
 - (b) If any of the charges were of such a nature that even if the allegations were established as factually true, yet there would be strong reasons for believing that they did not constitute a ground for censure.
2. To thoroughly investigate all charges not eliminated under No. 1 in order to secure relevant and material facts concerning them and the names of witnesses or records which can establish the facts at the hearings to be held.

In this connection the committee believes it should function as an impartial investigating agency to develop by direct contacts in the field and by direct examination of Senate records all relevant and material facts possible to secure.

When Senate Resolution 301 and amendments offered were referred to the committee, the committee interprets this action to mean that from that time on the resolution and charges became the sole responsibility of the Senate. To state it another way, the Senator, or Senators, who offered Resolution 301, and proposed amendments thereto, have no legal responsibility from that point on for the conduct of the investigations and hearings authorized by the order of the Senate. The hearings are not to be adversary in character. Under this interpretation, it became the committee's duty then to get all the facts and material relevant to the charges irrespective of whether the facts sustained the charges or showed them to be without foundation.

The foregoing statement seems to be necessary in view of a widespread misunderstanding that the Senator who introduced the resolution of censure into the Senate and the Senators who offered amendments thereto, setting up specific charges against the Senator from Wisconsin, are the complaining witnesses, or the parties plaintiff, in this proceeding. That is not true, as has been explained. However, because of the fact that they had made some study of the situation, the committee did give them an opportunity to submit informational documentation of the charges they had offered. Also they were asked to submit the names of any witnesses who might have firsthand knowledge of the matters charged and who could give relevant and material testimony in the hearings.

Since matters of law also will be involved in reaching evaluation of the facts developed, pertinent rules of the Senate and sections of law, together with precedents and decisions by competent tribunals, should be briefed and made a part of the hearing record, the committee believes.

3. To hold hearings where the committee can present witnesses and documentary evidence for the purpose of placing on record, for later use by the Senate, the evidence and other information gathered during the preliminary investigation period, and for the development of additional evidence and information as the hearings proceed.

The resolution of censure presents to the Senate an issue with respect to the conduct and possible punishment of one of its Members. The debate in the Senate preceding the vote to refer the matter to a select committee made it abundantly clear that the proceedings necessary to a proper disposal of the resolution and the amendments proposed, both in the Senate and in the select committee, would be judicial or quasi-judicial in nature, and for that reason should be conducted in a judicial manner and atmosphere, so far as compatible with the investigative functions of the committee in its preliminary and continuing search for evidence and information bearing on all phases of the issues presented.

Inherent in the situation created by the resolution of censure and the charges made, is the right of the Senator against whom the charges were made to be present at the hearings held by the select committee. He should also be permitted to be represented by counsel and should have the right of cross-examination. This is somewhat contrary to the practice by Senate committees in the past, in hearings of this nature, but the present committee believes that the accused Senator should have these rights. He or his counsel, but not both, shall be permitted to make objections to the introduction of testimony, but the argument on the objections may be had or withheld at the discretion of the chairman. The Senator under charges should be permitted to present witnesses and documentary evidence in his behalf, but, of course, this should be done in compliance with the policy laid down by the committee in its notice of hearing, which is a part of this record.

In general, the committee wishes it understood that the regulations adopted are for the purpose of insuring a judicial hearing and a judicial atmosphere as befits the importance of the issues raised. For that reason, and in accordance with the order the committee believes to be the sentiment of the Senate, all activities which are not permitted in the Senate itself will not be permitted in this hearing.

4. When the hearings have closed, to prepare a report and submit it to the Senate. Under the order creating this committee, this must be done before the present Senate adjourns sine die.

By way of comment, let me say that the inquiry we are engaged in is of a special character which differentiates it from the usual legislative inquiry. It involves the internal affairs of the Senate itself in the exercise of a high constitutional function. It is by nature a judicial or semijudicial function, and we shall attempt to conduct it as such. The procedures outlined are not necessarily appropriate to congressional investigations and should not, therefore, be construed as in any sense intended as a model appropriate to such inquiries. We hope what we are doing will be found to conform to sound senatorial principles and traditions in the special field in which the committee is operating.

It has been said before, but it will do no harm to repeat, that the members of this committee did not seek this appointment. The qualifications laid down by the Senate order creating the commission, said the committee should be made up of 3 Democrat Senators and 3 Republican Senators. This was the only condition named in the order. However, in a larger sense the proper authorities of the Senate were charged with the responsibility of attempting to choose Members of the Senate for this committee who could and would conduct a fair and impartial investigation and hearing. Members of the committee deemed their selection by the Senate authorities as a trust.

We realize we are human. We know, and the American people know, that there has been a controversy raging over the country through a number of years in connection with the activities of the Senator against whom the resolution is directed. Members of this committee have been conscious of that controversy; they have seen, heard, and read of the activities, charges, and countercharges, and being human, they may have at times expressed their impressions with respect to events that were happening while they were happening.

However, each of the Senators who make up this special select committee are mature men with a wide background of experience which should enable them to disregard any impressions or preconceived notions they may have had in the past respecting the controversies which have been going on in public for many years.

We approach this matter as a duty imposed upon us and which we feel that we should do our very best to discharge in a proper manner. We realize the United States Senate, in a sense, is on trial, and we hope our conduct will be such as to maintain the American sense of fair play and the high traditions and dignity of the United States Senate under the authority given it by the Constitution.

As the investigations and the hearings progressed, the committee found that the period of time allotted to perform the task assigned would not be sufficient if all the charges were given thorough investigation and hearings were held thereon. The committee also was aware of the practical situation that required that its task be completed sufficiently early to permit the Senate to consider its report before that body must adjourn sine die.

PROCEDURE FOR COMMITTEE HEARINGS ESTABLISHED IN NOTICE OF HEARINGS

All testimony and evidence received in the hearings shall be such as is found by the select committee to be competent, relevant, and material to the subject matters so under inquiry, with the right of examination and cross-examination, in general conformity to judicial proceedings and in accordance with said order of the Senate.

The select committee will admit, subject to said order, as competent testimony for the record, so far as material and relevant, the official proceedings and pertinent actions of the Senate and of any of its committees or subcommittees, taking judicial notice thereof, and using official reprints when convenient. Following

Senate tradition, witnesses may be examined by any member of the committee, and they may be examined or cross-examined for the committee by its counsel. Witnesses may be examined or cross-examined either by Senator McCarthy or his counsel, but not by both as to the same witness.

Senator McCarthy was permitted to and made an opening statement in his own behalf at the commencement of the first hearing, on condition that it be relevant and material, and not to be received as testimony (hearing record, p. 14).

By unanimous vote of the members of the select committee taken after the issuance of the notice of hearings, it was decided to proceed with hearings only upon the 13 specifications set forth in the 5 categories contained in the notice of hearings, to which reference is hereby made (hearing record, p. 8).

I

CATEGORY I. INCIDENTS OF CONTEMPT OF THE SENATE OR A SENATORIAL COMMITTEE

A. GENERAL DISCUSSION AND SUMMARY OF EVIDENCE

The evidence on the question whether Senator McCarthy was guilty of contempt of the Senate or a senatorial committee involves his conduct with relation to the Subcommittee on Privileges and Elections of the Senate Committee on Rules and Administration. An analysis of the three amendments referring to this general matter (being amendment (3) proposed by Senator Fulbright, amendment (a) proposed by Senator Morse, and amendment (17) proposed by Senator Flanders) reveals these specific charges:

(1) That Senator McCarthy refused repeated invitations to testify before the subcommittee.

(2) That he declined to comply with a request by letter dated November 21, 1952, from the chairman of the subcommittee to appear to supply information concerning certain specific matters involving his activities as a Member of the Senate.

(3) That he denounced the subcommittee and contemptuously refused to comply with its request.

(4) That he has continued to show his contempt for the Senate by failing to explain in any manner the six charges contained in the Hennings-Hayden-Hendrickson report, which was filed in January 1953.

We have decided to consider and discuss in our report under this category the incident with reference to Senator Hendrickson, since the conduct complained of is related directly to the fact that Senator Hendrickson was a member of the Subcommittee on Privileges and Elections. This incident is referred to in the amendment proposed by Senator Flanders (30), the specific charge being:

(5) That he ridiculed and defamed Senator Hendrickson in vulgar and base language, calling him: "A living miracle without brains or guts."

The report referred to as the Hennings-Hayden-Hendrickson report is the report of the Subcommittee on Privileges and Elections to the Committee on Rules and Administration, pursuant to Senate Resolu-

tion 187, 82d Congress, 1st session, and Senate Resolution 304, 82d Congress, 2d session, filed January 2, 1953, and appears in part II of the hearing record. The select committee admitted in evidence the Hennings-Hayden-Hendrickson report for the limited purposes of showing the nature of the charges before that subcommittee, as bearing upon the question of jurisdiction of that subcommittee, and what was the subject matter of the investigation (pp. 55, 121, and 524 of the hearings).

As stated by the chairman (p. 17 of the hearings), the select committee did not construe this category as involving in any way the truth or falsity of any of the charges against Senator McCarthy considered by that subcommittee. These charges, as shown by its report and as stated briefly by the chairman, Senator Hennings, in a letter to Senator McCarthy under date of November 21, 1952 (Hennings-Hayden-Hendrickson report, p. 98), were:

Pursuant to your request, as transmitted to us through Mr. Kiermas, we are advising you that the subcommittee desires to make inquiry with respect to the following matters:

(1) Whether any funds collected or received by you and by others on your behalf to conduct certain of your activities, including those relating to "communism," were ever diverted and used for other purposes inuring to your personal advantage.

(2) Whether you, at any time, used your official position as a United States Senator and as a member of the Banking and Currency Committee, the Joint Housing Committee, and the Senate Investigations Committee to obtain a \$10,000 fee from the Lustron Corp., which company was then almost entirely subsidized by agencies under the jurisdiction of the very committees of which you were a member.

(3) Whether your activities on behalf of certain special interest groups, such as housing, sugar, and China, were motivated by self-interest.

(4) Whether your activities with respect to your senatorial campaigns, particularly with respect to the reporting of your financing and your activities relating to the financial transactions with, and subsequent employment of, Ray Kiermas involved violations of the Federal and State Corrupt Practices Acts.

(5) Whether loan or other transactions which you had with the Appleton State Bank, of Appleton, Wis., involved violations of tax and banking laws.

(6) Whether you used close associates and members of your family to secrete receipts, income, commodity, and stock speculation, and other financial transactions for ulterior motives.

The evidence taken by the select committee under this category consisted of letters and documents, oral testimony by Senator McCarthy and oral testimony by Senator Hayden, and by the Parliamentarian. As to the statement regarding Senator Hendrickson, there is the testimony of a reporter. There is no material contradiction in any of the testimony relating to this category. The sending and receipt of the correspondence is admitted. There is no contradiction of the verbal testimony of Senator McCarthy with reference to his conversations with Chairman Gillette, or of that of Chairman Hayden with reference to the constitution of the Subcommittee on Privileges and Elections and the filing of its report, or of that of Parliamentarian Watkins, discussed fully hereinafter.

The evidence shows that the Subcommittee on Privileges and Elections was proceeding to investigate and report on Senate Resolution 187; that Senator McCarthy was invited to appear to testify before the subcommittee on five separate occasions extending from September 25, 1951, to November 7, 1952, and formally requested to appear by letter and telegram of November 21, 1952; that Senator McCarthy could

not appear at the times specified in the request because of his absence in Wisconsin; that Senator McCarthy did not appear before the subcommittee in answer to the matters under investigation regarding his own conduct, but did appear on one occasion in support of his Senate Resolution 304 directed against Senator Benton; that Senator McCarthy accused the subcommittee of acting without power and beyond its jurisdiction, of wasting vast amounts of public money for improper partisan purposes, of proceeding dishonestly, of aiding the cause of communism, and that these accusations were directed toward an official subcommittee of the Senate. The uncontradicted testimony further shows that Senator McCarthy directed and gave to the press an abusive and insulting statement concerning Senator Hendrickson, calculated to wound a colleague, solely because Senator Hendrickson was a member of the subcommittee and performing services required by the Senate.

Senate Resolution 187, introduced by Senator Benton, was not voted upon by the Senate, but when the jurisdiction of the Subcommittee on Privileges and Elections and the integrity of its members was attacked, the Senate by its vote of 60 to 0 in Senate Resolution 300, affirmed and ratified both.

Counsel for Senator McCarthy advanced the contention that these specifications relating to "Incidents of contempt of the Senate or a senatorial committee" were legally insufficient on their face as a predicate for the censure of Senator McCarthy because (1) there has never been a case of censure upon a Member of Congress for conduct antedating the inception of the Congress which is hearing the censure charges (p. 18 of the hearings), and (2) because the subcommittee acted unlawfully and beyond its jurisdiction (pp. 53 to 58 of the hearings).

B. FINDINGS OF FACT

From the evidence and testimony taken with reference to the first category, the select committee finds the following facts:

1. On August 6, 1951, Senate Resolution 187, 82d Congress, 1st session, was introduced by Senator Benton and referred to the Committee on Rules and Administration (p. 20 of the hearings).

2. In turn, this resolution was referred by the Committee on Rules and Administration to its Subcommittee on Privileges and Elections (p. 280 of the hearings).

3. This resolution provided, inter alia, that whereas "any sitting Senator, regardless of whether he is a candidate in the election himself, should be subject to expulsion by action of the Senate, if it finds such Senator engaged in practices and behavior that make him, in the opinion of the Senate, unfit to hold the position of United States Senator,": Therefore be it

Resolved, That the Committee on Rules and Administration of the Senate is authorized and directed to proceed with such consideration of the report of its Subcommittee on Privileges and Elections with respect to the 1950 Maryland senatorial general election, which was made pursuant to Senate Resolution 250, 81st Congress, April 13, 1950, and to make such further investigation with respect to the participation of Senator Joseph R. McCarthy in the 1950 senatorial campaign of Senator John Marshall Butler, and such investigation with respect to his other acts since his election to the Senate, as may be appropriate to enable such committee to determine whether or not it should initiate action with a view

toward the expulsion from the United States Senate of the said Senator Joseph R. McCarthy.

It will be noted that this proposed resolution authorized and directed such investigation as may be appropriate "with reference to his other acts since his election to the Senate."

4. Senator McCarthy was elected to the Senate in the fall of 1946, and took his seat in January 1947.

5. Among the charges pending before and investigated by that Subcommittee on Privileges and Elections, charges (1), (2), (3), and (4) related to matters since Senator McCarthy's election to the Senate in 1946, and charges (5) and (6) may or may not have referred to matters since his election to the Senate, or to matters both before and after his election.

6. Senator Guy M. Gillette was chairman of that Subcommittee on Privileges and Elections until his resignation on September 26, 1952 (p. 22 of the hearings).

7. By letter of Senator McCarthy to Chairman Gillette dated September 17, 1951, Senator McCarthy stated that he intended to appear to question witnesses and that the subcommittee, without authorization from the Senate was undertaking to conduct hearings in the matter (p. 280 of the hearings).

8. By letter of September 25, 1951, Chairman Gillette notified Senator McCarthy that the Benton resolution (S. Res. 187) would be taken up by the subcommittee on September 28, 1951, and that Senator McCarthy could be present to hear Senator Benton in executive session and make his own statement also, if time permitted (p. 23 of the hearings).

9. Senator McCarthy did not reply to this letter.

10. By letter of October 1, 1951, Chairman Gillette advised Senator McCarthy that Senator Benton had appeared and presented a statement in support of his resolution looking to action pertaining to the expulsion of Senator McCarthy from the Senate, that the subcommittee had taken action to accord to Senator McCarthy the opportunity to appear and make any statement he wished to make concerning the matter, and that the subcommittee "will be glad to hear you at an hour mutually convenient," before the 10th of October, if Senator McCarthy desired to appear (p. 23 of the hearings).

11. Under date of October 4, 1951, Senator McCarthy wrote to Chairman Gillette, in reply to the latter's letter of October 1, 1951, that "I have not and do not even intend to read, much less answer, Benton's smear attack" (p. 23 of the hearings).

12. By letter of December 6, 1951, Senator McCarthy advised Chairman Gillette (p. 24 of the hearings).

(a) That the "Elections Subcommittee, unless given further power by the Senate, is restricted to matters having to do with elections.

(b) That "a horde of investigators hired by your committee at a cost of tens of thousands of dollars of taxpayers' money, has been engaged exclusively in trying to dig up on McCarthy material covering periods of time long before he was even old enough to be a candidate for the Senate—material which can have no conceivable connection with his election or any other election."

(c) That the "obvious purpose is to dig up campaign material

for the Democrat Party for the coming campaign against McCarthy.

(d) That "when your Elections Subcommittee, without Senate authorization, spends tens of thousands of taxpayers' dollars for the sole purpose of digging up campaign material against McCarthy, then the committee is guilty of stealing just as clearly as though the Members engaged in picking the pockets of the taxpayers and turning the loot over to the Democrat National Committee."

(e) That "if one of the administration lackies were chairman of this committee, I would not waste the time or energy to write and point out the committee's complete dishonesty."

(f) That instead of obtaining the necessary power from the Senate, "your committee decided to spend tens of thousands of dollars of taxpayers' money to aid Benton in his smear attack upon McCarthy."

(g) That "I cannot understand your being willing to label Guy Gillette as a man who will head a committee which is stealing from the pockets of the American taxpayer tens of thousands of dollars and then using this money to protect the Democrat Party from the political effect of the exposure of Communists in Government."

(h) That "to take it upon yourself to hire a horde of investigators and spend tens of thousands of dollars without any authorization from the Senate is labeling your Elections Subcommittee even more dishonest than was the Tydings committee."

13. Chairman Gillette replied to Senator McCarthy by letter of December 6, 1951 (p. 26 of the hearings), stating that the subcommittee did not seek its unpleasant task, but that since Senate Resolution 187 was referred by the Senate to the Committee on Rules and Administration, and by it to its Subcommittee on Privileges and Elections, its duty was clear and would be discharged "in a spirit of utmost fairness to all concerned and to the Senate."

14. In the same letter, Chairman Gillette informed Senator McCarthy, "your information as to the use of a large staff and the expenditure of a large sum of money in investigations relative to the resolution is, of course, erroneous."

15. By letter from Senator McCarthy to Chairman Gillette dated December 7, 1951, information was requested of the number and salaries of employees of the subcommittee (p. 26 of the hearings).

16. Chairman Gillette gave this information to Senator McCarthy under date of December 11, 1951 (p. 27 of the hearings).

17. Under date of December 19, 1951, Senator McCarthy wrote to Chairman Gillette stating that: "the full committee appointed you chairman of an Elections Subcommittee, but gave you no power whatsoever to hire investigators and spend vast amounts of money to make investigations having nothing to do with elections. Again, may I have an answer to my questions as to why you feel you are entitled to spend the taxpayers' money to do the work of the Democratic National Committee" (p. 27 of the hearings).

18. In the same letter, Senator McCarthy stated: "You and every member of your subcommittee who is responsible for spending vast amounts of money to hire investigators, pay their traveling expenses, etc., on matters not concerned with elections, is just as dishonest as

