not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 258, nays 147, not voting 29, as follows:

[Roll No. 601]

YEAS—258

Addabbo	Frenzel	Murphy, N.Y.
Akaka	Frey	Murphy, Pa.
Alexander	Fuqua	Natcher
Allen	Gammage	Neal
Ambro	Gibbons	Nedzi
Ammerman	Gilman	Nix
Anderson, Calif.	Ginn	Nolan
Anderson, Ill.	Glickman	Nowak
Andrews, N.C.	Gonzalez	Oakar
Applegate	Gore	Oberstar
Armstrong	Gradison	Ottinger
Ashbrook	Guyer	Panetta
Ashley	Hamilton	Pattison
Aspin	Hammer-schmidt	Pease
Badillo	Hanley	Perkins
Bafalis	Hannaford	Pettis
Baucus	Harkin	Pickle
Beard, R.I.	Harrington	Pressler
Bedell	Harris	Preyer
Bellenson	Harsha	Price
Benjamin	Hawkins	Pritchard
Bennett	Heckler	Pursell
Bevill	Hefner	Quie
Biaggi	Heftel	Quillen
Bingham	Hightower	Rahall
Blanchard	Holland	Regula
Blouin	Hollenbeck	Reuss
Boland	Holtzman	Rhodes
Bolling	Howard	Richmond
Bonior	Hubbard	Rodino
Bonker	Huckaby	Rogers
Brademas	Hughes	Roncalio
Breckinridge	Ichord	Rose
Brinkley	Ireland	Rosenthal
Brodhead	Jeffords	Rostenkowski
Brooks	Jenkins	Roybal
Brown, Calif.	Johnson, Colo.	Ruppe
Brown, Mich.	Jones, N.C.	Ryan
Brown, Ohio	Jones, Tenn.	Santini
Broyhill	Jordan	Sarasin
Buchanan	Kasten	Sawyer
Burke, Calif.	Kastenmeier	Scheuer
Burke, Fla.	Kemp	Seiberling
Burton, John	Keys	Sharp
Burton, Phillip	Kildee	Shuster
Butler	Koch	Simon
Caputo	Kostmayer	Siak
Carter	Krebs	Skubitz
Cederberg	Krueger	Smith, Iowa
Chisholm	LaFalce	Solarz
Clay	Leach	Spellman
Cohen	Leggett	Staggers
Collins, Ill.	Lent	Steers
Conable	Levitas	Stockman
Conte	Lloyd, Calif.	Stokes
Conyers	Lloyd, Tenn.	Thompson
Corman	Long, La.	Thone
Coughlin	Long, Md.	Thornton
D'Amours	Lott	Treen
Danielson	Luken	Tsongas
Davis	Lundine	Tucker
Dellums	McCloskey	Udall
Derrick	McEwen	Ullman
Dicks	McFall	Van Deerlin
Dingell	McKinney	Vander Jagt
Dodd	Madigan	Vanik
Downey	Maguire	Vento
Drinan	Markey	Waggonner
Duncan, Oreg.	Marks	Walgren
Duncan, Tenn.	Martin	Walker
Eckhardt	Mattox	Wampler
Edgar	Meeds	Waxman
Edwards, Calif.	Metcalfe	Weaver
Emery	Meyner	Weiss
Erlenborn	Mikva	Whitehurst
Evans, Del.	Miller, Ohio	Whitley
Fary	Mineta	Whitten
Fenwick	Minish	Wiggins
Findley	Mitchell, Md.	Wilson, Tex.
Fish	Mitchell, N.Y.	Winn
Fisher	Moakley	Wirth
Fithian	Moffett	Wolff
Ford, Mich.	Montgomery	Wright
Ford, Tenn.	Moorhead, Pa.	Wydler
Forsythe	Moss	Yates
Fraser	Murphy, Ill.	Zeferetti

NAYS—147

Abdnor	Flood	Myers, Michael
Andrews, N. Dak.	Flowers	Nichols
Annunzio	Flynt	O'Brien
Archer	Foley	Obey
AuCoin	Fountain	Patten
Baldus	Fowler	Pike
Barnard	Gaydos	Poage
Bauman	Gephardt	Quayle
Beard, Tenn.	Giaimo	Railsback
Boggs	Goldwater	Rinaldo
Breaux	Goodling	Risenhoover
Broomfield	Grassley	Robinson
Burgener	Gudger	Rooney
Burke, Mass.	Hagedorn	Rousselot
Burleson, Tex.	Hall	Rudd
Burlison, Mo.	Hansen	Runnels
Byron	Hillis	Russo
Carney	Holt	Satterfield
Carr	Hyde	Schroeder
Chappell	Jacobs	Schulze
Clausen, Don H.	Jones, Okla.	Sebelius
Cleveland	Kazen	Shipley
Cochran	Kelly	Sikes
Coleman	Ketchum	Slack
Collins, Tex.	Kindness	Smith, Nebr.
Corcoran	Lagomarsino	Snyder
Cornell	Latta	Spence
Crane	Lederer	St Germain
Daniel, Dan	Livingston	Stangeland
Daniel, R. W.	Lujan	Stanton,
de la Garza	McDade	Steiger
Delaney	McDonald	Stratton
Derwinski	McHugh	Studds
Devine	McKay	Stump
Dickinson	Mahon	Symms
Diggs	Marlenee	Taylor
Dornan	Marriott	Traxler
Early	Mathis	Treible
Edwards, Ala.	Mazzoli	Volkmer
Edwards, Okla.	Michel	Walsh
Eilberg	Milford	Watkins
English	Miller, Calif.	White
Ertel	Mollohan	Wilson, C. H.
Evans, Colo.	Moore	Wylie
Evans, Ga.	Moorhead, Calif.	Yatron
Evans, Ind.	Mottl	Young, Alaska
Fascell	Murtha	Young, Fla.
Flippo	Myers, Gary	Young, Mo.
	Myers, John	Young, Tex.
		Zablocki

NOT VOTING—29

Badham	Jenrette	Rangel
Bowen	Johnson, Calif.	Roberts
Cavanaugh	Le Fante	Roe
Clawson, Del	Lehman	Skelton
Cornwell	McClory	Stark
Cotter	McCormack	Steed
Cunningham	Mann	Teague
Dent	Mikulski	Whalen
Florio	Patterson	Wilson, Bob
Horton	Pepper	

The Clerk announced the following pairs:

On this vote:

Mr. Stark for, with Mr. Dent against.
Mr. Rangel for, with Mr. Teague against.
Mr. Pepper for, with Mr. Jenrette against.

Until further notice:

Mr. Florio with Mr. Badham.
Mr. Lehman with Mr. Whalen.
Mr. Patterson of California with Mr. McClory.
Mr. Cotter with Mr. Del Clawson.
Mr. Bowen with Mr. Cavanaugh.
Mr. Roberts with Mr. Bob Wilson.
Mr. Le Fante with Mr. Cunningham.
Mr. Steed with Mr. Horton.
Mr. Roe with Mr. Skelton.
Mr. Mann with Mr. McCormack.
Ms. Mikulski with Mr. Cornwell.

Mr. MAZZOLI changed his vote from "yea" to "nay."

So the resolution, as amended, was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SCHEUER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

PERMISSION FOR COMMITTEE ON GOVERNMENT OPERATIONS TO SIT TOMORROW UNDER THE 5-MINUTE RULE

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the Committee on Government Operations may be permitted to sit while the House is meeting under the 5-minute rule tomorrow, Thursday, September 29.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. ROUSSELOT. Mr. Speaker, reserving the right to object, can the gentleman assure us this is vitally essential legislation?

Mr. BROOKS. Mr. Speaker, if the gentleman will yield, I certainly can; and the committee is scheduled to meet at 9:15, and we anticipate to be through Friday at 10 o'clock; but if we ran over a few minutes, I did not in any way want to violate the House rules. I wanted this to protect us.

Mr. ROUSSELOT. Mr. Speaker, further reserving the right to object, can the gentleman assure us that the committee will not go beyond 12 o'clock?

Mr. BROOKS. I certainly can.

Mr. ROUSSELOT. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT-INDEPENDENT AGENCIES APPROPRIATION ACT, 1978

Mr. BOLAND. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 7554) making appropriations for the Department of Housing and Urban Development, and for sundry independent executive agencies, boards, bureaus, commissions, corporations, and offices for the fiscal year ending September 30, 1978, and for other purposes, with the remaining amendment in disagreement, and that the House recede from its disagreement to the Senate amendment No. 40 and concur therein.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Senate amendment No. 40: Page 30, strike out lines 3 to 9 inclusive.

The SPEAKER pro tempore (Mr. THORNTON). Is there objection to the request of the gentleman from Massachusetts?

Mr. BEARD of Tennessee. Mr. Speaker, reserving the right to object, I would like to just reaffirm what has already been stated in the record. As a result of the Roberts-Hammerschmidt bill that was a

compromise bill and also the Cranston-Thurmond bill on the Senate side, I have been told and the reason I will not object is it has been said to the Members of the committee that the White House will sign the compromise veterans' bill dealing with the awarding of veterans' benefits to those whose discharges are automatically upgraded under the Carter program.

Mr. BOLAND. Mr. Speaker, if the gentleman will yield, I personally am not privy to any such information from the White House myself. My understanding is that the members of the Veterans' Committee do have that assurance with respect to the authorization bill, S. 1307. That bill will be signed. In light of the circumstances. I urge that the House now recede from its insistence on the so-called Beard amendment.

Mr. BEARD of Tennessee. Mr. Speaker, I thank the gentleman and I do want to state the authors of the House bill, SONNY MONTGOMERY, JOHN PAUL HAMMERSCHMIDT and RAY ROBERTS have been assured by the White House that the President would sign it..

Mr. Speaker, I thank the gentleman for his patience.

Mr. BOLAND. Mr. Speaker, if the gentleman will yield further, I thank the gentleman from Tennessee for his patience.

Mr. COUGHLIN. Mr. Speaker, will the gentleman yield?

Mr. BEARD of Tennessee. I yield to the gentleman from Pennsylvania.

Mr. COUGHLIN. Mr. Speaker, the minority supports the majority position. This matter has been resolved all the way through.

(Mr. BEARD of Tennessee asked and was given permission to revise and extend his remarks.)

Mr. BEARD of Tennessee. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

A motion to reconsider was laid on the table.

AUTHORIZING SELECT COMMITTEE ON ASSASSINATIONS TO APPLY TO COURTS

Mr. MURPHY of Illinois. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 760 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 760

Resolved, That for the purpose of carrying out H. Res. 222, Ninety-fifth Congress, when authorized by a majority of the committee, or subcommittee members voting, a majority being present, the Select Committee on Assassinations, or any subcommittee thereof, is authorized to make applications to courts; and to bring and defend lawsuits arising out of subpenas, orders immunizing witnesses and compelling them to testify, testimony or the production of evidence, and the failure to testify or produce evidence.

The SPEAKER pro tempore. The gentleman from Illinois (Mr. MURPHY) for 1 hour.

Mr. MURPHY of Illinois. Mr. Speaker, I yield the usual 30 minutes for the minority to the distinguished gentleman from Ohio (Mr. LATTA) for purposes of debate only, pending which I yield myself such time as I may consume.

(Mr. MURPHY of Illinois asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of Illinois. Mr. Speaker, House Resolution 760 is a privileged resolution providing for 1 hour of debate in the House. This resolution gives the Select Committee on Assassinations authority to make applications to the courts and to bring and defend certain lawsuits. This authority may not be exercised unless authorized by a majority of the committee or subcommittee members voting, a majority being present.

The select committee was created by House Resolution 222 to conduct a "full and complete" investigation on the deaths of John F. Kennedy and Martin Luther King, Jr. Under House Resolution 222 the committee was given subpena power and the authority to grant immunity.

House Resolution 433 extended the life of the select committee through the 95th Congress. This resolution originally contained language giving the select committee authority "to bring, defend and intervene in lawsuits and make applications to court." However, this portion of House Resolution 433 was struck from the resolution by a floor amendment on March 30, 1977. It was felt that the authority sought by the committee was too broad with no limitations placed on the type of suits in which the committee might become involved.

The current resolution seeks less authority than was originally requested by the select committee in House Resolution 433. This resolution seeks no authority to intervene in lawsuits. Secondly, the authority to bring and defend lawsuits is clearly limited to certain types of lawsuits arising out of subpenas, immunity orders, testimony, or the production of evidence, and the failure of a witness to testify or produce evidence.

House Resolution 760 would clarify the power of the select committee with regard to its authority to go to court. Although House Resolution 222 granted the committee the power to obtain immunity for witnesses under the appropriate statutes of the United States, the power to "make applications to courts" was deleted from House Resolution 433. There is now some doubt as to whether the committee can still apply to courts for immunity orders. Without this clarification, the committee would be compelled to go to the House on a case-by-case basis whenever the committee needed to apply for a grant of immunity, or for any other authority to go to court such as to obtain access to grand jury minutes or to defend against a motion to quash a subpena. House Resolution 760 should clarify this ambiguity.

House Resolution 760 was unanimously adopted by the Select Committee on Assassinations. The Rules Committee reported the resolution out by unanimous voice vote. This resolution provides the select committee with limited legal authority to conduct its investigation. I urge the adoption of House Resolution 760.

Mr. LATTA. Mr. Speaker, I yield myself such time as I may consume.

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, I agree with the statement just made by the distinguished gentleman from Illinois (Mr. MURPHY) about House Resolution 760. The resolution, for example, would make it clear that the select committee may apply to a court for an order of immunity. But it is somewhat more limited than the authority that was sought on March 30, 1977 when the House, by a vote of 223 to 195, deleted certain language from House Resolution 433. The language deleted provided that,

For the purpose of carrying out H. Res. 222, the select committee is also authorized to bring, defend, and intervene in lawsuits and make applications to courts.

Mr. Speaker, I might say the alternative, according to the proponents of this legislation, to the House granting the select committee the limited power at this time to make application to the courts is that the select committee would have to come back to the House each and every time it sought an immunity order.

In the Kennedy assassination investigation alone, the select committee has anticipated calling approximately 200 witnesses, many of whom might request a grant of immunity before they would testify. This could require the House to schedule each of these grants of immunity for floor debate, possibly on 150 separate occasions.

According to the proponents of this resolution, this is what they are attempting to prevent by virtue of the resolution.

Mr. MURPHY of Illinois. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. BAUMAN), for purposes of debate only.

(Mr. BAUMAN asked and was given permission to revise and extend his remarks.)

Mr. BAUMAN. Mr. Speaker, on March 30, when the House considered the latest resolution authorizing the continuance of the Committee on Asssasinations, the resolution then before us contained the following phrase:

For the purposes of carrying out House Resolution 222, the Select Committee is authorized to bring, defend and intervene in lawsuits and make applications to courts.

Mr. Speaker, I offered an amendment at that time to strike out that language, and on a rollcall vote, with 223 in favor, 195 opposed, this broad authority was stricken from the resolution.

The reason I offered the amendment at that time—I think most Members will recall, and the majority of the House agreed—was the erratic behavior of the committee and its sensational activities had cast in doubt whether or not the committee could properly handle such wide-ranging authority which at that

time was unprecedented in the House of Representatives.

Mr. Speaker, since that time a similar authority for a House committee to go into the courts without full House approval has been granted for the first time to the special Korean investigation that is being conducted. But still no other committee, standing or select, has the power to go into court for these purposes without first coming to the House.

Quite frankly, I discussed this matter with the gentleman from Ohio (Mr. STOKES) at length. I read the remarks he put into the record explaining why he felt this was now necessary. But I would also point out that this committee has already the power under the House rules and the United States Code to issue subpenas and to grant immunity to the witnesses that they may seek to compel to testify.

The thing that concerns me still is that, while this resolution before us, House Resolution 760, is described by the gentleman from Illinois as being limited in its scope, it does authorize the committee to make applications to courts. I have no idea exactly what that means. It does not sound to me to be a legal term of art. The resolution also says, without the committee, or its subcommittees, mind you, ever coming back to the House, they may compel witnesses to testify and to produce evidence.

Many of the Members have expressed grave concern that that kind of authority in the original resolution might lead to the calling of officials from the Attorney General's office, the FBI, the CIA, since at one point the committee was threatening to bring the Attorney General before the committee under subpena to testify.

Although the report says this power is limited to legal proceedings regarding immunity, and the remarks of the gentleman from Ohio indicate it is to be limited to immunity, I still read this as being a very wide-ranging authority for the majority of the select committe on its subcommittees so that there could be two or three Members of the House agreeing to bring contempt citations.

If they have many witnesses that need to be called, let us have them tell us what it is all about, and then we can have confidence that this power is needed. Otherwise we should let them come back to the House, as every other committee of the House must do, save the one conducting the Korean investigation, and seek such authority in each instance.

Mr. Speaker, I am afraid that, although the committee has demonstrated a greater responsibility in the last few months—at least I assume it has, because they are saying nothing—the history of the committee is such that I do not think we ought to change our stand. I, therefore, oppose the resolution.

Mr. MURPHY of Illinois. Mr. Speaker, for purposes of debate only, I yield 10 minutes to the gentleman from Ohio (Mr. STOKES).

(Mr. STOKES asked and was given permission to revise and extend his remarks.)

Mr. STOKES. Mr. Speaker, the resolution being debated today would, if adopted, clarify the power of the select committee to use one aspect of the authority already part of the select committee's basic resolution. The new resolution makes it clear that the select committee has the authority to make an application to a court to obtain a grant of immunity under the appropriate statutes of the United States. We are taking this action out of an abundance of caution and out of a desire scrupulously to follow the limitations of our current resolution and the essential requirements of due process. I note, too, that this power is ordinarily at the disposal of other investigative committees of the Congress.

I believe that a brief history of the scheduling of House Resolution 760 is illustrative of the necessity that the House pass it at this time. The committee has a witness who was scheduled to appear, and the committee desires to interrogate this witness at the earliest possible time. To obtain the immunity that this witness requires before he will testify, House Resolution 760 was introduced. The Rules Committee by voice vote reported House Resolution 760 to the House Calendar. Almost 2 weeks have passed since the House first could have taken action on House Resolution 760. It has been scheduled numerous times for action on the floor but due to the press of other urgent business of the House, like the ERDA bill, House Resolution 760 has not been brought up for vote until the present time. Consequently, the committee's investigation into the sensitive area where we believe this witness has information has been completely stopped. As I have indicated, one of the reasons we desire the passage of House Resolution 760 is the precise desire to avoid consuming excessive amounts of time on the floor of the House and to be able to proceed with our investigation without an undue delay due to awaiting action on the floor. The delay in voting on House Resolution 760, due to the other urgent business of the House, is a perfect ilustration of the necessity that the House pass House Resoluion 760 today.

LEGISLATIVE BACKGROUND

Mr. Speaker, an explanation of the need for this action requires some background. In House Resolution 222, the House placed upon the select committee the duty of conducting "a full and complete investigation and study of the circumstances surrounding the assassination and death of President John F. Kennedy and the assassination and death of Martin Luther King, Jr." The House also empowered the committee to subpena witnesses and grant immunity. In fulfilling this mandate, the committee indeed expects to call a number of witnesses, some of whom may have to be granted immunity from the use of their testimony in a prosecution against them.

But, under 18 U.S.C. 6005(a), to obtain immunity for such witness, a congressional committee, so authorized by its basic resolution, must apply to a Federal district court for an order conferring immunity on the witness. It is probably already the case that the select committee has been authorized to apply to a court for such an immunity order, because the House Resolution 222 explicitly provides that—

> The Select Committee shall be considered a committee of the House of Representatives for all purposes of law, including . . . sections 6002 and 6005 of title 18, United States Code, . . .

Since section 6005 requires applications to courts for orders of immunity, it would seem to follow from the inclusion of this languge in the select committee's basic resolution that such applications are authorized.

Nevertheless, the special legislative history of House Resolution 433, the resolution that reconstituted the select committee, casts some doubt over the committee's power to apply to a court for such an order. Originally, the committee, in House Resolution 433, sought general authority to "bring, defend and intervene in lawsuits." This portion of House Resolution 433 was deleted on the floor of the House. The effect this particular deletion had on the general immunity provision in House Resolution 222 is what is at issue.

ALTERNATIVES IF HOUSE RESOLUTION 760 NOT PASSED

Were a witness to refuse to comply with a court's immunity order compelling testimony before the committee, as well as defend a contempt charge on the ground that the rejection of the explicit language in House Resolution 433 authorizing the committee to go to court also affected the general authority granted by House Resolution 222 to seek immunity applications under section 6005, the committee would face a difficult and troublesome legal issue. It is likely, too, that an appellate court would not resolve this issue for several months, a period of time coming during the heart of the committee's investigations. Were the resolution of the issue to go against the select committee's power, it would also seriously hinder the course of the investigation. While the lawsuit was pending, moreover, all witnesses appearing before the committee would also be in a position to frustrate the committee's efforts to secure their testimony safe in the knowledge that the committee's authority to proceed was in doubt because of the litigation. Obviously, this is a risk that the select committee cannot afford to run if we are to fulfill the mandate the House has given us.

If the committee cannot secure this clarification of its power, our work will not, of course, come to an end. But if it is to go forward, it will be necessary for the committee to return to the House floor on a case-by-case basis for each immunity application, something that other committees of the House do not have to do and something that we do not believe that the House intended when House Resolution 222 was amended. We can reasonably foresee that during the most difficult period of our investigation, immunity applications might be a weekly or even biweekly occurrence. Obviously, what is at stake here is more than the power of the committee. The efficient operation of the House calendar is also called into question, since it would be extremely time consuming for the commit-

tee to seek specific authority on the floor of the House to go to court to implement each of the committee's individual votes to grant immunity to particular witnesses. Obviously, too, if the House were on recess the investigation would remain in limbo pending the return of the Members.

GRAND JURY ILLUSTRATION

There are additional reasons for requesting the specific authorizing language we seek rather than for a resolution narrowly authorizing the committee to make an application in immunity situations. The committee has already been confronted with a limited number of other situations where it is necessary to make other types of applications to courts. For example, the committee presently needs access to certain grand jury minutes. We do not believe that the prosecutive agencies involved would object, but we know that they would want the committee to seek court permission, too. This is the proper legal way to proceed. It would be unseemly for us to act in any other fashion.

BRINGING AND DEFENDING LAWSUITS

In addition to granting the committee unequivocal authority to make applications for immunity or grand jury transcripts, the new resolution also specifically authorizes the committee to bring and defend lawsuits arising out of subpenas, immunity orders, testimony, or the failure of a witness to testify. This authority is narrowly related to issues touching on testimony or the production of evidence before the committee. For example, it insures that the committee has the authority to defend a motion to quash that may be filed against one of its subpenas. The committee has an absolute defense against such a motion based upon the speech and debate clause; this provision guarantees the committee authority to appear in court to assert that defense.

It would also enable the committee to go to a court to obtain a civil contempt order against a witness who had een ordered to testify by a court, but had not complied with it. The witness would be in violation of a court order, but to obtain the witness' testimony, it may only be necessary to clarify the order or call the judge's attention to the fact that a witness had not obeyed his order. The resolution would give the committee this authority; it would not supplant the role of the House in any criminal contempt proceeding, since pursuant to statute, criminal contempt proceedings would still have to be referred to the full House for certification.

COMPARISON WITH 443

The power to bring suit is not something that could be exercised by staff members without careful committee supervision. No power is sought to roam far and wide conducting our investigation by lawsuit rather than by carefully planned hearings—something that those who voted to delete general litigation authority in House Resolution 433 legitimately feared. For example, under the deleted authority in House Resolution 433, the committee could have intervened in a freedom of information suit brought by a citizen against the Archives for access to the Kennedy autopsy materials. No such power for the committee would be granted by the current resolution.

The authority could only be exercised by a majority of the committee or subcommittee members voting, a majority being present. It is certainly a much more restrictive and controlled authority than that which was deleted from House Resolution 433.

SENATE AND KOREAN PRECEDENT

The authority is necessary because committees cannot go to court to defend themselves unless they are specifically authorized to do so by resolution of the full House. *Reed* v. *County Commissioners*, 277 U.S. 376 (1928). Here it is significant to note that in response to the Reed case, the Senate passed a special resolution authorizing all Senate committees to petition courts for relief. See Senate Resolution 262, 70th Congress, 1st session 1928. There is no comparable resolution that exists for the House. Consequently, each committee must be individually so authorized, as the Korean Committee has been under its resolution. See House Resolution 252. Indeed, the powers granted the Korean Committee in section 6 of its resolution are broader than those we seek. This last point is particularly significant. It was thought that powers such as these were unprecedented when House Resolution 222 was considered. Now that the Korean Committee has found it necessary and helpful to have powers of this character of a general nature, the narrow authority sought by this committee should not be refused.

Mr. Speaker, this resolution will clarify and grant the committee the narrowly drawn legal authority it needs to accomplish what the House has mandated. It is a necessary power for any investigative committee to have to perform a competent and complete investigation. Having authorized the committee, and funded it, the House clearly has demonstrated its commitment to a serious investigation. To deny the committee sufficient legal authority to perform its task would make a mockery out of the "full and complete" investigation mandated by House Resolution 222. I hope it will receive the favorable attention of the House.

Mr. Speaker, as I have stated, the ability of the committee to be able to grant use immunity for a witness is crucial to the success of the committee's investigation. I have a legal memorandum written on the origins of the use immunity concept and its key role in any successful investigation. I include in the RECORD the memorandum which I have referred to.

SEPTEMBER 19, 1977.

MEMORANDUM

To: Select Committee Members.
From: G. Robert Blakey, Chief Counsel and Director.
Re: Use Immunity and the Congressional Investigatory Process.

The congressional fact finding process requires many legal tools. It is not enough that a congressional committee charged with a sensitive and difficult investigation has the power to compel the attendance of witnesses and the production of documents. Although witnesses may be forced to attend, they may not be compelled to testify contrary to their privilege against self-incrimination. Immunity is a means to procure a witness' testimony by guaranteeing that that testimony will not be used to incriminate the witness.

The immunity mechanism has deep historical roots, has been widely used by the Congress, and has proven most useful in untangling complicated conduct involving criminal wrong-doing. The Ervin Committee, for example, in investigating presidential campaign activities and the 1972 Watergate breakin conferred immunity on twenty-seven witnesses. The testimony of two of those immunized, Jean Dean and Jeb Stuart Magruder, may have been the single most important factor leading to the breaking of the Watergate case".[1]

The statute under which immunity was granted by the Ervin Committee was enacted in 1970 as part of the Organized Crime Control Act.[2] It was a "use immunity" statute; it replaced a hodgepodge of fifty separate Federal statutes that provided for blanket or "transactional immunity". The 1970 law provides "no testimony or other information compelled under the (court) order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order".[3]

This statute presently governs the granting of immunity by Congress and its Committees. It also regulates grand juries and administrative agencies. Its legal roots run deep in English and American law. To understand the scope and limitations on Congress' immunity power under the statute, reference must be made to the history behind the concept of "use immunity" and its place in American criminal law.

I. HISTORY OF THE DUTY TO TESTIFY AND THE PRIVILEGE AGAINST SELF-INCRIMINATION

A. The duty to testify

Use immunity is merely a constitutional equivalent of the Fifth Amendment privileges against self-incrimination. The Fifth Amendment states:

"No person shall be . . . compelled in any criminal case to be a witness against himself. . . ."[4]

This right against self-incrimination counterbalances the duty of every witness to provide testimony. The right to maintain silence is best seen as an exception to a general duty to speak. The legal duty to speak is basic to and arose with the modern Anglo-American system of justice. Until the Sixteenth Century "witnesses", as we know them today, were not used in English trials.[5] Jurors were supposed to find the facts based on their own self-acquired knowledge. Indeed, the pure witness—the individual unrelated to either party who merely happened to have relevant information—ran the substantial risk of a suit for maintenance if he volunteered to testify.[6] The situation became unworkable as litigation became more complex and juries became less and less able to resolve factual disputes on their own. Finally, in the *Statute of Elizabeth* in 1563,[7] provision was made for compulsory process for witnesses in civil cases. The enactment of this statute alleviated the risk of a suit for maintenance, for "what a man does by compulsion of law cannot be called maintenance".[8]

The *Stat. of Elizabeth*, by allowing a party to compel a witness to attend a hearing, only made it possible to testify freely; it imposed no duty to testify. Nevertheless, the step from right to duty was short, and it was soon taken. By 1612, Sir Francis Bacon in the

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Countess of Shrewsbury's Trial was able to assert confidently

"You must know that all subjects, without distinction of degrees, owe to the King tribute and service, not only of their deed and land, but of their knowledge and discovery. If there be anything that imports the King's service they ought themselves undemanded to impart it; much more, if they be called and examined, whether it be of their own fact or of another's, they ought to make direct answer."[9]

For more than three centuries it thus has been a maxim of indubitable certainty that the "public has a right to everyman's evidence".[10] "When the cause of justice requires the investigation of the truth," as Wigmore[11] put it, "no man has knowledge that is rightly private."

This principle, steadfastly adhered to over the past three hundred and fifty years, was resoundingly affirmed by the Supreme Court as recently as the "Watergate case". On March 1, 1974, seven presidential staff members were indicted for conspiracy to obstruct justice and other offenses relating to Watergate. On April 18, the District Court on motion of the Special Prosecutor issued a subpoena *duces tecum* to the President of the United States, directing him to produce in advance of the September 8 trial certain specified tapes and documents. Citing Executive privilege, the President refused.

On July 24, the day the House Judiciary Committee began its final, public debate on proposed articles of impeachment, the Supreme Court held unequivocally that not even the President may eschew his duty to provide evidence. As the Court stated, "The very integrity of the judicial system and public confidence in the system depend on a full disclosure of all the facts . . . To ensure that justice is done, it is imperative to the function of courts that compulsory process be available for the production of evidence . . ."[12]

The Court, in rejecting the President's privilege in this case, reaffirmed the ancient proposition of law, "(T)he public . . . has a right to every man's evidence except for those persons protected by a constitutional, common law, or statutory privilege."[13] Executive privilege was found to be too general and ill-defined a concept to offset the testimonial duty in a criminal case.

B. The privilege against self-incrimination

As the Watergate case reflects, the historical duty to testify is not absolute; it may be qualified by certain distinct privileges, the most important being the privilege against self-incrimination. The origins of this privilege, however, are unclear. The history of the privilege begins with the hated practice of the oath *ex officio mero*.[14] This oath was one abuse characteristic of heresy trials in the ecclesiastical courts and then of the infamous Star Chamber, which took its rules of procedure from ecclesiastical law. The emotional reaction which accompanied abolution of the oath ultimately halted the use of such incriminating interrogation in the common law courts.

Until the early Seventeenth Century, however, when the long battle between King and Parliament began, no serious and successful objection had been made to the oath *ex officio*. Under proper circumstances, the canon law upheld it.[15] Nevertheless, through the influence of Lord Coke, a change occurred By 1615, the power of the ecclesiastical court to use the oath *ex officio* in any penal inquiry had been ended by decisions of the common law courts.[16] The Star Chamber and its similar practice were the next to go. As a direct result of public indignation at the *Lilburn Trial*,[17] where the defendant was ordered pilloried and whipped for failure to respond to the oath, Parliament abolished both the oath and the Chamber itself.[18]

Footnotes at end of article.

Before the Star Chamber, Lilburn himself had not claimed a privilege against self-incrimination, but merely that the proper presentment had not been made, a presentment necessary before the oath could be lawfully administered. After the cause had triumphed, however, the distinction was soon lost or ignored. The oath itself had come to be associated with the Stuart tyranny. Details were forgotten.[19] Repeatedly claimed, then assumed for argument, finally by the end of the reign of Charles II, there was no longer any doubt of its general application.[20] No one at any time in any English court could be compelled to accuse himself. It was out of this history and the experience of the colonists with the Royal Governors that the privilege ultimately found its way into our Bill of Rights in the Fifth Amendment.[21]

The modern privilege against self-incrimination applies to both Federal and state proceedings.[22] Any question the answer to which would furnish a link in a chain of evidence[23] which would incriminate the witness need not be answered "unless he chooses to speak in the unfettered exercise of his own will".[24] The privilege applies not only at trial but also in any circumstance of official interrogation.[25] Only testimonial utterances fall within its scope.[26] The privilege is personal; it may not be claimed to protect another.[27] In addition, it protects only natural persons; corporations[28] or unions[29] may not claim its protection. The privilege may be waived by the recitation of incriminating facts;[30] the law requires its waiver when an accused testifies in his own behalf at a criminal trial.[31]

Generally, it must be asserted to be claimed. Otherwise, it is waived. For the privilege is "merely an option of refusal not a prohibition of inquiry".[32]

Like the duty to testify, the privilege against self-incrimination is not an absolute. It is out of the conflict of this privilege with the duty to testify that the concept of immunity developed.

II. HISTORICAL DVELOPMENT OF THE IMMUNITY GRANT: A SUBSTITUTE FOR THE PRIVILEGE AGAINST SELF-INCRIMINATION

In England, it was only a comparatively short time after the privilege against self-incrimination had matured before various techniques to mitigate its impact on the administration of justice developed. The first reliable example occurred in the *Trial of Lord Chancellor Macclesfield* in 1725.[33] The Chancellor had been guilty of traffic in public offices. An act was passed to immunize present Masters in Chancery so that their testimony could be compelled. Once the present "criminality" legally attaching to their actions was effectively "taken away" by the statute, their privilege against self-incrimination "ceased" to exist.[34] What Parliament found it could thus do with its amnesty powers, the King's prosecutors soon learned they could accomplish by the tendering of Royal pardons. The tradition in English law of permitting the privilege to be thus annulled stands even today unquestioned.[35]

The American colonists not only brought with them the privilege against self-incrimination, but they also adopted these various techniques. As early as 1807 in the treason trial of Aaron Burr, President Jefferson attempted to give an executive pardon to one of the witnesses against Burr.[36] The witness refused the pardon, but testified anyway The right of a witness to refuse a pardon, and thus defeat the technique, was not clearly established until 1915, when the Supreme Court upheld the right of a grand jury witness to turn down an executive pardon from President Wilson.[37] In the intervening years, the cloud that existed over the pardon technique because of the Burr trial directed the chief attention of the law toward the legislatively authorized immunity grant.

Congress first adopted a compulsory immunity statute in 1857.[38] Legally, no attack was successfully mounted upon it. Nevertheless, its operation was hardly successful, since it automatically protected against prosecution any matter about which any witness testified before Congress. It constituted Congress' first broadscale experimentation with transactional immunity.

"For five years, rascals and scalawags of various stripes journeyed with celerity to Congress to confess and thus receive an 'immunity bath' that cleansed them, if not of their sins, at least of legal culpability for crimes committed."[39]

As Alan Barth described it:

"The investigating committees became, during the brief period the law was in force, a kind of bargain-basement confessional where easy absolution could be secured."[40]

One individual who had stolen two million dollars in bonds from the Interior Department had himself called before Congress, where he testified to a matter relating to the bonds and was immunized.[41] Obviously, this was an intolerable situation, and the statute was soon repealed. In its place the Immunity Statute of 1862[42] was enacted. The new statute did not grant immunity from prosecution; it merely purported to protect the witness from having his testimony subsequently used against him. Six years later the statute was broadened to cover judicial proceedings.[43] After being upheld by lower Federal courts,[44] relying on an early New York decision,[45] the statutory scheme finally reached the Supreme Court in *Counselmen v. Hitchcock* in 1892.[46]

The Court refused to uphold the relevant elements of the 1862 Act. It noted that the statute to be upheld would have to afford a protection coextensive with the privilege.[47] The statute only barred the use of the statements made, not the use of leads derived from those statements. But the Fifth Amendment offered, the Court felt, protection to the witness against not only his testimony being used against him, but also leads or "fruits" of that testimony being so used, since a witness need not testify at all about matters that might incriminate him, even indirectly. To be constitutional then, an immunity statute had to protect a witness to the same degree that the Fifth Amendment protected him, i.e., it had to bar the use of the compelled testimony as well as the fruits of that testimony. The Court recognized this when it stated the protection under the statute in question was inadequate because, "It could not, and would not, prevent the use of his testimony to search out other testimony to be used in evidence against him. . . ."[48]

Nevertheless, there was language in the opinion that went beyond this narrow holding. The Court indicated at one point, "In view of the constitutional provision, a statutory enactment, to be valid, must afford absolute immunity against prosecution for the offense to which the question relates."[49] *Counselmen* was read from thereon to mean that a statutory grant of immunity to be constitutional must be absolute, or in other words, cover the whole "transaction" underlying the testimony, not just the testimony itself or its fruits.

In response to the *Counselmen* decision, Congress amended various immunity provisions in the Federal Criminal Code, so that they provided "transactional" instead of "use" immunity. In *Brown v. Walker*,[50] the validity of this device was presented once again to the Supreme Court. The Court, by a closely divided vote, sustained the constitutionality of transactional immunity. The Court held that once the criminality attaching by law to the actions of the witness was removed by another law the privilege ceased to operate. The dissenters suggested that the privilege was intended to accord to the witness an absolute right of silence designed to protect not only from criminality, but also disgrace or infamy, something no legislative

immunity could eliminate. The majority, relying on English history, rejected this proposition.

Since *Brown* v. *Walker*, the basic principle of the immunity grant has not been successfully challenged. But it is interesting to note that Congress neglected to alter the immunity provision relating to Congress until 1964, when it provided for transactional immunity to witnesses testifying concerning "attempts to interfere with or endanger the national security or defense of the United States by treason, sabotage, espionage, or the overthrow of its government by force or violence".[31] This and other similar grants were subsequently sustained.[32]

The view that transactional immunity was constitutionally mandated remained until the Supreme Court's 1964 decision in *Murphy* v. *Waterfront Commission*.[33] In that case, the Court held immunity conferred by a state prevented the Federal government from using compelled testimony or information derived from it in a later criminal prosecution. The Court thus implied, contrary to *Counselmen*, that the constitutional privilege against self-incrimination was adequately preserved if the witness was protected against direct or derivative use of his compelled testimony. The Court suggested that the Fifth Amendment privilege would be sufficiently preserved by using the doctrine of suppression of the fruit of the poisonous tree, an analogy borrowed from the test for suppressing illegally obtained evidence in Fourth Amendment cases.[34]

The Court's view in *Murphy* was embodied in the current immunity statute,[35] which the Brown Commission,[36] after an exhaustive and thorough survey of the relevant case law and an analysis of the policy arguments, included in its proposed Organized Crime Control Act. The Act passed by an overwhelming majority of both Houses in 1970.[37] Subsequent to passage in the Congress, similar statutes were passed in Louisiana, Ohio and Arizona.

Even before Federal enactment, states had been experimenting with similar use immunity statutes. Such statutes were sustained by the Supreme Court at the same time as the Federal law was upheld.[38] Such statutes have recently won the recommendation of the National Advisory Committee on Criminal Justice Standards and Goals.[39]

In *Kastigar* v. *U.S.*,[40] the Supreme Court upheld the constitutionality of this use immunity statute. The Court offered a twofold rationale. First, it concluded that "use immunity" was coextensive with the Fifth Amendment since it placed a witness in precisely the same position he would have been in under the Fifth Amendment, i.e., his testimony, even though compelled, could not be used in any way to incriminate him. Thus the Court reasoned:

(P)rotection coextensive with the privilege is the degree of protection which the Constitution requires. Transactional immunity which affords full immunity from prosecution for the offense to which the compelled testimony relates, affords the witness considerably broader protection than does the Fifth Amendment privilege. The privilege has never been construed to mean that one who invokes it cannot subsequently be prosecuted. Its sole concern is to afford protection against being 'forced to give testimony leading to the infliction of "penalties affixed to . . . criminal acts".' Immunity from the use of compelled testimony and evidence derived directly and indirectly therefrom affords this protection. It prohibits the prosecutorial authorities from using the compelled testimony in any respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness.[41]

Second, the Court determined that "use immunity" provided a resolution of the conflict between the duty to testify and the privilege against self-incrimination that was more consonant with the realities of law enforcement than was transactional immunity. The Court stated:

"Immunity statutes, which have historical roots deep in Anglo-American jurisprudence, are not incompatible (with the values of the self-incrimination clause). Rather they seek a rational accommodation between the imperatives of the privilege and the legitimate demands of government to compel citizens to testify. The existence of these statutes reflects the importance of testimony, and the fact that many offenses are of such a character that the only persons capable of giving useful testimony are those implicated in the crime." [42]

In short, the Court found that use immunity was not only equivalent to the Fifth Amendment privilege but was also better suited to the aims of the criminal justice system.

When the Brown Commission and the *Kastigar* Court opted for use immunity as a solution to the conflict between the duty to testify and the privilege against self-incrimination, those bodies were not importing a foreign jurisprudential concept. The notion that testimony or statements may be extracted for one purpose to satisfy an overriding principle but may not be used to prosecute the witness is firmly embedded in the American criminal law.

For instance, in the case of a suppression hearing concerning illegally obtained evidence the Court has made clear that any testimony provided by the defendant cannot be used at the subsequent trial. The analogy with the normal immunity situation is apposite. As the Court noted in *Simmons* v. *U.S.*[43] a defendant wishing to establish standing must do so at the risk that the words which he utters may later be used to incriminate him. In this situation, the Court, in order to provide the defendant with an opportunity to testify concerning possibly illegally obtained evidence, grants "use" immunity for any such evidence elicited.[44]

Similarly, Congress and the courts have prevented the use of testimony garnered at incompetency hearings from being used at trial against the defendant.[45] And the Federal Rules have forbidden the use of the withdrawn guilty plea by the prosecution at trial.[46] Again, in these instances, resort was made to a use immunity mechanism to obtain testimony necessary to fulfill a particular policy interest where that testimony might otherwise not have been given because of its incriminating nature.

III. POLICY ADVANTAGES OF USE OVER TRANSACTIONAL IMMUNITY

An effective investigation requires the power to grant immunity. Under the present federal statute, Congress has access to use immunity. Aside from its constitutional rationale, there are several policy advantages of use over transactional immunity. Use immunity more effectively respects inter and intra-government relations. Use immunity does not interfere with administrative regulation by preventing the imposition of civil penalties and forfeitures. Under some circumstances, it promotes the defendant's Sixth Amendment rights to compulsory process of witnesses. And most importantly, it more effectively than its counterpart promotes witness cooperation.

A. Use immunity preserves comity between state and federal jurisdictions

The present immunity statute reconciles federal and state power. The power of state governments to grant immunity only reaches the testimony compelled or its fruits, even if the statute under which it is granted is a transactional immunity statute. *Murphy* v. *Waterfront Commission*,[47] held that the constitutional privilege against self-incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law. At that time a great majority of state statutes in states which had immunity legislation were "transactional" in nature. The Court held that the constitutional rule required that a state witness may not be compelled to give testimony which may be incriminating under federal law unless the compelled testimony and its fruits could not be used in any manner by federal officials in connection with a criminal prosecution against him. In essence then, the Court found that "use" immunity was constitutionally sufficient to accommodate the interests of state and federal governments in investigating and prosecuting crime. It allowed the states to carry out their law enforcement responsibilities without unduly entrenching on ongoing federal investigations. As Justice Goldberg concluded:

"This exclusionary rule, while permitting the states to secure information necessary for effective law enforcement, leaves the witness and the Federal Government in substantially the same position as if the witness had claimed his privilege in the absence of immunity." [48]

The implication of *Murphy*, of course, is that federal prosecuting agencies should be barred from granting transactional immunity, which would interfere with state prosecutions. One would assume such a result on grounds of comity if nothing else. Nevertheless, an earlier Supreme Court opinion leaves this in doubt. In *Adams* v. *State of Maryland*,[49] the Court allowed a congressional grant of immunity under a federal transactional statute to abort a state prosecution. Under the *Adams* opinion, it is possible for a federal agency, either legislative or executive, to interfere with independent state prosecutions by providing a blanket immunity order to a federal witness. Under the present federal use immunity statute, such a result is not possible since only the federal witness' testimony and its fruits are barred from use in state courts.

B. Use immunity does not interfere with executive and congressional investigative responsibilities

Unlike transactional immunity, which prohibits the government from prosecuting a witness for the entire transaction about which he testifies, use immunity bars only the direct and indirect use of the testimony against that witness. As a result, use immunity does *not* interfere with the executive branch's ability to prosecute the witness so long as the prosecutor can demonstrate that any testimony used against the witness was obtained independently of the immunized testimony.[50] The prosecutor can, of course, meet this burden by sealing all evidence in his possession and delivering that evidence to the court prior to the time that the immunized testimony is to be given. In fact, this procedure was successfully followed by the Special Prosecutor's Office in advance of John Dean's immunized testimony before the Ervin Committee. Based on the sealed evidence, Dean decided to plead guilty.

Similarly, under the current immunity statute, the executive branch cannot interfere with the activities of its legislative counterpart in granting immunity.[51] Thus, if 10 days notice is given the Attorney General and the appropriate committee of Congress approves the immunity application by a two-thirds vote, the court must grant the legislative request to bestow the witness with immunity regardless of any policy arguments to the contrary made by the executive branch.[52]

Such a proscription could not be maintained under a transactional immunity statute. Transactional immunity operates like a pardon. It prohibits the future prosecution of the individual. Traditionally, the pardon power has been exercised only by the Executive. The executive branch is responsible for

Footnotes at end of article.

investigating and prosecuting wrongdoers. Such a broad-based power to abort prosecution of wrongdoers should only be exercised by the highest official responsible for carrying out the prosecutive responsibility. On a more pragmatic level, only the executive is in a position to know the full implication of a pardon on ongoing or potential prosecutions.

Hypothetically, under a transactional immunity statute, Congress could exercise a power to pardon by granting immunity and effectively aborting criminal prosecutions. To prevent such a transfer of constitutional power and interference with duties of the Executive, the Executive would have to be granted a veto over Congress' deployment of transactional immunity.

The dangers of such a limitation, however, are readily apparent. It is only necessary to recall the Senate Watergate investigation. A presidential veto on the Ervin Committee's use of immunity for John Dean and other witnesses would have prevented the true story of Watergate from coming out. The converse is also true. The possibility exists under transactional immunity for congressional committees acting on corrupt motives to prevent executive prosecutions.

Use immunity, of course, obviates the need for an executive veto. By allowing the Congress to wield immunity power without executive interference, it respects the division of authority and separation of powers between the various branches. With use immunity, congressional investigating committees are free to make important immunity decisions without being dominated by a fear of aborting an independent executive investigation. In addition, by restricting the immunity only to the testimony and fruits compelled, both branches are prevented from employing immunity for corrupt purposes.

C. Use immunity does not interfere with administrative regulation by foreclosing the imposition of civil penalties and forfeitures

Transactional immunity has traditionally been interpreted to prohibit not only criminal proceedings, but also the exaction of civil penalties and forfeitures. For example, in one case, authorities were unable to suspend the license of an inattentive co-pilot after transactional immunity had been granted for testimony relating to an airplane crash.[72] Use immunity does not carry with it such a prohibition. The courts are unwilling to include within the scope of its protection a bar against use of immunized testimony in proceedings to impose civil penalties.[74]

D. Use immunity promotes defendant's Sixth Amendment right to compulsory process for obtaining witnesses

Ironically, there are some circumstances in which not even the defendant's interest is served by transactional immunity. A defendant has a Sixth Amendment right to use compulsory process to produce witnesses in his favor. It has been held under both use and transactional immunity statutes, however, that a defendant has no constitutional right to confer immunity upon a defense witness who exercises his privilege not to give testimony that is self-incriminating.[75] Immunity can only be conferred by those agencies granted that power by statute. A prosecutor or a court would be extremely reluctant to confer immunity on a witness in such a situation if the grant amounted to pardon for all crimes testified to by the witness. Therefore the defendant's interest in compelling a witness' testimony is better served in this case by use immunity. A prosecutor will be less inclined to oppose immunity for the defendant's witnesses if the effect is merely to prevent prosecution based on the testimony or leads derived from that testimony.

E. Use immunity promotes witness cooperation

Immunity is granted solely for the purpose of obtaining testimony. By this criteria, use is preferable to transactional immunity because only use immunity has a built-in incentive for the witness to testify with as much detail as possible.

Since transactional immunity prohibits prosecution for any criminal activities mentioned in the witness' testimony, the witness has no incentive to testify to anything beyond his general involvement in the crimes for which he seeks immunity. The reluctant witness may provide the government with some evidence, but not enough to sustain a conviction. Although the witness would still be subject to the contempt sanction, this remedy is effective only if the government can establish that the witness is still withholding information.[76]

Use immunity, on the other hand, carries an inherent incentive for an immunized witness to furnish the details of his criminal activity. Since use immunity imposes a burden on the prosecution to demonstrate that all of the evidence it introduces against an immunized witness was obtained independently of the immunized testimony, the witness vastly increases the prosecutor's burden by including more and more information in his testimony. In short, a witness' protection under use immunity is only as good as his testimony is detailed. Thus, John Dean, having been granted use immunity by the Senate Watergate Committee, sought to erect a shield against subsequent prosecution by furnishing the Committee with one of the most richly detailed accounts even given a congressional investigative committee.[77]

CONCLUSION

Use immunity gives the Congress an effective investigative tool. It has deep historical roots in Anglo American jurisprudence and in our system of criminal justice. The Congress can be confident that use immunity under the statute, more effectively than any other form of immunity, accomplishes the purpose of the immunity grant—obtaining testimony. It does so not only by fulfilling its constitutional responsibility to be coextensive with the Fifth Amendment privilege against self-incrimination, but also by respecting the separation of power between the Executive and Congress, and the relation between the states and the federal government.

FOOTNOTES

[1] See Hamilton, *The Power to Probe*, Vintage Press, 1977, pp. 22–23.
[2] 18 U.S.C. §§ 6001–6005.
[3] *Id.* at § 6002.
[4] V Amendment, U. S. Constitution.
[5] See generally 7 Wigmore, *Evidence*, § 2190 (3d. ed. 1940); Morgan, *The Privilege Against Self-incrimination*, 34 Minn. L. Rev. 1–45 (1949).
[6] See, e.g., (1450) Y.B. 28 Hen. 6, 6, 1.
[7] St., 1563, 5 Eliz. 1, c. 9, § 12.
[8] Littleton arguing in (1450) Y.B. 28 Hen. 6, 6, 1.
[9] (1612) 2 How. St. Tr. 769, 778.
[10] Cf. *Piedmonte v. United States*, 367 U.S. 556, 558 n.2 (1961).
[11] 8 Wigmore, *Evidence*, § 2190, at 66 (3d ed. 1940).
[12] *U.S. v. Nixon*, 418 N.S. 683 (1974) at 691.
[13] *Id.* at 691.
[14] The oath *ex officio mero* was a procedure in which a clergyman was compelled to state under oath whether he committed the crime with which he was charged. 3 *Blackstone's Commentaries*, 99–100, (Wendell ed. 1857).
[15] See Wigmore, supra. at § 2250.
[16] See *Id.* § 2250, at 289 nn. 56 and 57, and cases cited therein.
[17] (1637) 3 How. St. Tr. 1315.
[18] St., 16 Car. 1, cc. 10, 11.
[19] Benthem, *Rationale of Judicial Evidence* (1827). 7 *The Works of Jeremy Bentham* 456, 462 (Bowring ed. 1843), quoted in 8 Wigmore, *Evidence*, § 2250, at 292 (McNaughton rev ed. 1961).
[20] See cases cited 7 Wigmore, *Evidence* § 2250, at 298–99 n 105 (3d ed. 1940).
[21] See generally Pittman, *The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America*, 22 Va. L. Rev 763 (1935).
[22] *Malloy* v *Hogan*, 378 U.S. 1 (1964).
[23] *Hoffman* v *United States*, 378 U.S. 1, 8 (1964)
[24] *Malloy* v *Hogan*, 378 U.S. 1, 8 (1964).
[25] Cf. *Miranda* v. *Arizona*, 384 U.S. 436 (1966).
[26] *Schmerber* v. *California*, 384 U.S. 757 (1966).
[27] *Rogers* v. *United States*, 340 U.S. 367, 371 (1951).
[28] *Wilson* v. *United States*, 221 U.S. 361 (1911).
[29] *United States* v. *White*, 322 U.S. 694 (1944).
[30] *Rogers* v. *United States*, 340 U.S. 367, 373 (1951).
[31] *Spies* v *Illinois*, 123 U.S. 131, 180 (1887).
[32] 7 Wigmore, *Evidence*, § 2268, at 388 (3d ed. 1940).
[33] (1725) 16 How St. Tr. 767, 921, 1147.
[34] Cf *Hale* v *Henkel*, 201 U.S. 43, 67 (1906).
[35] 8 Wigmore, *Evidence*, § 2281, at 469 (3d ed. 1940).
[36] See generally Wendell, *Compulsory Immunity Legislation and the Fifth Amendment Privilege New Development and New Confusion*, 10 St. Louis U.L.J. 327, 330–31 (1966).
[37] *Burdick* v. *United States*, 236 U.S. 79 (1915). Cf. *United States* v. *Wilson*, 32 U.S. (7 Pet.) 150, 160–61 (1833).
[38] Act of Jan. 24, 1857, ch. 19, 11 Stat. 155.
[39] Hamilton, supra. at 80.
[40] Barth, *Government by Investigation*, p. 131.
[41] See generally Wendel, *supra.* note 138, at 333–35.
[42] Act of Jan. 24, 1862, ch. 11, 12 Stat. 333. The statute is now found in 18 U.S.C. § 3486 (1964), as amended, 18 U.S.C. § 3486(c) (Supp. I, 1965).
[43] Act of Feb. 25, 1868, ch. 13, 15 Stat. 37.
[44] *United States* v. *Williams*, 28 Fed. Cas. 670 (C.C.S.D. Ohio 1872); *United States* v. *Brown*, 24 Fed. Cas. 1273 (D.C.C. Ore. 1871); *United States* v. *Farrington*, 5 Fed. Cas. 343 S.C.N.D.N.Y. 1881); *In re Phillips;* 19 Fed. Cas. 506 (D.C.D. Va. 1869).
[45] *People* v. *Kelly*, 24 N.Y. 74 (1861).
[46] 142 U.S. 547 (1892).
[47] *Id.* at 565–84.
[48] *Id.* at 564.
[49] *Id.* at 585–86.
[50] 161 U.S. 591 (1896).
[51] 18 U.S.C. § 3486, 68 Stat. 745 (1954).
[52] See *Ullman* v. *United States*, 350 U.S. 422 (1956) upholding 18 U.S.C. § 3486, and *Reina* v. *United States*, 364 U.S. 507 (1960) upholding 18 U.S.C. § 1406 which granted transactional immunity in narcotic and Internal Revenue cases.
[53] 378 U.S. 52 (1964).
[54] See e.g., *Wong-Sun* v. *United States*, 371 U.S. 471 (1963).
[55] 18 U.S.C. §§ 6001–6005.
[56] National Commission in Reform of Federal Criminal Laws, 1970. Members included former Gov. Edmund (Pat) Brown, Chairman, Rep. Richard Poff, Vice-Chairman, Senators Sam Ervin, Roman Hruska, John McClellan, Representatives Robert Kastenmeier, Abner Mikva and Don Edwards.

Use immunity also brings with it the recommendations of scholars. In analyzing the constitutional demands of the privilege against self-incrimination, Wigmore in his treatise noted that the initial judicial analysis before *Counselmen* was sound concerning

the constitutional meaning of use immunity statutes

The constitutional efficacy of (use) statutes was well expounded in early opinions written at a period nearer to the era of constitution-making when the cobwebs of artificial fantasy had not begun to obscure its plain meanings " Wigmore. *Evidence* 3rd Ed p 523

These sentiments were echoed in McCormack in analyzing the rejection by Counselmen of the analysis of use immunity by Judge Denio in *People v Kelly* As the legal scholar put it

"Surely (Counselmen) was a wrong turning at a critical point Perhaps few decisions in history have resulted in freeing more rascals from punishment Surely protection (from use plus fruits) is all that (should) reasonably be demanded and the insistence upon complete immunities for punishment is an unjust and unnecessary (obstruction to law enforcement" McCormack *Evidence* 1954 p 285 86

" Organized Crime Control Act of 1970 84 Stat 922 18 U S C §§ 6002 3

" *Zicarelli v New Jersey State Crime Commission* 406 U S 472 (1972)

" Report of Task Force on Organized Crime Washington 1976 p 154 55

To date only the ABA House of Delegates has voiced disapproval over the enactment of use as opposed to transactional immunity statutes The ABA criticism has revolved around charges that use immunity inhibits witness cooperation and encourages inaccurate testimony because of the uncertainty about the scope of protection Further the ABA points to the "small number of successful prosecutions" of immunized witnesses under use immunity statutes and that a return therefore to transactional immunity would not remove a significant weapon against organized crime

The ABA is also troubled by the fact that as they put it. "'Use' immunity represents the most grudging interpretation of the constitutional right against self-incrimination" Perhaps the most fitting answer to such a view is Justice Holmes' opinion in *Heike v U S* (227 U S 131 144 (1913)) He called for strict construction of immunity statutes Giving immunity where it is not necessary the Justice stated would be giving an unnecessary gratuity to crime a step no sane society ought ever to take

" 406 U S 441 (1972)

" *Id* at 453

" *Id* at 459

" 390 U S 377 (1968)

" *Id* at 389

" *United States v Alvarez* 519 F 2d 1036 (1975) and 18 U S C § 4244

" F R Cr P 11(e)(6)

" *Supra*

" *Murphy supra* at 56

" 347 U S 179 (1953)

" *Kastigar supra*

" 18 U S C § 6005

" *Application of U S Senate Select Comm on Pres Camp Activities* 361 F Supp 1270 (DDC 1973) (Sirica Jr)

" See *Lee v CAB* 225 F 2d 950 (D C Cir 1955) and hearings before Subcommittee on Criminal Law and Procedure of United States Senate Judiciary Committee 91st Congress 1st Session Hearings on S 30 and others March 18 19 25 26 and June 3 4 1969 Testimony of Robert G Dixon Jr p 248 9

U S v Capetto 502 F 2d 1351 (1974) *Cert den* 420 U S 925 (1975)

" *U S v Allstate* 507 F 2d 492 (7th Cir 1974)

" See *U S v Buffalino* 285 F 2d 408 418 n 27 (2d Cir 1960) (witness to "organized crime convention" able to circumvent transactional immunity by answering evasively)

" While the ABA has been critical of the effect of use immunity as an incentive to provide testimony its criticism is misplaced Use immunity has proven itself to be a potent weapon against organized crime precisely because of this crucial distinction from transactional immunity Use immunity does not prohibit prosecutions It prohibits the use of compelled testimony and its fruits As such use unlike transactional immunity leaves some uncertainty as to the subsequent vulnerability of the witness to criminal prosecution Whatever uncertainty is generated about whether a witness can be prosecuted will induce increased cooperation of that witness The witness must assure that as much testimony as possible is recorded under immunity or risk prosecution based on evidence or leads not referred to or implied by the testimony The ABA comment that use immunity inhibits witness cooperation is not only inherently illogical but ignores the Ervin Committee's experience with the federal use immunity statute

Mr BAUMAN. Mr. Speaker, will the gentleman yield?

Mr STOKES I yield to the gentleman from Maryland.

Mr BAUMAN. Mr. Speaker, the gentleman from Maryland agrees that this select committee already has power to grant witness immunity, regardless of any past action of the House. The gentleman from Ohio (Mr STOKES) agrees. In the face of that, however, he seeks to have this resolution passed so as to make sure of that right.

Mr. Speaker, I think the gentleman is correct. I do not think we need this resolution to grant these immunity powers.

Mr. Speaker, what concerns the gentleman from Maryland is that when the gentleman from Ohio first appeared before the Committee on Rules in March, he said:

* * * there may be instances where it may be preferable for the Committee itself to exercise its right to secure evidence from the Executive Branch of Government, rather than having to rely upon the Justice Department to pursue statutory contempt * * *

This resolution is written rather broadly. May I ask the gentleman this question: Have there been any instances in which a witness has refused to testify when the committee has offered to grant immunity; and second, is the gentleman seeking to use these powers to bring citations of contempt, either civil or criminal?

Mr. STOKES. Mr. Speaker, in order to answer the gentleman, may I say first that yes, we have had witnesses who have appeared before the committee and who have refused to testify, asserting their constitutional privilege.

Because of the cloud over this committee and its authority to be able to grant immunity, we have not made any application to any court or come to the floor for authority to grant immunity to a witness This is precisely why we are before this body today asking for this narrowly prescribed authority

Fortunately, we have had no difficulty with the executive branch of the Government We have had excellent cooperation from all of the agencies from whom we have sought any type of testimony or evidence of any type.

So that we might properly deal with those persons who are involved in organized crime or those persons who might be soldiers of fortune who want to avail themselves of the constitutional privilege of not incriminating themselves, we need this authority. If we are going to be able to conduct the type of investigation that has to be conducted here where there are allegations of conspiracy, this is a tool that is absolutely needed. All we are asking for is for this body not to require us to come here conceivably to get 100 or 150 immunity applications from this body.

Mr. THONE. Mr. Speaker, will the gentleman yield?

Mr. STOKES. I yield to the gentleman from Nebraska.

Mr. THONE. Mr. Speaker, I certainly support the gentleman from Ohio (Mr. STOKES) in his advocacy of this resolution and the necessity for it. I do have one inquiry to make. I think the gentleman from Maryland (Mr. BAUMAN) makes a good point regarding the fact that the subcommittee is also authorized to exercise this somewhat extraordinary authority. Does the gentleman from Ohio (Mr STOKES) feel strongly on that point?

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. STOKES. Mr. Speaker, I thank the gentleman for yielding me the additional time

In answer to the gentleman from Nebraska (Mr THONE), I say that we do feel strongly on that point. But, Mr. Speaker, first let me describe the procedure that is necessary here without this resolution. In order to proceed to the Federal court and request an application of immunity, the full committee would have to vote such procedure by a two-thirds vote of the full committee. The House would then have to give us permission to go to court. If we were to then go to the Federal court and receive the order immunizing the witness and the witness then refused, despite that court order, to testify before our committee, it would then be necessary for us to come back to the floor of the House to get permission to bring the matter to the attention of the court. To go back to the court and say to the court that this witness refused to comply with the court's order, we would have to come back to the floor of the House for authority to go back to tell the court that the witness refused to comply with its order.

Under this resolution, we could avoid these unnecessary trips to the House floor. But this, of course, is a procedure in civil contempt. In no way can we proceed with criminal contempt without coming back to the floor of the House for full certification under the applicable U S statutes

Mr THONE Will the gentleman from Ohio (Mr STOKES) yield again briefly?

Mr STOKES Certainly I yield to the gentleman from Nebraska.

Mr THONE Mr. Speaker, as I understand it, just to clarify again the statement made by the gentleman from Maryland (Mr BAUMAN) the only use of immunity contemplated here is strictly in the area of "use" immunity, is that correct?

Mr STOKES That is correct.

(Mr THONE asked and was given per-

mission to revise and extend his remarks.)

Mr. THONE. Mr. Speaker, Congress investigative process requires many legal tools, chief among them, after the subpena, is the power to grant immunity. It is not enough that a congressional committee charged with a sensitive and difficult investigation has the power to compel the attendance of witnesses and the production of documents. Witnesses may be forced to attend by a subpena; they may not be forced to testify in derogation of their right against self-incrimination. Immunity, therefore, is a legal means to get a witness' testimony by guaranteeing that the testimony will not be used to incriminate the witness.

In recent years, the immunity mechanism has been widely used by the Congress, and has proven most useful in untangling complicated conduct involving criminal wrongdoing. The Ervin Committee, for example, in investigating Presidential campaign activities and the 1972 Watergate breakin, conferred immunity on some 27 witnesses. The testimony of one of those immunized, John Dean, may have been the single most important factor leading to the breaking of the Watergate case.

The primary reason for the introduction of House Resolution 760 is to insure that the Select Committee on Assassinations, like the Ervin Committee, will not be hampered in obtaining the necessary immunity orders to fulfill its investigatory responsibility.

The type of immunity that the select committee will be seeking under the statute is "use immunity", the same type which enabled the Ervin Committee to effectively compel the testimony of many of its important witnesses without jeopardizing prosecution of these witnesses by the Watergate Special Prosecutor. As I just mentioned, the Members are probably most familiar with the case of John Dean. His story, perhaps more than any other, best illuminates the effective application of use immunity by a congressional committee.

"Use" immunity prevents the use of an immunized witness' testimony in a subsequent criminal trial by any jurisdiction, State or Federal. It also prevents any use being made of leads, inferences, or implications arising out of the testimony. It does not, however, prevent the subsequent prosecution of a witness on matters touched upon in the testimony provided the prosecutors are able to meet the substantial burden of demonstrating that any evidence used in the prosecution was obtained independently of the testimony. Such proof may, of course, as in John Dean's case, be had by the sealing by the prosecution of all testimony in advance of any immunized testimony by a witness. Based on such sealed evidence, Dean decided to plead guilty and was convicted of a crime after his Watergate testimony.

Use immunity should not be confused with "transactional immunity". "Transactional" immunity involves granting a witness complete protection against future criminal prosecutions on all matters touched upon in the immunized testimony. In effect, the witness is allowed to take an immunity "bath" that then cleanses him of all crimes relevant to the testimony. No prosecutions are possible against that witness for those crimes indicated in the testimony, regardless of whether the evidence implicating the witness was obtained independently or even previous to the immunized testimony.

Mr. Speaker, use immunity has not only been found to be constitutionally sufficient, but has proven to be a precise tool for congressional investigations. When all is said and done, the interest in granting immunity is in obtaining testimony. Transactional immunity prohibits prosecution of matters related to a witness' testimony. There is no incentive, therefore, for an individual to testify beyond acknowledging in the testimony the matter sought to be immunized.

In contrast, it is only necessary to remember the testimony given in great and lengthy detail by John Dean before the Ervin Committee. Many attributed it to Mr. Dean's remarkable powers of recollection. I suggest that something else was involved. Like any witness immunized under the present Federal use immunity statute, Dean had a great incentive to develop his powers of recall. A witness is protected under use immunity for all his testimony and its implications given under the immunity grant. But the protection is only as good as the testimony is detailed.

In short, use immunity gives the Congress a device for prompting testimony without preventing future prosecutions by the Government for criminal activities related to the witness' testimony, but for which evidence is independently obtained. It is essential to the work of the select committee.

The current use immunity statute will allow the select committee to conduct its investigation without interfering unduly upon the prosecutive responsibilities of State or Federal officials. The select committee will be able to fulfill its mandate to conduct a full and complete investigation into the assassinations of John F. Kennedy and Dr. Martin Luther King, Jr. We need now to clarify our power to use immunity by the passage of this resolution.

The SPEAKER pro tempore. The time of the gentleman from Ohio (Mr. STOKES) has again expired.

Mr. MURPHY of Illinois. Mr. Speaker, for purposes of debate only, I yield 1 minute to the gentleman from Maryland (Mr. BAUMAN).

Mr. BAUMAN. Mr. Speaker, the gentleman from Ohio has not assured me at all by his statement with reference to my concerns. In fact, I think the gentleman has only magnified them, by saying that this resolution is for the purpose of allowing contempt procedures against witnesses without further action by the House. I do not understand that such power rests with any other committees of the House. If the Congress is to hold in contempt any witness, clearly the House should decide the issue, whether in civil or criminal contempt. The full House should pass on it. I cannot think of any instances where this power has been granted with the possible exception of in the Korean investigation. This committee does not warrant this kind of a broad grant of power.

Mr. MURPHY of Illinois. Mr. Speaker, I yield, for purposes of debate only, 1 minute to the gentleman from Connecticut (Mr. MCKINNEY).

Mr. MCKINNEY. I thank the gentleman for yielding.

I would just like to say that I admire the chairman. I am not a lawyer on this committee, so some of the Members can get very much over my head. But we have sat on Saturday and Sunday for hours coming up with what we think is the fairest and the most constricted power. It has been given to the Korean Committee, and it would seem to me that the investigation of the murder of one of the Nation's greatest black leaders and the investigation of the murder of a President of the United States would require that we give to this committee, to its chairman, and to the head of counsel, our new counsel, the ability to proceed. We have a limited period of time, and we have limited money. To go back to the House every single time, particularly when we are only talking about civil contempt, would be to me a ludicrous construction of the committee's purpose and the committee's job, which is being done however quietly.

Mr. DODD. Mr. Speaker, will the gentleman yield?

Mr. MURPHY of Illinois. I yield to the gentleman from Connecticut.

Mr. DODD. I thank the gentleman for yielding.

I would like to commend the chairman and the gentleman from Connecticut (Mr. MCKINNEY) for his stand. The point is well taken. We have seen this resolution necessarily delayed for a 2-week period, having come up four different times before we could do what we are doing here this afternoon.

I think if everyone would recognize that if we try to come back to this Congress for permission to proceed in a civil contempt case, we might be here all year on these cases, given the calendar and the pressure we are under.

Mr. MURPHY of Illinois. Mr. Speaker, for purposes of debate only, I yield 1 additional minute to the gentleman from Ohio (Mr. STOKES).

Mr. STOKES. I would just like to say to the House that the gentleman from Connecticut has accurately described the situation we have been in the 2-week period since we left the Committee on Rules. We have now been trying for 2 weeks just to be able to get this resolution on the floor of the House. We have identified somewhere in the neighborhood of 100 to 150 witnesses in the Kennedy case alone, for whom we may want to seek immunity applications. If we are seriously to be about this investigation, the Members can understand the problem we would have with the House Calendar and trying to get onto the floor 100 or 150 times pursuant to immunity applications for those witnesses. It would be impossible. No one in this body wants to obstruct this investigation. But I think it would be seriously obstructing the purposes for which we were originally constituted if we were required to come back

to this body, case after case, 100 or 150 times or more, to get permission to make immunity applications to a court or to seek citations for civil contempt.

Mrs. COLLINS of Illinois. Mr. Chairman, I stand in support of House Resolution 760, a resolution which authorizes the House Assassination Committee to enter courts and intervene in court proceedings in order to discharge their legislative duties in a complete fashion.

As my colleagues will recall this Assassinations Committee originally had the power to "bring, defend, and intervene" in lawsuits, but this authority was curtailed during House consideration of the status of the committee on March 30, 1977.

It is fitting and proper that this committee and its subcommittees have the power to engage in lawsuits that might be necessary as a result of its use of subpenas, grants of immunity, contempt power, or efforts to see that evidence is produced. Having access to the courts and the judicial process is a fundamental and necessary tool of any congressional investigative body. Without the authorization to seek legal means to carry out an investigation, the possibility of this committee discharging its obligation to investigate the assassinations of President John F. Kennedy and Dr. Martin Luther King is surely curtailed.

In summary, let me remind my colleagues that this committee is a responsible body, chaired ably by Congressman STOKES of Ohio. It appears to me, we ought to give this reasonable request for access to the courts our unequivocal approval.

I urge my colleagues to join me in support of House Resolution 760.

Mr. MURPHY of Illinois. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. ROUSSELOT. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 290, nays 112, not voting 32, as follows:

[Roll No. 602]

YEAS—290

Addabbo	Baldus	Brademas
Akaka	Barnard	Breaux
Alexander	Baucus	Breckinridge
Allen	Beard, R.I.	Brinkley
Ambro	Beard, Tenn.	Brodhead
Ammerman	Bedell	Brooks
Anderson, Calif.	Bellenson	Broomfield
	Benjamin	Brown, Mich.
Anderson, Ill.	Bennett	Buchanan
Andrews, N.C.	Bevill	Burke, Calif.
Andrews, N. Dak.	Biaggi	Burke, Fla.
	Bingham	Burke, Mass.
Annunzio	Blanchard	Burlison, Mo.
Applegate	Blouin	Burton, John
Ashley	Boggs	Burton, Phillip
Aspin	Boland	Caputo
AuCoin	Bonior	Carney
Badillo	Bonker	Carr
Carter	Holtzman	Ottinger
Cavanaugh	Hubbard	Panetta
Cederberg	Hughes	Pattison
Chappell	Ichord	Pease
Chisholm	Ireland	Perkins
Clay	Jacobs	Pettis
Cohen	Jeffords	Pike
Coleman	Jenkins	Preyer
Collins, Ill.	Jenrette	Price
Conte	Johnson, Colo.	Pritchard
Conyers	Jones, N.C.	Quie
Corcoran	Jones, Tenn.	Railsback
Corman	Jordan	Regula
Cornell	Kastenmeier	Reuss
D'Amours	Kazen	Richmond
Danielson	Ketchum	Rinaldo
Davis	Keys	Risenhoover
Delaney	Kildee	Rodino
Dellums	Koch	Rogers
Derrick	Kostmayer	Roncalio
Devine	Krebs	Rose
Dickinson	Krueger	Rosenthal
Dicks	LaFalce	Roybal
Diggs	Leach	Ryan
Dodd	Lederer	Santini
Downey	Leggett	Sarasin
Drinan	Levitas	Sawyer
Duncan, Oreg.	Lloyd, Calif.	Scheuer
Duncan, Tenn.	Long, La.	Schroeder
Early	Long, Md.	Schulze
Edgar	Luken	Seiberling
Edwards, Ala.	Lundine	Sharp
Edwards, Calif.	McCloskey	Shipley
Eilberg	McDade	Sikes
Emery	McFall	Sisk
English	McHugh	Skubitz
Ertel	McKay	Slack
Evans, Colo.	McKinney	Smith, Nebr.
Evans, Del.	Maguire	Snyder
Evans, Ind.	Mahon	Solarz
Fary	Mann	Spellman
Fascell	Markey	St Germain
Fenwick	Marks	Staggers
Fish	Mathis	Stanton
Fisher	Mattox	Steers
Fithian	Mazzoli	Stokes
Flippo	Meeds	Studds
Flood	Metcalfe	Thompson
Flowers	Meyner	Thone
Flynt	Mikulski	Traxler
Foley	Mikva	Tsongas
Ford, Mich.	Miller, Calif.	Tucker
Ford, Tenn.	Mineta	Udall
Fountain	Minish	Ullman
Fowler	Mitchell, Md.	Van Deerlin
Fraser	Mitchell, N.Y.	Vander Jagt
Frenzel	Moakley	Vanik
Fuqua	Moffett	Vento
Gammage	Mollohan	Walgren
Gephardt	Montgomery	Walsh
Giaimo	Moorhead, Calif.	Wampler
Gibbons		Warman
Gilman	Moorhead, Pa.	Weaver
Ginn	Moss	Weiss
Gore	Mottl	White
Gudger	Murphy, Ill.	Whitley
Hamilton	Murphy, N.Y.	Whitten
Hanley	Murphy, Pa.	Wiggins
Hannaford	Murtha	Wilson, C. H.
Harkin	Myers, Gary	Wilson, Tex.
Harrington	Myers, Michael	Winn
Harris	Natcher	Wirth
Harsha	Neal	Wolff
Hawkins	Nichols	Wright
Heckler	Nix	Wylie
Hefner	Nolan	Yates
Heftel	Nowak	Yatron
Hightower	Oakar	Young, Mo.
Hillis	Oberstar	Zablocki
Holland	Obey	

NAYS—112

Archer	Derwinski	Huckaby
Armstrong	Dingell	Hyde
Ashbrook	Dornan	Jones, Okla.
Badham	Edwards, Okla.	Kasten
Bafalis	Evans, Ga.	Kelly
Bauman	Findley	Kemp
Brown, Ohio	Forsythe	Kindness
Broyhill	Frey	Lagomarsino
Burgener	Gaydos	Latta
Burleson, Tex.	Glickman	Lent
Butler	Goldwater	Livingston
Byron	Gonzalez	Lloyd, Tenn.
Clausen, Don H.	Goodling	Lott
	Gradison	Lujan
Cleveland	Grassley	McCormack
Cochran	Guyer	McDonald
Collins, Tex.	Hagedorn	McEwen
Conable	Hall	Madigan
Coughlin	Hammer-schmidt	Marlenee
Crane		Marriott
Daniel, Dan	Hansen	Martin
Daniel, R. W.	Hollenbeck	Michel
de la Garza	Holt	Milford
Miller, Ohio	Rudd	Stump
Moore	Runnels	Symms
Myers, John	Ruppe	Taylor
Nedzi	Russo	Thornton
O'Brien	Satterfield	Treen
Patten	Sebelius	Trible
Pickle	Shuster	Volkmer
Poage	Simon	Waggonner
Quayle	Skelton	Walker
Quillen	Smith, Iowa	Watkins
Rhodes	Spence	Whitehurst
Robinson	Stangeland	Wydler
Rooney	Steiger	Young, Fla.
Rostenkowski	Stockman	Young, Tex.
Rousselot	Stratton	Zeferetti

NOT VOTING—32

Abdnor	Florio	Rahall
Bolling	Horton	Rangel
Bowen	Howard	Roberts
Brown, Calif.	Johnson, Calif.	Roe
Clawson, Del	Le Fante	Stark
Cornwell	Lehman	Steed
Cotter	McClory	Teague
Cunningham	Patterson	Whalen
Dent	Pepper	Wilson, Bob
Eckhardt	Pressler	Young, Alaska
Erlenborn	Pursell	

The Clerk announced the following pairs:

Mr. Dent with Mr. Horton.
Mr. Eckhardt with Mr. Rahall.
Mr. Cotter with Mr. Whalen.
Mr. Rangel with Mr. Erlenborn.
Mr. Stark with Mr. Cunningham.
Mr. Teague with Mr. McClory.
Mr. Howard with Mr. Young of Alaska.
Mr. Le Fante with Mr. Del Clawson.
Mr. Lehman with Mr. Bob Wilson.
Mr. Bowen with Mr. Steed.
Mr. Brown of California with Mr. Roe.
Mr. Cornwell with Mr. Johnson of California.
Mr. Florio with Mr. Pressler.
Mr. Pepper with Mr. Pursell.
Mr. Roberts with Mr. Patterson of California.

Messrs. ZEFERETTI and RUPPE changed their vote from "yea" to "nay."

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MURPHY of Illinois. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the resolution just agreed to.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

PROVIDING FOR CONSIDERATION OF H.R. 9290, INCREASING THE TEMPORARY DEBT LIMIT

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 781 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. Res. 781

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 2(l)(6) of rule XI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 9290) to increase the temporary debt limit, and for other purposes, and all points of order against said bill for failure to comply with the provisions of clause