

Fish Invokes 'Privilege' In Nazi Inquiry

House Instructs Him To Ignore Call Until Committee Reports

By Dillard Stokes
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Representative Hamilton Fish yesterday invoked the "privilege of the House" to avoid going before the special grand jury investigating activities of German agents in the United States.

Fish raised a "point of personal privilege," whereupon the House unanimously adopted a resolution ordering its Judiciary Committee to determine whether any of its prerogatives were infringed when the grand jury sent a summons for Fish. The resolution instructed Fish not to respond until the committee has reported.

Fish said six weeks ago that he would "willingly appear," but that was before the grand jurors indicted his aide, George Hill, 45, on two charges of corrupt perjury.

After Fish disregarded an informal invitation to testify last week the grand jurors issued a subpoena, which was served on Fish by a deputy United States marshal last Saturday.

O'Connor Raises Issue

First to advance the idea that Fish did not have to obey the summons "to testify on behalf of the United States" was former Representative John O'Connor, of New York. Opposed by President Roosevelt, O'Connor was denied renomination in 1938. Fish then proposed that the Republicans nominate O'Connor, but they chose another candidate and O'Connor vanished from the Washington scene, returning last month as counsel for Fish's indicted secretary.

O'Connor brought up the question of privilege in this telegram to Speaker Sam Rayburn:

"For the purpose of inquiring about the disposition of some mailbags, containing only speeches of members, made in Congress, a coordinate, and not superior, branch of the Government, the Executive, through its administrative arm, the

See AGENTS, Page 4, Column 5.

Department of Justice, has caused a grand jury subpoena to be served on Representative Hamilton Fish of New York commanding his appearance on Wednesday when debate will start on the repeal of our neutrality. It is obvious a further attempt to smear and harass Congressman Fish and his colleagues who put America ahead of the British Empire. If the House of Representatives of the United States countenances such as outrageous intrusion, it will be, according to all its precedents, for the first time in the history of our American Government. Such intimidation has many precedents in Germany, Russia and England."

O'Connor signed his telegram, "Former chairman of the House Rules Committee." But he did not add to the identification of himself that he is lawyer for George Hill, evidence against whom might be given by Fish if the Congressman were examined under oath.

Another point not disclosed by O'Connor was how he found out that "the purpose" for which the grand jury summoned Fish is to inquire about the 20 mail bags which were hustled out of the headquarters of another witness under subpoena; hauled off in a House truck sent by Hill and eight of them stored, by Hill's order, in Representative Fish's storage room in the House Office Building. The law makes grand jury proceedings inviolately secret.

A few hours after the telegram, the House met and 10 minutes later Fish rose to claim "personal privilege. He sent to the Chair the subpoena in which he was commanded to be at the grand jury room at 10:30 a. m. Wednesday. Using the same phrase as O'Connor, Fish said "the precedents of the House" made him unable to comply with the summons without permission from the House, because its privileges were involved.

McCormack Offers Resolution

Representative John McCormack, of Massachusetts, the Democratic floor leader, said the matter involved the fundamental question of whether a Congressman is privileged against a subpoena, whether a member may waive this privilege and whether service of a subpoena from a grand jury is an infringement of the privilege of the House.

McCormack offered this resolution:

"Whereas Hamilton Fish, a member of this House from the State of New York, has been summoned as a witness before the grand jury of a United States court for the District of Columbia to testify; and

"Whereas the service of such process upon a member of this House during his attendance while the Congress is in session might deprive the district which he represents of his voice and vote; and

"Whereas Article I, Section 6, of the Constitution of the United States provides: 'They (the Senators and Representatives) shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; . . . and for any speech or debate in either House, they (the Senators and Representatives) shall not be questioned in any other place'; and

"Whereas it appears by reason of the action taken by the said grand jury that the rights and privileges of the House of Representatives may be infringed;

"Resolved: That the Committee on the Judiciary of the House of Representatives is authorized and directed to investigate and consider whether the service of a subpoena or any other process by a court or a grand jury purporting to command a member of this House to appear and testify invades the rights and privileges of the House of Representatives. The committee shall report at any time on the matters herein committed to it; and that until the committee shall report Representative Hamilton Fish shall refrain from responding to the summons served upon him."

The House considered the resolution forthwith, by unanimous consent. The question was presented as soon as the document was read; there was a scattered chorus of "ayes" and no negative votes.

Chairman Sumners of the Judiciary Committee said his group would be called to meet Wednesday. Fish had been scheduled last week to leave, voluntarily, for a two-week period of service with the Army. He is a reserve colonel. This was postponed so he could attend the House debate on repeal of a portion of the Neutrality Act. He is now scheduled to don his uniform Thursday, but is expected to ask for another postponement.

Cloakroom Questions

Comment in the House cloakrooms after Fish raised the point of personal privilege yesterday included two observations:

(1) That no question of the privilege of the House would have arisen if Fish had chosen to accept the invitation to appear last week, or had appointed a time when his giving the evidence desired by the grand jurors would not conflict with his activities in the House, his voluntary training, his frequent trips to New York or the other claims upon his time.

(2) That the charges of Fish and others that the current investigation and resultant disclosures were part of a "smear" campaign against him determined his colleagues to lean over backward to discredit such charges, so that when he introduced his claims about "the privilege of the House," the members readily agreed to have the matter considered.

The claim that the privilege of the House permitted its members to defy subpoena was advanced as early as the year 1800. The Su-

Subpoena in Nazi Probe, Invokes House 'Privilege'

preme Court then decided that "a member of Congress is not exempt from the service nor the obligations of a subpoena in a criminal case."

A century later Representative from Oregon was convicted of conspiracy to suborn perjury. When he claimed that privilege of the House protected him from going to jail, the Supreme Court ruled that " . . . the claim of exemption from arrest and sentence was without merit."

This decision was subsequently referred to by the late Justice Louis D. Brandeis, who stated the unani-

mous opinion of the court that Senator Huey P. Long, of Louisiana, had no immunity against a subpoena served on him by the District Court.

Fish's name first came into the investigation of German agents on September 29, when The Post uncovered the fact that his secretary, Hill, had sent a House truck which had hauled off 20 mailbags full of franked envelopes from the headquarters of Prescott Dennett the morning after the grand jury summoned Dennett.

Some of the bags were traced to

the America First Committee, which surrendered ten upon being served with a subpoena. Eight other bags were taken to the House and Hill ordered them placed in the store-room used by Fish.

Fish told the House, "My secretary refused to accept the bags." Yet they were found in the store-room and Hill produced them before the grand jury after he was threatened with contempt of court action. Hill told the grand jurors the same story Fish told the House, and was indicted on two charges of perjury.