

# CRS Report for Congress

## Expulsion and Censure Actions Taken by the Full Senate Against Members

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Jack Maskell  
Legislative Attorney  
American Law Division



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# Expulsion and Censure Actions Taken by the Full Senate Against Members

## Summary

The authority of the United States Senate (as well as of the House) to establish the rules for its own proceedings, to “punish” its Members for misconduct, and to expel a Member by a vote of two-thirds of Members present and voting, is provided in the Constitution at Article I, Section 5, clause 2. This express grant of authority for the Senate to expel a Senator is, on its face, unlimited — save for the requirement of a two-thirds majority. In the context of what the Supreme Court has characterized as, in effect, an “unbridled discretion” of the body, expulsions in the Senate, as well as the House, have historically been reserved for cases of the most serious misconduct: disloyalty to the government or abuses of one’s official position. The Senate has actually expelled only 15 Members — 14 of those during the Civil War period for disloyalty to the Union (one of these expulsions was subsequently revoked by the Senate), and the other Senator during the late 1700s for disloyal conduct. The House of Representatives has expelled only five Members in its history, three during the Civil War period, one in 1980, and another in 2002, after convictions for bribery and corruption offenses related to official congressional duties. In the Senate, as well as in the House, however, other Members for whom expulsion was recommended have resigned from office prior to official, formal action by the institution.

The term “censure,” unlike the term “expel,” does not appear in the Constitution, and has traditionally been used to describe the “punishment” imposed by the Senate under authority of Article I, Section 5, clause 2, when the full body formally disapproves of conduct by way of the adoption of a resolution expressing such condemnation or disapproval. There is no specific forfeiture of rights or privileges that automatically follows a “censure” by the Senate. The term “censure” is used to describe the action of the Senate formally adopting a resolution expressing the body’s “censure,” “condemnation,” “denouncement,” or other expression of disapproval of a Member’s conduct, even when the word “censure” is not expressly included in the language of the resolution. There is no specific or official hierarchy or ranking of the terms that have been employed in a censure resolution, although there may be certain connotations associated with the language used in a resolution because of precedents and associations with past Members disciplined.

The Senate has censured nine Senators for various misconduct, including conduct not a violation of any law or specific written Senate ethics rule, when such conduct is found contrary to “acceptable norms of ethical conduct in the Senate,” contrary to “accepted morals” and “senatorial ethics,” when found to “derogate from the public trust expected of a Senator,” and/or found to be “reprehensible” conduct which brings the Senate into “dishonor and disrepute.” Conduct resulting in Senate “censure” has included violating orders of secrecy of documents; fighting in the Senate (“censure”); allowing a lobbyist with interests in particular legislation to be on official staff with access to the secret considerations of the legislation by committee (“condemn”); non-cooperation and abuse of investigating committees of the Senate (“condemn”); financial irregularities concerning political contributions (“censure”), office expenses and contributions (“denounce”), and excessive honoraria, official reimbursements and gifts (“denounce”).

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# Expulsion and Censure Actions Taken by the Full Senate Against Members

Each house of the United States Congress is expressly authorized within the Constitution to “punish” its own Members for misconduct, and the Senate has exercised this authority in the past by imposing formal “censures,” imposing restitution costs, and by expelling Senators from the Senate. In imposing legislative discipline against their Members, the Senate and the House operate through their rulemaking powers,<sup>1</sup> and the express provision for legislative discipline is specifically set out within the clause of the Constitution establishing the rulemaking authority of each house of Congress, at Article I, Section 5, clause 2:

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

The underlying justification for legislative discipline has traditionally been to protect the integrity and dignity of the legislative institution and its proceedings, rather than merely to punish an individual;<sup>2</sup> and such internal legislative process is additional to any potential criminal or civil liability that a Member might incur for any particular misconduct.<sup>3</sup> Senators are subject to internal, congressional discipline for any conduct which the institution of the Senate believes warrants such discipline. The express constitutional authority drafted by the Framers of the Constitution was influenced by British parliamentary practice, as well as our own colonial legislative experiences, and reflects the principle and understanding that although the qualifications of Members of Congress were intentionally kept to a minimum to allow the voters the broadest discretion in sending whomever they please to represent

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<sup>1</sup> Justice Joseph Story, *Commentaries on the Constitution of the United States*, Vol. II, § 835 (Boston 1883); see discussion in *Deschler's Precedents of the United States House of Representatives*, H. Doc. 94-661, Volume 3, Ch. 12, § 12, p. 168 (1979).

<sup>2</sup> Cushing, *The Law and Practice of Legislative Assemblies*, pp.250-251, 257-259, 268-270 (Boston 1874). Internal disciplinary action is “rooted in the judgment of the House as to what was necessary or appropriate for it to do to assure the integrity of its legislative performance and its institutional acceptability to the people at large as a serious and responsible instrument of government.” *Deschler's Precedents, supra* at 174, citing *Powell v. McCormack*, 395 F.2d 577, McGowan concurring, at 607 (D.C.Cir. 1968), *rev'd on other grounds*, 395 U.S. 486 (1969); Story, *supra* at § 835. Note British Parliamentary practice: “The practice of expulsion is not so much disciplinary as remedial, not so much to punish Members as to rid the House of persons who are unfit for membership.” Erskine May, *Law, Privileges, Proceedings and Usage of Parliament*, at 105 (London 1964).

<sup>3</sup> Senate or House discipline does not foreclose a criminal prosecution on the same matter, nor does criminal prosecution bar subsequent congressional discipline as “double jeopardy.” *United States v. Rose*, 28 F.3d 181, 189-190 (D.C.Cir. 1994); 2 *Op. Atty. Gen.* 655 (1834); *United States v. Traficant*, 368 F.3d 646 (6<sup>th</sup> Cir. 2004), *cert. denied*, 543 U.S. 1055 (2005).

them in Congress,<sup>4</sup> the Senate and the House have the right to discipline those who breach their privileges or decorum, or who damage their integrity or reputation, even to the extent of expelling from Congress a duly-elected Member.<sup>5</sup>

On several occasions, Senate committees to whom censure or expulsion resolutions were referred have recommended certain discipline to the full body, but either the Senate took no action, adjourned prior to consideration (and the Member was defeated in a subsequent election), the Member resigned before Senate action, or the Senate simply did not act upon the particular recommendation or resolution.<sup>6</sup> Additionally, it should be noted that the Senate has delegated to the Select Committee on Ethics the authority to investigate any “improper conduct” of a Senator or employee “which may reflect upon the Senate,” and to recommend to the Senate appropriate disciplinary action.<sup>7</sup> As part of the authority delegated to it, the Senate Select Committee on Ethics may issue, and has in the past issued, “a private or public letter of admonition” on the committee’s own accord, without further Senate action.<sup>8</sup> The focus of this report, however, is upon those disciplinary actions which were taken by the *full* Senate against Members.

## Expulsion

Expulsion is the form of action whereby the Senate (or the House), after a Member has taken the oath of office,<sup>9</sup> removes that Senator (or Representative, in the case of the House) from membership in the respective body by a vote of at least two-thirds of the Members present and voting.<sup>10</sup> The authority to expel a Member is

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<sup>4</sup> Alexander Hamilton, II *Eliot’s Debates* 257; note also James Madison, 2 Farrand, *Records of the Federal Convention of 1787*, 249-250, and *Federalist Papers*, No. 57; *Powell v. McCormack*, 395 U.S. 486, 508, 509, 531 (1969).

<sup>5</sup> See footnote 2, *supra*; Story, *supra* at §§ 835-836. Note also Senator John Quincy Adams’ arguments in 1807 on Senate’s authority to expel a Member even after re-election, II *Hinds’ Precedents of the House of Representatives*, § 1264, p. 817 (1907).

<sup>6</sup> For a complete list of Senate precedents prior to 1990, see generally S. Doc. 103-33, Butler and Wolff, Senate Historical Office, *United States Senate Election, Expulsion and Censure Cases, 1793-1990* (1995) and S. Doc. No. 92-7, 92d Cong., 1st Sess., *Senate Election, Expulsion and Censure Cases from 1793 to 1972* (1972).

<sup>7</sup> Standing Orders of the Senate, *Senate Manual*, § 80 (S.Res. 338, 88<sup>th</sup> Cong., Section 2(a), as amended).

<sup>8</sup> S.Res. 338, as amended, *supra* at Section 2(d)(3) and 2(a)(4).

<sup>9</sup> This is distinguished from an “exclusion” by majority vote prior to the taking of the oath of office and seating of a Member-elect, note *Powell v. McCormack*, 395 U.S. 486 (1969). (Several Senators from southern states who had not shown up to take their seats, however, were “expelled” during the Civil War period.)

<sup>10</sup> See Riddick and Fruman, *Riddick’s Senate Procedure, Precedents and Practices*, at p. 683 (1992), e.g., two-thirds vote requirement for Constitutional Amendments. In House, see Brown, *House Practice, Guide to the Rules, Precedents and Procedures of the House*, 108th Cong., “Voting,” at § 28, p. 935: “A two-thirds vote ordinarily means two-thirds of those  
(continued...) ”

expressly provided for in the Constitution at Article I, Section 5, clause 2. This grant of authority within the Constitution for each house of Congress to expel a Member appears to have been influenced by the parliamentary practice in England whereby Members of the House of Commons were expelled, regardless of the nature or timing of the offense, as a disciplinary action, as well as a remedial measure to deal with those deemed “unworthy” or “unfit” for membership.<sup>11</sup>

## Distinguished from Exclusion

It should be noted that the disciplinary action of *expulsion* is different than, and is distinguished from, the action of *exclusion*. An *exclusion* is where the Senate (or the House) refuses to seat a Member-elect, generally upon the objection of another Member or Member-elect, by a simple majority vote on the grounds that such challenged Member-elect has either not met the three standing constitutional qualifications of office (age, citizenship, and inhabitancy in the state from which elected), or was not “duly elected.”<sup>12</sup> The authority of the Senate to exclude a Member-elect by a simple majority vote of the body — although there had been some legitimate minority argument to the contrary in the past — is now clearly understood to be limited to questions of whether a Member-elect meets the constitutional qualifications for office,<sup>13</sup> or the question of whether the Member-elect had been “duly elected” (a question which is generally resolved in a so-called “contested election” case).<sup>14</sup> The Supreme Court in *Powell v. McCormack* stated clearly that “the Constitution leaves the House [and the Senate] without authority to *exclude* any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution.”<sup>15</sup>

The precedents in the Senate which pre-date the 1969 *Powell v. McCormack* decision, and which consider moral character and/or past misconduct in assessing the “suitability,” “fitness,” or “qualifications” of an individual who was duly elected by the voters of a state in an “exclusion” proceeding, are, therefore, of suspect relevance and value as a precedent concerning this issue at the present time. As explained in

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<sup>10</sup> (...continued)

voting, a quorum being present, and not two-thirds of the entire membership.”

<sup>11</sup> Story, *supra*, at Volume II, §836; May, *The Law, Privileges, Proceedings and Usage of Parliament*, *supra* at 104 -106.

<sup>12</sup> An “exclusion,” under the authority of Art. I, Section 5, cl. 1 of the U.S. Constitution for each House to judge the “Elections, Returns and Qualifications of its own Members,” is now understood *not* to be a disciplinary procedure addressing “fitness” or “character” of a Member-elect. See *Powell v. McCormack*, *supra* at 522, *Deschler’s Precedents*, *supra* at Ch. 12, §12, p. 169, n. 21.

<sup>13</sup> Article I, Section 3, cl. 3 for Senators (and Art. I, Section 2, cl. 2 for House Members).

<sup>14</sup> Challenging the election of a Member-elect in the Senate is generally conducted under the procedures for contested elections cases. See Office of Senate Legal Counsel, *Contested Election Cases* (October 2006). As for the House, see the Federal Contested Elections Act, 2 U.S.C. §§ 381-396. Note also, CRS Report RL33780, *Procedures for Contested Election Cases in the House of Representatives*, by Jack Maskell and L. Paige Whitaker.

<sup>15</sup> 395 U.S. at 522; see also 395 U.S. at 550.

*Deschler's Precedents*, “The [*Powell*] decision apparently precludes the practice of the House or Senate, followed on numerous occasions during the 19th and 20th centuries, of excluding Members-elect for prior criminal, immoral, or disloyal conduct.”<sup>16</sup>

## Authority As to Grounds and Timing

There is no limitation apparent in the text of the Constitution, nor in the deliberations of the Framers, on the authority to expel a Member of Congress, other than the two-thirds vote requirement. One study of the expulsion clause summarized the Framers’ intent as follows:

[From] the history of Article I, Section 5, clause 2, and in particular its course in the Committee of Detail, it is clear that the Framers ... did not intend to impose any limitation on Congressional power to determine what conduct warranted expulsion .... Nor do the debates in the Convention suggest any desire to impose any other substantive restrictions on the expulsion power.<sup>17</sup>

Justice Joseph Story similarly concluded that it would be “difficult to draw a clear line of distinction between the right to inflict the punishment of expulsion, and any other punishment upon a member, founded on the time, place, or nature or the offense,” and that “expulsion may be for any misdemeanor, which, though not punishable by any statute, is inconsistent with the trust and duty of” a Member.<sup>18</sup>

The Supreme Court of the United States, citing Justice Story’s historic treatise on the Constitution, found an expansive authority and discretion within each house of Congress concerning the grounds and the timing for an expulsion. In *In re Chapman*, the Supreme Court noted the Senate expulsion case of Senator William Blount<sup>19</sup> as supporting the constitutional authority of either house of Congress to punish a Member for conduct which in the judgment of the body “is inconsistent with the trust and duty of a member” even if such conduct was “not a statutable offense nor was it committed in his official character, nor was it committed during the session of Congress, nor at the seat of government.”<sup>20</sup>

The Supreme Court has thus recognized a very broad discretion and authority of each house of Congress to discipline its Members under its own chosen standards, generally without established right to judicial review. Describing the congressional

<sup>16</sup> *Deschler's Precedents* Volume 2, Chapter 7, § 9, at 98. Note, for example, the Senate consideration of the case of Senator-elect Arthur R. Gould of Maine, in 1926, concerning allegations of bribery of a foreign official in 1910 in a business deal. Case No. 111, *Senate Election, Expulsion and Censure Cases*, S. Doc. 103-33, *supra*.

<sup>17</sup> Bowman and Bowman, “Article I, Section 5: Congress’ Power to Expel - An Exercise in Self Restraint,” 29 *Syracuse Law Review* 1071, 1089-1090 (1978).

<sup>18</sup> Story, *supra* at § 836.

<sup>19</sup> II *Hinds' Precedents*, *supra* at §1263.

<sup>20</sup> 166 U.S. 661, 669-670 (1897).

disciplinary process, the Supreme Court in *United States v. Brewster*, noted in *dicta*:

The process of disciplining a Member in the Congress ... is not surrounded with the panoply of protective shields that are present in a criminal case. An accused Member is judged by no specifically articulated standards, and is at the mercy of an almost unbridled discretion of the charging body ... from whose decision there is no established right of review.<sup>21</sup>

It is thus likely that a court would find, in a similar fashion to the above quoted *dicta* of the Supreme Court in *Brewster* (regarding “no established right to review” of a congressional disciplinary action), that the issue of an expulsion of a Senator by the Senate (or a Representative by the House) is a non-justiciable “political question” in which there exists a “textually demonstrable constitutional commitment of the issue to a coordinate political department” of government.<sup>22</sup> Unlike the factual premise in the Powell exclusion, an expulsion of a Member for misconduct would not appear to involve another, express constitutional provision which may be in conflict with the exercise of such authority of the legislature;<sup>23</sup> nor would such action arguably impinge upon the constitutional rights of an individual.<sup>24</sup> In fact, in *Powell v. McCormack*, Justice Douglas in his concurring opinion noted the difference in justiciability between that *exclusion* case based on “qualifications” other than those established in another, express provision of the Constitution, as opposed to an *expulsion* case based on misconduct, by noting that “if this were an expulsion case I would think that no justiciable controversy were presented.”<sup>25</sup>

Although the authority and power of each house of Congress to expel appears to be within the broad discretion of the institution, or as noted by the Supreme Court in *dicta* “at the unbridled discretion of the charging body,” *policy* considerations, as opposed to questions of *power*, may have generally restrained the Senate and the House in exercising the authority to expel a Member when the conduct complained of occurred prior to the time the individual was elected to be a Member of

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<sup>21</sup> *United States v. Brewster*, 408 U.S. 501, 519 (1972).

<sup>22</sup> *Powell v. McCormack*, *supra* at 520-522; *Baker v. Carr*, 369 U.S. 186, 211, 217 (1962). It should be noted that as to *impeachment* in the Senate, the Supreme Court found as a non-justiciable “political question,” a challenge to the Senate’s impeachment proceedings under Article I, Section 3, cl. 6. The Court in *Nixon v. United States*, 506 U.S. 224 (1993), found that the claims of the federal judge-petitioner were nonjusticiable under the political question doctrine and its separation of powers implications, as the Court found “a textually demonstrable constitutional commitment of the issue to a coordinate political department.” Since these are matters specifically assigned in the Constitution to the Senate, the Senate has broad discretion in establishing the procedures that it uses, and the courts would not review such procedures absent a conflict with another specific section of the Constitution.

<sup>23</sup> In *Powell v. McCormack*, the House’s exclusion was found to contravene the qualifications clause in Article I, Section 2, cl. 2.

<sup>24</sup> *Bond v. Floyd*, 385 U.S. 116, 131 (1966).

<sup>25</sup> 395 U.S. at 553.



Congress,<sup>26</sup> or when the conduct complained of occurred in a prior Congress when the electorate knew of the conduct but still reelected the Member to the current Congress.<sup>27</sup> On occasion, this restraint has been characterized, such as in *dicta* by the Supreme Court, as evidence that “both Houses have distrusted their power to punish in such cases” of past misconduct.<sup>28</sup> The Court in *Powell v. McCormack, supra*, in distinguishing the exclusion of Powell from an expulsion, observed that congressional precedents have shown that “the House will not expel a member for misconduct committed during an earlier Congress.”<sup>29</sup> The Court noted specifically, however, that it was not actually ruling on the House’s authority to expel for past misconduct,<sup>30</sup> and, as noted above, Justice Douglas, in his concurrence stated specifically that “if this were an expulsion case I would think that no justiciable controversy were presented,” since Douglas agreed with Senator Murdock of Utah in a 1940 exclusion case that each house may “expel anyone it designates by a two-thirds vote.”<sup>31</sup>

It should be noted that the principal congressional case cited by the Supreme Court for its assertion in *Powell v. McCormack* that the House “will not expel” for prior misconduct, the case involving Representative John W. Langley, involved many other relevant considerations. Although the committee in that instance did question the ability of the House to expel an individual for misconduct (resulting in a criminal conviction) “prior to his election as a Member,” the committee also found that “the House could not permit in its membership a person serving a sentence for a crime.”<sup>32</sup> In resolving this apparent conflict, the committee reported to the House that Representative Langley, whose conviction prior to his reelection was pending on appeal, had agreed not to participate in House proceedings while the appeal was pending, and had agreed to resign if his appeals were denied. After Langley’s appeals were denied by the Supreme Court, he resigned his office.<sup>33</sup>

It should also be noted that many of the arguments opposed to proceeding against a Member of the House for misconduct in a prior Congress were based on the concept that the existing House should not take recognition of injuries to a past

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<sup>26</sup> *Deschler’s Precedents, supra* at Ch. 12, § 13, p. 176. In the House, see H.Rept. 94-1477, at 2, *In the Matter of Representative Andrew J. Hinshaw* (1976). The House Committee on Standards of Official Conduct recommended against expulsion of a Member, since the Member’s conviction “while reflecting on his moral turpitude, does not relate to his official conduct while a Member of Congress.”

<sup>27</sup> See, e.g., discussion in S.Rept. No. 2508, 83rd Cong., 2d Sess. 20-23, 30-31, concerning McCarthy censure; and H.Rept. 27, 90th Cong., 1st Sess. 26-27 (1969), recommending seating and then censure of Representative Powell.

<sup>28</sup> 395 U.S. at 508-509, citing to the Rules of House, 90<sup>th</sup> Congress.

<sup>29</sup> 395 U.S. at 509, quoting the committee report in the expulsion case of John W. Langley.

<sup>30</sup> 395 U.S. at 507, n. 27; 510, n.30

<sup>31</sup> 395 U.S. at 553.

<sup>32</sup> The expulsion case of John W. Langley, H.Rept. 30, 69<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1925), see VI *Cannon’s Precedents, supra* at § 238, p. 407.

<sup>33</sup> *Id.*

House of Representatives.<sup>34</sup> The Senate, however, has consistently considered itself to be a “continuing” body,<sup>35</sup> and thus injuries to the integrity and dignity of the Senate in the past may not have the same character of being, arguably, against a “different” institution or body. In the report on the McCarthy censure, the Select Committee to Study Censure charges specifically stated the following:

Precedents in both the Senate and House for expulsion or censure for conduct occurring during a preceding Congress may be found in Hinds (op. cit. 1275 to 1289). Precedents in the House cannot be considered as controlling because the House is not a continuing body.<sup>36</sup>

A careful reading of congressional precedents would appear to indicate that although there has certainly been some questioning of the “right” of the body to expel a Member for past misconduct when reelected, with knowledge of his constituents of that conduct, there have been divisions of opinions on this subject. For example, there were two conflicting opinions of two different House committees in the *Credit Mobilier* investigations on the discipline of Representatives Ames and Brooks in the 42<sup>nd</sup> Congress in 1872.<sup>37</sup> In adopting a disciplinary resolution of censure and not expulsion in that case, however, the House specifically refused to accept a preamble to the substitute resolution for censure which had expressly questioned its authority to expel for past misconduct.<sup>38</sup> Differences of opinion also arose in other expulsion and disciplinary cases.<sup>39</sup>

In modern congressional practice, and in light of Supreme Court rulings and *dicta*, it would appear to be more accurate to say that restraint concerning a Member’s expulsion after reelection has arisen from a questioning by the institution of the Senate or the House of the wisdom of such a *policy*, rather than a formal recognition of an absence of constitutional *power* to expel for past misconduct. The reticence of the House or the Senate to expel a Member for past misconduct after the Member has been reelected by his or her constituents, with knowledge of the Member’s conduct, appears to reflect the deference traditionally paid in our heritage

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<sup>34</sup> See, for example, Report of the Judiciary Committee on the proposed expulsion of Representatives King and Schumaker, H.Rept. 815, 44<sup>th</sup> Cong., 1<sup>st</sup> Sess. 2 (1876), cited in *Powell v. McCormack*, *supra* at 509, n. 29, asserting that “the House of Representatives has no authority to take jurisdiction of violations of law or offenses committed against a previous Congress.” See also Committee Print, Joint Committee on Congressional Operations, *House of Representatives Exclusion, Censure and Expulsion Cases from 1789 to 1973*, 93<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 122 (1973).

<sup>35</sup> *Riddick’s Senate Procedure*, *supra* at 1220.

<sup>36</sup> S.Rept. 2508, 83<sup>rd</sup> Cong., *supra* at 22.

<sup>37</sup> H.Rept. 77, 42<sup>nd</sup> Cong., 3<sup>rd</sup> Sess. (1872) and H.Rept. 82, 42<sup>d</sup> Cong., 3<sup>rd</sup> Sess. (1872).

<sup>38</sup> *House Exclusion, Censure and Expulsion Cases from 1789 to 1973*, *supra* at 125.

<sup>39</sup> Note majority and minority opinions in expulsion cases of William S. King and John Schumaker, H.Rept. 815, 44<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1876), II *Hinds’ Precedents*, *supra* at §1283, and in expulsion case of Orsamus B. Matteson, H.Rept. 179, 35<sup>th</sup> Cong., 1<sup>st</sup> Sess. (1858), II *Hinds’ Precedents* § 1285.

to the popular will and election choice of the people.<sup>40</sup> Justice Story, while noting the necessity of expulsion of one who “disgrace[d] the House by the grossness of his conduct,” noted that such power of the institution of the House to expel a duly-elected representative of the people is “at the same time so subversive of the rights of the people,” as to require that it be used sparingly and to be “wisely guarded” by a two-thirds requirement.<sup>41</sup> Similarly, Cushing noted that the power to expel “should be governed by the strictest justice,” since in expelling a duly-elected Member without just cause “a power of control would thus be assumed by the representative body over the constituent, wholly inconsistent with the freedom of election.”<sup>42</sup>

In 1807 Senator John Quincy Adams discussed in a select committee report on a proposed expulsion of Senator John Smith for his alleged part in the Aaron Burr conspiracy, the issues of the authority of the Senate to expel a Member even after the Senator’s indictment had been dropped. Although the indictment, as well as the alleged misconduct, occurred subsequent to the time of Senator Smith’s election to the Senate by the Ohio legislature, Senator Adams discussed in broad terms the Senate’s authority to expel, finding that “By the letter of the Constitution the power of expelling a Member is given to each of the two Houses of Congress, without any limitation other than that which requires a concurrence of two-thirds.” This sole limitation, that is, the two-thirds requirement, was in the opinion of the select committee “a wise and sufficient guard against the possible abuse of this legislative discretion.”<sup>43</sup>

The distinction between the “power” of the House of Representatives to expel, and the judicious use of that power as a “policy” of the House, was cogently explained in a House Judiciary Committee report in 1914:

In the judgment of your committee, *the power of the House to expel or punish by censure a Member for misconduct occurring before his election or in a preceding or former Congress is sustained by the practice of the House, sanctioned by reason and sound policy and in extreme cases is absolutely essential* to enable the House to exclude from its deliberations and councils notoriously corrupt men, who have unexpectedly and suddenly dishonored themselves and betrayed the public by acts and conduct rendering them unworthy of the high position of honor and trust reposed in them....

But in considering this question and in arriving at the conclusions we have reached, we would not have you unmindful of the fact that we have been dealing with the question merely as one of *power*, and it should not be confused with the question of *policy* also involved. As a matter of sound policy, this extraordinary prerogative of the House, in our judgment, should be exercised only in extreme

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<sup>40</sup> See footnote 4 of this report, *supra*. Note also discussion of the infamous “Wilkes case” in England, shortly before the time of the drafting of the United States Constitution. *Powell v. McCormack*, *supra* at 532-535; May, *supra* at 107.

<sup>41</sup> Story, *supra* at § 835.

<sup>42</sup> Cushing, *supra* at § 625; *Deschler’s Precedents*, *supra* at Ch. 12, §13, p. 175.

<sup>43</sup> *II Hinds’ Precedents supra*, at § 1264, p. 817. The expulsion vote to receive the required two-thirds.

cases and always with great caution and after due circumspection, and should be invoked with greatest caution where the acts of misconduct complained of had become public previous to and were generally known at the time of the Member's election. To exercise such power in that instance the House might abuse its high prerogative, and in our opinion might exceed the just limitations of its constitutional authority by seeking to substitute its standards and ideals for the standards and ideals of the constituency of the member who had deliberately chosen him to be their Representative. The effect of such a policy would tend not to preserve but to undermine and destroy representative government.<sup>44</sup>

The power to expel is thus used cautiously when the institution of Congress might be seen as usurping or supplanting its own institutional judgment for the judgment of the electorate as to the character or fitness for office of an individual whom the people have chosen to represent them in Congress.<sup>45</sup> The principal manner of dealing with ethical improprieties or misconduct of a Representative (Senators were not at the time of the adoption of the Constitution, and until 1913, chosen directly by the people, but were selected by the state legislatures) was intended by the Framers to be, and has historically been, reliance upon the voters to keep their Members "virtuous" through the "restraint of frequent elections."<sup>46</sup> However, there is no indication in the actual text of the Constitution or in the debates on the adoption of Article I, Section 5, clause 2, that such limitation has been imposed, nor has any judicial ruling on the authority or power of the Senate found an express or implied limitation on the expulsion power, to reach only conduct that was *not* known to an electorate prior to election or reelection of the Senator.

## Practices and Precedents

Actual expulsions in the Senate (as well as in the House) have historically concerned cases of perceived disloyalty to the United States Government,<sup>47</sup> or of a violation of criminal statutory law which involved abuse of one's official position.<sup>48</sup> However, it should be noted that the Senate Select Committee on Ethics, in 1995,

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<sup>44</sup> H.Rept. 570, 63rd Cong., 2d Sess. (1914), at VI *Cannon's Precedents, supra* at § 398. Emphasis added.

<sup>45</sup> "Congress has demonstrated a clear reluctance to expel when to do so would impinge ... on the electoral process." Bowman and Bowman, *supra* at 1101.

<sup>46</sup> Madison, *The Federalist Papers*, No. 57.

<sup>47</sup> See Senate expulsions of Blount (1797), Mason, Hunter, Clingman, Bragg, Chestnut, Nicholson, Sebastian, Mitchell, Hemphill, and Wigfall (1861), Breckinridge (1861), Bright (1862), Polk (1862); House expulsions of Clark of Missouri (1861), Reid of Missouri (1861), and Burnett of Kentucky (1861).

<sup>48</sup> The Senate in 1981 considered the expulsion of Senator Harrison A. Williams, of New Jersey, recommended by the Senate Select Committee on Ethics (S.Rept. 97-187, 97th Cong., 1st Sess. (1981)), after the Senator's conviction of bribery, illegal gratuities, conflicts of interest and conspiracy in the so-called ABSCAM influence peddling probe. For House practices, see modern expulsion of Representatives Myers (H.Rept. 96-1387 (1980)) and Traficant (H.Rept. 107-594 (2002)), as well as committee recommendations of expulsion for Representatives Lederer (H.Rept. 97-110 (1981)) and Biaggi (H.Rept. 100-506, (1988)), after corruption convictions.

recommended the expulsion of a Member for conduct which had not been the subject of any criminal prosecution, but which involved allegations of an abuse of the authority of the Senator's office and position in making unwanted sexual advances to women, enhancing his personal financial position, and for obstructing and impeding the Committee's investigation.<sup>49</sup>

In the United States Senate, 15 Senators have been expelled, 14 during the Civil War period for disloyalty to the Union (one expulsion was later revoked by the Senate),<sup>50</sup> and one Senator was expelled in 1797 for other disloyal conduct.<sup>51</sup> Although the Senate has actually expelled relatively few Members, and none since the Civil War, other Senators, when facing a recommended expulsion for misconduct, have resigned their seat rather than face the potential expulsion action.<sup>52</sup> In the House of Representatives, five Members have been expelled — 3 during the Civil War period for disloyalty, one in 1980 after conviction of bribery and conspiracy in congressional office, and one Member in 2002 after his convictions for bribery, receipt of illegal gratuities, and other corruption charges, while several other Members, facing potential expulsion, resigned their offices prior to action by the full House of Representatives.<sup>53</sup>

The Senate has demonstrated that in cases of conviction of a Member of crimes that relate to official misconduct, that the institution need not wait until all of the Senator's judicial appeals are exhausted, but that the Senate may independently investigate and adjudicate the underlying factual circumstances involved in the judicial proceedings, regardless of the potential legal or procedural issues that may be raised and resolved on appeal.<sup>54</sup> In the last expulsion action regarding a sitting Member of the Senate who had been convicted of a crime, the Senate Select

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<sup>49</sup> S. Rep. 104-137 (1995), *Resolution for Disciplinary Action* (re: Senator Packwood). The Senator resigned from office prior to full Senate consideration.

<sup>50</sup> Senators Mason, Hunter, Clingman, Bragg, Chestnut, Nicholson, Sebastian, Mitchell, Hemphill, and Wigfall (1861), Breckinridge (1861), Bright (1862), Johnson (1862), and Polk (1862). The expulsion order regarding Senator Sebastian was later revoked. *United States Senate Election, Expulsion and Censure Cases, 1793-1990, supra*.

<sup>51</sup> Senator William Blount of Tennessee, July 8, 1797, *United States Senate Election, Expulsion and Censure Cases, 1793-1990, supra* at 13-15, Case 5.

<sup>52</sup> See, for example, recommendation of expulsion of Senator Williams (S. Rep. No. 97-187, *supra*), after the Senator's conviction in the so-called ABSCAM influence peddling probe, and Senator's subsequent resignation prior to final Senate floor consideration. Note Riddick and Fruman, *Riddick's Senate Procedure*, S. Doc. No. 101-28, *supra* at 270. Additionally, Senator Packwood resigned in 1995 after the Senate Select Committee on Ethics recommended expulsion in S. Rep. 104-137 (1995).

<sup>53</sup> Note modern expulsions of Representative Myers (H.Rept. 96-1387 (1980)) and Representative Traficant (H.Rept. 107-594 (2002)). See generally, CRS Report RL31382, *Expulsion, Censure, Reprimand, and Fine: Legislative Discipline in the House of Representatives*, by Jack Maskell.

<sup>54</sup> S.Rept. 97-187, *supra* at 10. The Senate Select Committee on Ethics stated that its unanimous recommendation of expulsion "reflects its strong conviction that its own determination of this matter, and that of the Senate, must be made independently of the jury's verdict," or the outcome of the appeal.

Committee on Ethics went forward with the disciplinary investigation and hearing after the Senator's conviction, and issued its report recommending expulsion prior to the conclusion of the appellate procedure, but suggested that the Senate postpone consideration of the committee's report and recommendation of discipline until after the Senator's appeals were concluded.<sup>55</sup> Subsequent to the Member's conviction, and up until the time the full Senate considered the Senate Select Committee on Ethics's recommendation of expulsion in this particular matter, the Senator who had been convicted of the felony offenses continued to participate and vote on the floor of the Senate.<sup>56</sup>

It may be noted, generally, that as to precedents in the Senate concerning the policy considerations and procedural decisions regarding disciplinary actions, as well as precedents in the House of Representatives, that such precedents are, of course, not necessarily binding on a subsequent Senate, but are given substantial weight and consideration in the formulation of each Member's consideration of the matter.<sup>57</sup>

## Censure

The term "censure," unlike the term "expel," does not appear in the Constitution, although the authority is derived from the same clause in the Constitution at Article I, Section 5, clause 2, concerning the authority of each house of Congress to "punish its Members for disorderly Behaviour." The Standing Orders of the Senate provide that the Select Committee on Ethics may recommend to the Senate disciplinary action against a Member "including, but not limited to, in the case of a Member: censure, expulsion, or recommendation to the appropriate party conference regarding such Member's seniority or positions of responsibility ...."<sup>58</sup>

A "censure" in the Senate has traditionally meant the "punishment" imposed by the Senate when the full body formally disapproves of conduct or behavior of a Member by way of the adoption, by majority vote, of a resolution expressing such condemnation or disapproval. Under Senate Rules, no forfeiture of rights or

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<sup>55</sup> Although the Committee proceeded in its investigation, and found that it had a basis independent of the judicial proceedings to pursue legislative discipline, the Committee recommended "that the Senate proceed expeditiously to final disposition of the foregoing resolution only when Judge Pratt has ruled on the aforesaid motions." Senate Rep. No. 97-187, *supra* at 11.

<sup>56</sup> See Congressional Quarterly, *Congressional Roll Call 1981*, at pp. 20S - 77S, and *Congressional Roll Call 1982*, at pp. 2S - 11S, concerning recorded Senate votes subsequent to May 1, 1981, until March 11, 1982.

<sup>57</sup> See, for example, discussion in *Deschler's Precedents, supra*, Volume 1, at vi - viii.

<sup>58</sup> *Senate Manual*, Section 79, S.Res. 338, 88th Cong., Sec. 2(a)(2), as amended. In addition to expulsion and censure it is possible, and arguably within the authority of the Senate, to punish a Member by way of fine, imprisonment, suspension of privileges, or deprivation of seniority status. Note Senate Report on Tillman-McLaurin censure, II *Hinds' Precedents, supra* at §1655, p. 1140; Cushing, *Elements of the Law and Practice of Legislative Assemblies in the United States of America*, §§675-684 (1856); *Kilbourn v. Thompson*, 103 U.S. 168, 189-190 (1881); *Deschler's Precedents, supra*, Ch. 12, §§13-18.

privileges automatically follows a “censure” by the Senate, but the individual political party caucus or conference rules in the Senate may have relevance to party and committee leadership positions.

The term “censure” is used to describe the formal action of the Senate adopting a resolution expressing the body’s “censure,” “condemnation,” “denouncement,” or general disapproval of a Member’s conduct even when the word “censure” is not expressly included in the language of the resolution.<sup>59</sup> In the two earliest Senate censure cases cited by historians and parliamentarians, the resolutions finally adopted by the Senate did not use any specific term of disapproval, such as “censure,” “condemn,” or “denounce,” but merely stated the relevant findings and the conclusion that Senator Pickering, in 1811, “committed a violation of the rules of this body”;<sup>60</sup> and that Senator Tappan, in 1844, was “guilty of a flagrant violation of the rules of the Senate and disregard of its authority.”<sup>61</sup> During the floor discussion of the 1844 censure it was stated by a Member of the Select Committee examining the matter that the use of no express word of disapproval in the previous censure resolution of Senator Pickering in 1811 was “evidently designed as a mild form of censure.”<sup>62</sup>

Senators Bingham of Connecticut, in 1929, and McCarthy of Wisconsin, in 1954, were “condemned” by the full Senate in a resolution; while the resolutions adopted in the cases of Senators McLaurin and Tillman of South Carolina, in 1902, and Thomas Dodd of Connecticut, in 1967, used the term “censure.” Senator Talmadge in 1979, and Senator Durenberger in 1990, were “denounced” in the resolutions adopted by the Senate.

## Condemn

The term “condemn” has been used in two censure resolutions in the Senate, in 1929 and in 1954. It appears that no distinction of great import was made at the times of those actions in using the word “condemn” in the censure resolutions, as opposed to the term “censure,” and that the terms were seen at the times employed as substantially synonymous.<sup>63</sup>

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<sup>59</sup> Riddick and Fruman, *Riddick’s Senate Procedure, Precedents and Practices*, S. Doc. No. 101-28, 101st Cong., 2d Sess. 270-273 (1992); note also S. Doc. No. 92-7, 92d Cong., 1st Sess., *Senate Election, Expulsion and Censure Cases from 1793 to 1972* (1972); *Deschler’s Precedents*, H. Doc. No. 94-661, 94th Cong., 2d Sess., Ch. 12, §16, at 193-194, n.10, §§16.2, 16.3.

<sup>60</sup> Censure of Timothy Pickering of Massachusetts, *S. Journal*, 11th Cong., 3rd Sess., pp. 535, 536 (January 2, 1811).

<sup>61</sup> Censure of Benjamin Tappan of Ohio, *S. Journal*, 28th Cong., 1st Sess. App. pp. 441-442 (May 10, 1844).

<sup>62</sup> Senator Archer, *S. Journal*, 28th Cong., 1st Sess. App. 440 (May 8, 1844).

<sup>63</sup> As noted in S. Doc. 92-7, *supra* at 128, the Chairman of the Judiciary Committee which had investigated the matter concerning Senator Bingham “offered a resolution of censure (S.Res. 146) condemning Senator Bingham for his conduct.” One Senator noted that “I

(continued...)

In the censure of Senator Joseph McCarthy from Wisconsin, the select committee considering the matter recommended in its report that on two of the charges investigated the “Senator from Wisconsin, Mr. McCarthy, should be censured,”<sup>64</sup> and reported out favorably the resolution referred to the committee which provided that the conduct of the Senator “is hereby condemned.”<sup>65</sup> In the floor consideration of the resolution, the Chairman of the Select Committee to Study Censure Charges, Senator Watkins of Utah, was questioned in a colloquy by another member of the Select Committee concerning the uses of the terms “censure” and “condemn”:

Mr. CASE. Let me ask the Senator from Utah how he refers to the adoption of a censure resolution which would have for its main substance section 1, which uses the word “condemn,” and when he now proposes that section 2 be modified by including the words “and condemn”? How does the Senator from Utah think that modification will modify the censure proposed in Section 2?

Mr. WATKINS. The modification strikes out the word “censure.”

Mr. CASE. Yes; but then we come to the words “and condemn” in section 1, although the Senator from Utah still refers to the resolution as a censure resolution.

Mr. WATKINS. That is a difference of semantics. Some persons believe that “condemn” is a stronger word than “censure”; and some persons believe that “censure” is a stronger word than “condemn.” I do not know which is which.<sup>66</sup>

The Select Committee and its Chairman in the McCarthy censure did not officially distinguish between the meaning of the two terms employed. However, it is clear that at least one Member of the Senate at the time felt that the term “condemn” was the stronger term, and that the Senator was not necessarily dissuaded from that perception by the Select Committee Chairman.<sup>67</sup> At present, it may be argued that the use of the verb “condemn” in a censure resolution, although not officially distinguished from using any other word in such resolution, may be perceived to be a somewhat stronger disapproval than merely using the term “censure,” based in large part on the feelings associated with the last Senator to be

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<sup>63</sup> (...continued)

propose by my vote to censure those acts” (71 *Cong. Rec.* 5130, November 4, 1929, Mr. Walsh). One of the main contentions in the Bingham censure appeared to concern substituting the term “disapproved” for “condemned.” As noted by Senator Pittman: “I think the charge here is simply a condemnation of what he did. ... You may use the word ‘disapprove’ or you may use the word ‘condemn’; but what is the difference between disapproving conduct and condemning conduct? The only difference that I see is that ‘condemning’ is a stronger word than ‘disapproving.’” 71 *Cong. Rec.*, *supra* at 5120, 5121.

<sup>64</sup> S.Rept. 2508, *supra* at 67

<sup>65</sup> S.Res. 301, 83rd Cong., 2d Sess.

<sup>66</sup> 100 *Cong. Rec.* 16369, December 2, 1954.

<sup>67</sup> Mr. WELKER. Being a practitioner of law, as is the Senator from Utah, he certainly knows that a man is never censured to death. On the contrary, a man is condemned to death. That indicates the difference between the two words.

Mr. WATKINS. Very well; I accept that effort on the part of the Senator from Idaho to clarify the difference between the meaning of the two words. 100 *Cong. Rec.* 16369, December 2, 1954.



“condemned” for conduct in a censure resolution, the late Senator Joseph McCarthy. In a later Senate consideration of a censure resolution, the Chairman of the then Senate Select Committee on Standards and Conduct, Senator Stennis of Mississippi, stated that he had believed that the term “condemn” was a harder and a more “severe” term than “censure.”<sup>68</sup>

## Denounce

The term “denounce” has been used in two relatively recent censure resolutions in the Senate. As discussed above, although distinctions were intentionally drawn in the Herman Talmadge case between using the word “denouncement” in the resolution on the one hand, and the use of the terms “censure” or “condemnation” on the other, historians and parliamentarians consider the disciplinary action voted in the Talmadge case, where the full Senate formally “denounced” his conduct in a resolution, as a “censure” of Senator Talmadge.<sup>69</sup>

The Senate Select Committee on Ethics in the Talmadge matter noted in its report that it was using the term “denounce” in the resolution to distinguish the facts in the Talmadge case “from those earlier matters in which the Senate ‘censured’ or ‘condemned’ a Member” so that the Committee may express “its judgments and recommendations ... with words that do not depend on analogy to dissimilar historical circumstances for interpretation.”<sup>70</sup> The Committee report did not expressly explain why the Talmadge matter was distinguishable from past matters, nor if it considered the term “denounce” as stronger or weaker than the terms “censure” or “condemn.” In the additional views of Senator Schmitt in the Senate report, however, the Senator argued that the terms are essentially “equivalent,” but that the term “denounce” was employed because only a “gross neglect” of duty of a Member towards the administration of his office affairs was found, while the actual wrongdoing was perpetrated by staff:

Such words as “reprehensible” and “denounced” have no legal or historic precedents for their use as do “censured” and “condemned”. However, they should be viewed now by history as equivalent in meaning to “censured” but applied to special cases where the financial duties of a senatorial office have been subject to gross neglect and where years of illegal activities by subordinates have been overlooked, if not encouraged.

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Thus, even though the Committee avoided the use of the word censure and even though the general historical precedents are strongly [sic], it none the less

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<sup>68</sup> “We debated, at considerable length, the use of the word ‘censure’ or the word ‘condemn.’ Speaking first for myself, I was convinced that the historic term and the proper term to suit these facts was the word ‘censure’ rather than ‘condemn.’ I thought that the word ‘censure’ was not as hard a word, not as severe a word, as the word ‘condemn.’” 113 *Cong. Rec.* 16979 (June 22, 1967).

<sup>69</sup> See Riddick, *Senate Procedure, Precedents and Practices*, S. Doc. No. 97-2, 97th Cong. 1st Sess. at 219-220 (1981); and *Riddick’s Senate Procedure*, Revised and Edited by Allan Fruman, Parliamentarian, S. Doc. No. 101-28, at 270.

<sup>70</sup> S.Rept. 96-337, *supra* at 18.

applied words defined *in terms* of “censure” to the misconduct of Senator Talmadge.<sup>71</sup>

From the full Senate consideration of the matter, it appears that a common opinion was that the term “denounce” was employed to recognize that there were “mitigating” circumstances involved in the case, and to recognize that it had not been concluded by the committee that the improprieties were engaged in by the Senator willfully and with actual knowledge, and thus the term “censure” would not be used.<sup>72</sup>

The Senate Select Committee on Ethics in its report in the matter of Senator Durenberger did not state an express reason or justification for using the term “denounce” rather than “censure” or “condemn” in the resolution it recommended for adoption, although the special counsel’s report to the Committee suggested that the precise verb in a censure resolution is not as important as the Committee’s characterization of the conduct in a resolution which is then formally adopted by the full Senate.<sup>73</sup> During the Senate consideration of the resolution a member of the Select Committee on Ethics, Senator Lott of Mississippi, noted that an amendment offered during Committee procedures to substitute the term “censure” for “denounce” was defeated, and it was the Senator’s opinion that a “denouncement” was intended to be a lesser term of disapproval than a “censure” because of the mitigating circumstances and the lack of venal intent in the case.<sup>74</sup>

Questions concerning the meaning of the term “denounce” employed in the resolution were directed to the Chairman of the Select Committee on Ethics, Senator Heflin of Alabama. The Chairman of the Committee, in an explanation somewhat similar to the one given by the Chairman of the Select Committee to Investigate Censure Charges in the McCarthy censure, explained that the actual term employed in the censure resolution voted on by the full body was a matter of semantics and personal interpretation, and that the action of the full Senate formally adopting a resolution using the term “denounce” was “within the broad parameters of the word ‘censure’”:

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<sup>71</sup> S.Rept. No. 96-337, *supra* at 148-149.

<sup>72</sup> 125 *Cong. Rec.* 27768, 27785,-27786, 27789 (October 11, 1979). Note, for example, comments of Senator Hollings: “I know the gentleman discussed what word to use at length, and they did save my good friend from censure, and instead recommended that he be denounced.” *Id.* at 27785.

<sup>73</sup> S.Rept. No. 101-382, at 106 (1990).

<sup>74</sup> “Ezra Pound once spoke of ‘language charged with meaning.’ I think the commitment to recommend denouncement rather than censure was for a reason.

Although our rules mention only censure and expulsion, this history of the Senate shows that there are in effect different levels of punishment. Past cases have resulted in what amounts to a letter of reproof by the committee as well as denouncement, condemnation, censure and expulsion by the full Senate.

In this case the committee chose denouncement instead of censure, largely because, I think, of the mitigation that was present and because, as the defense counsel emphasized in our public hearings, there was no venal intent.” 136 *Cong. Rec.* S 10564 (daily ed.), July 25, 1990.

The denouncement terminology originated in the case of a former Senator from Georgia. The Parliamentarian, as I understand it, considered “denouncement” to be within the parameters of censure. I think some people in the instance of a Georgia Senator felt that the word “denouncement” was weaker than the word censure.

Some, on the other hand, felt that it was stronger. I think it is more in the eyes of the beholder as to how you might view it. ...

... The major aspect of this is that the Senate as a whole acts. It acts to show its displeasure; it acts to show its disapproval in strong language, whether the language be denouncement, censure, or in one case condemnation. ...

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I think it is up to each individual to give whatever meaning and connotation he may wish. I would think that it falls within the broad parameters of the word “censure.”<sup>75</sup>

## Grounds For Censure

The Constitution, in providing that either house of Congress may “expel” a Member by a two-thirds majority, does not specify the reasons for such expulsion, but does in that same provision state that either house of Congress may “punish its Members for disorderly Behavior.” Article I, Sec. 5, cl. 2. Some early commentators thus felt that the authority to “punish” a Member by way of censure or condemnation was thus expressly limited, unlike expulsion, to cases concerning disorderly or unruly behavior or conduct in Congress, that is, conduct which disrupts the institution.<sup>76</sup>

The authority to discipline by way of censure, however, has come to be recognized and accepted in congressional practice as extending to cases of “misconduct”, even outside of Congress, which the Senate or House finds to be reprehensible and to reflect discredit on the institution, and which is, therefore, worthy of condemnation. As stated in S.Rept. 2508, 83d Cong., 2d Sess. 22 (1954) by the Senate Select Committee to Study Censure Charges:

It seems clear that if a Senator should be guilty of reprehensible conduct unconnected with his official duties and position, but which conduct brings the Senate into disrepute, the Senate has the power to censure.

The House of Representatives has similarly taken a broad view of its authority to discipline its Members by way of expulsion or censure. In the 63rd Congress the House Judiciary Committee described the power of the House to punish for disorderly behavior as a power which is “full and plenary and may be enforced by summary proceedings. It is discretionary in character ... restricted by no limitation except in case of expulsion the requirement of the concurrence of a two-thirds vote.”<sup>77</sup> In the report on Representative Adam Clayton Powell, the House Select Committee described censure cases as follows:

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<sup>75</sup> 136 *Cong. Rec.* S10568-69 (daily ed. July 25, 1990).

<sup>76</sup> Note, for example, discussion in 29 *Syracuse Law Review*, *supra* at 1089 - 1091, citing Rawle, *View of the Constitution of United States* 46-47 (2nd ed. 1829).

<sup>77</sup> H.Rept. 570, 63rd Cong., 2d Sess. (1914).

Censure of a Member has been deemed appropriate in cases of a breach of the privileges of the House. There are two classes of privilege, the one, affecting the rights of the House collectively, its safety, dignity, and the integrity of its proceedings; and the other, affecting the rights, reputation, and conduct of Members, individually, in their representative capacity....

Most cases of censure have involved the use of unparliamentary language, assaults upon a Member or insults to the House by introductions of offensive resolutions, but in five cases in the House and one in the Senate [as of 1969] censure was based on corrupt acts by a Member, and in another Senate case censure was based upon noncooperation with and abuse of Senate committees.

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This discretionary power to punish for disorderly behavior is vested by the Constitution in the House of Representatives and its exercise is appropriate where a Member has been guilty of misconduct relating to his official duties, noncooperation with committees of this House, or nonofficial acts of a kind likely to bring this House into disrepute.<sup>78</sup>

The authority and grounds for censure, under the express Constitutional authority of the Senate, at Article I, Section 5, clause 2, as well as under the Senate's own Rules<sup>79</sup> and precedents, thus extend to misconduct or improprieties which may or may not violate an express statute or a particular written rule of ethical conduct. Even when not a violation of a particular law or rule, the Senate has censured Members for conduct when found contrary to "acceptable norms of ethical conduct in the Senate," contrary to "good" or "accepted morals" and "senatorial ethics," when found to "derogate from the public trust expected of a Senator," and/or for "reprehensible" conduct which brings the Senate into "dishonor and disrepute."<sup>80</sup>

It should be noted that prior to 1968 there were no written Senate ethics rules. Upon the drafting of a code of conduct in the Senate Rules for the first time in 1968, it was made clear that the drafting and existence of such an express, written code would not preempt nor supersede the existing, unwritten standards or norms of ethical behavior against which a Senator's conduct has been and may always be

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<sup>78</sup> H.Rept. 27, *supra* at 24-26, 29.

<sup>79</sup> *Standing Orders of the Senate, Senate Manual*, Section 79, derived from S.Res. 338, 88th Cong., 2d Sess., Sec. 2(a) (1964), as amended.

<sup>80</sup> Note, for example, Senate approval of "resolution of censure (S.Res. 146 [71st Cong. 1929]) condemning Senator Bingham" for conduct which is "contrary to good morals and senatorial ethics and tends to bring the Senate into dishonor and disrepute," S. Doc. No. 92-7, *supra* at case 160; adoption of S.Res. 301, 83rd Congress, censuring Senator McCarthy for conduct which was (Sec. 1) "contrary to senatorial traditions" and (Sec. 2) "contrary to senatorial ethics and tended to bring the Senate into dishonor and disrepute, to obstruct the constitutional processes of the Senate, and to impair its dignity"; adoption of S.Res. 112, 90th Cong., censuring Senator Dodd for a pattern of conduct which was found "contrary to accepted morals, derogates from the public trust expected of a Senator and tends to bring the Senate into dishonor and disrepute"; S.Res. 311, 101st Cong., denouncing Senator for a pattern of conduct found "reprehensible" and which "brought the Senate into dishonor and disrepute," based on violations of statutes, rules, and "acceptable norms of ethical conduct."

judged.<sup>81</sup> The earlier resolution in 1964 establishing and authorizing the Select Committee on Standards and Conduct (now the Select Committee on Ethics) was expressly intended to give to and to continue within that committee that portion of the Senate's traditional authority and jurisdiction to investigate, make findings, and report to the full body for consideration matters concerning official "misconduct" of Members, as well as violations of specific rules, codes, or statutes relating to official duties.<sup>82</sup>

The Senate has "censured" Members for violating orders of secrecy of documents in their possession; for fighting in the Senate; for allowing a lobbyist with interests in particular legislation to be on one's staff and on a committee considering such legislation, with access to the secret meetings and considerations of the committee; for non-cooperation and abuse of investigating committees of the Senate; and for financial irregularities concerning contributions, official expenses, and outside income.

## Reprimand

There is no precedent in the Senate for the full Senate to vote a resolution "reprimanding" a Member for misconduct, nor for any committee to recommend that the Senate "reprimand" a Senator, although such an action has been considered by the Senate and by at least one committee to which a disciplinary case was referred. In the censure case of the late Senator Thomas Dodd, Senator Tower introduced an amendment to substitute the word "reprimand" for that of "censure" in the resolution.<sup>83</sup> Senator Tower argued that this "would give us the opportunity to express our displeasure, our disapproval, and our disassociation, but at the same time avoid the severity of censure, which ... is one of the most severe penalties that we could impose."<sup>84</sup> Senator Stennis, the Chairman of the Select Committee on Standards and Conduct, argued against using the term "reprimand," contending that

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<sup>81</sup> Note preamble to S.Res. 266, 90th Cong., Standing Orders of the Senate, §79.6, and Senate consideration of Code of Conduct at 114 *Cong. Rec.* 6833 (March 18, 1968), comments of the Chairman of the Select Committee, Senator Stennis: "We do not pretend to displace those backgrounds of precedents concerning standards and trust and the fiduciary relationship of the Senate with the people and a Senator's obligations. We do not try to write a full code of regulations. However, we do set forth in the very beginning that our effort is merely to add rules and not to replace that great body of unwritten but generally accepted standards that will, of course, continue in effect."

<sup>82</sup> In consideration and passage of S.Res. 338, 88th Cong., the Senate adopted a substitute proposal by Senator John Sherman Cooper to establish a permanent Select Committee with authority, as explained by Senator Cooper, to "receive complaints of illegal and unethical conduct .. and then if required, recommend to the Senate proper disciplinary action." 110 *Cong. Rec.* 16930 (July 24, 1964). As stated by a supporter of the substitute measure, "unlike the resolution in its original form, ... the proposal would not be limited to alleged violations of Senate rules, but, it would take into account all improper conduct of any kind whatever." 110 *Cong. Rec.*, *supra* at 16933 (Senator Case).

<sup>83</sup> 113 *Cong. Rec.* 16978 (June 22, 1967).

<sup>84</sup> *Id.* at 16979.

term had no historical context in Senate procedure and thus was without meaning in the Senate, and arguing that the term “censure” was appropriate to the facts and was less severe than using the term “condemn”:

Mr. STENNIS. ... The matter was given as careful consideration as our capacity on the subject permitted; and we found that, uniformly, the legislative history of the United States had tended, for serious matters, always to use the word “censure” or the word “condemn”.

We found that there was some precedent, in the House of Representatives, in connection with the use of the word “reprimand,” after passing a resolution of censure, to require the Member to present himself at the bar of the House and be publicly reprimanded there by the Speaker.

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[I]t has been the custom in the House of Representatives in a censure resolution to require the Member of the House, if he is so censured by resolution, to come down before the bar and be publicly “reprimanded” by word of mouth by the Speaker. However, that has never been done in the Senate. We did not like the idea of doing that.

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Members of the Senate, I will put this in this way, as to what we found as to the meaning of “reprimand” in legislative parlance. It just does not mean anything. It means what you might call just a slap on the wrist. It does not carry any weight.

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We looked and looked and looked, and we feel certain that our research was complete, and therefore we totally rejected, for the reason I have given, the mild legislative word “reprimand,” which has no meaning or means nothing more than just a disapproval, and put in the word “censure,” which we thought was the mildest of the words that have a legislative meaning, and would carry the idea of the Senate taking a stand with reference to the matter.<sup>85</sup>

In the case of Senators Tillman and McLaurin who were “censured” by the full Senate in 1902 for fighting on the floor of the Senate, the Committee to whom the matter was referred considered the options for the Senate, including a “reprimand” of the Members which it considered “only a more formal reiteration [of an earlier contempt vote and] .. not sufficiently severe,” found that the conduct should be “condemned” by the Senate and recommended a resolution which “censured” the Members. The Committee explained:

The Senate may punish the Senators from South Carolina by fine, by reprimand, by imprisonment, by suspension by majority vote, or by expulsion with the concurrence of two-thirds of its Members.

The offense is well stated in the majority report. It is not grave enough to require expulsion. A reprimand would be too slight a punishment. The Senate by a yea-and-nay vote has unanimously resolved that the said Senators are in contempt. A reprimand is in effect only a more formal reiteration of that vote. It is not sufficiently severe upon consideration of the facts.<sup>86</sup>

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<sup>85</sup> 113 *Cong. Rec.* 16979, 16984 (June 22, 1967).

<sup>86</sup> II *Hinds’ Precedents, supra* at §1665, pp. 1140-1142.

Prior to the 1970s in the House of Representatives, although there were some inconsistencies,<sup>87</sup> the terms “reprimand” and “censure” were often considered synonymous and used together in a resolution. In 1921, for example, a resolution adopted by the House instructed the Speaker to summon Representative Blanton of Texas to the bar of the House “and deliver to him its reprimand and censure”.<sup>88</sup> More recently, however, there has come to be a distinction in the House whereby it is considered that a “reprimand” involves a lesser level of disapproval of the conduct of a Member than that of a “censure”, and is thus a less severe rebuke by the institution.<sup>89</sup> Procedurally in the House, a “censure” resolution will generally instruct the Member to go to the well of the House and for the Speaker of the House to read the resolution as a verbal castigation of the Member. In the case of a “reprimand,” however, the resolution is merely adopted by a vote of the House.<sup>90</sup>

Such procedures are not relevant to the Senate which merely adopts a censure resolution and does not require a Member to “go to the well” for a verbal rebuke.<sup>91</sup> A resolution which is adopted by a formal vote of the Senate using the word “reprimand” would thus have the same effect and be governed by the same procedures as a “censure” in the Senate, and might thus possibly be considered as a “distinction without a difference” in the Senate and, technically, a form of “censure” as have been the recent “denouncements” in the Senate. A resolution which uses the word “reprimand” in the Senate, although without historical precedent, might, however, be publicly perceived as similar to the modern House practice, that is, a minor rebuke, and may arguably be seen by the public as a lesser form of institutional disapproval or discipline than would the use of the words “condemn,” “censure,” or “denounce.”

Although not a disciplinary action employed by the full Senate, the Select Committee on Ethics may issue, and has issued a “reprimand” or other similar form of rebuke, in a report or in a letter to a particular Member, which is not voted upon by the full Senate. The Senate Select Committee on Ethics issued such a “reprimand” in a report concerning Senator Cranston and the so-called “Keating Five” investigations in 1991. The Committee found that the Senator’s conduct

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<sup>87</sup> Note II *Hinds’ Precedents of the House of Representatives*, Sec. 1257, 47th Cong., 1st Sess. 1882; II *Hinds’*, *supra* at Sec. 1666, 39th Cong., 1st Sess. (1866).

<sup>88</sup> VI *Cannon’s Precedents of the House of Representatives*, §236, 67th Cong., 1st Sess.

<sup>89</sup> *Deschler’s Precedents*, Ch. 12, §16, p. 196 (“a somewhat lesser punitive measure than censure”); see also Cushing, *supra* at 266-269, for historical context.

<sup>90</sup> *Deschler’s Precedents*, *supra*.

<sup>91</sup> In 1844 the resolution of censure for Senator Tappan of Ohio had originally stated that the Senator has “incurred the just censure of the Senate, and shall receive its reprimand through the Presiding Officer, who is hereby directed to give the same in the presence of the Senate.” *S. Journal*, 28th Cong., 1st Sess. App. 441 (1844). After debate in executive session, however, the resolution finally adopted merely stated that the Senator “has been guilty of flagrant violation of the rules of the Senate and disregard of its authority.” *S. Journal*, *supra*; *Executive Journal*, 28th Cong., 1st Sess., 271-272 (May 10, 1844). No precedent for requiring the Presiding Officer to give a verbal rebuke or “reprimand” to a Senator, either before the Senate or standing in his place in the Senate, has been found.

“deserves the fullest, strongest and most severe sanction which the Committee has the authority to impose” and therefore the Committee “does hereby strongly and severely reprimand” the Senator.<sup>92</sup> The Committee reprimand was reported to the full Senate, and discussion was taken on the Senate floor regarding the Committee’s action, but no formal Senate action was required or taken by the full body. Under the current rules governing the Senate Select Committee on Ethics, the Committee may “dispose of” an ethics matter by issuing a “letter of admonition” after a preliminary inquiry (or after an adjudicatory review) if the Committee determines that a violation is “inadvertent, technical, or otherwise of a de minimis nature,” and that such public or private letter “shall not be considered discipline.”<sup>93</sup>

## Senate Precedents

### Expulsion

1. William Blount of Tennessee. July 8, 1797.

Blount wrote a private letter to a United States Government interpreter seeking his aid in a plan to seize Spanish Florida and Louisiana with British and Indian help. A select committee found that Senator Blount’s conduct in attempting to incite the Indians against U.S. government officials was inconsistent with his public duty, amounted to a “high misdemeanor,” and recommended expulsion. The report was adopted 25 - 1.

2. James M. Mason and Robert M. T. Hunter of Virginia; Thomas L. Clingman and Thomas Bragg of North Carolina; James Chestnut, Jr. of South Carolina; A.O.P. Nicholson of Tennessee; William K. Sebastian<sup>94</sup> and Charles C. Mitchell of Arkansas; John Hemphill and Louis T. Wigfall of Texas. July 11, 1861.

The resolution of expulsion was introduced on July 10, 1861, recognizing the attempt of some persons to withdraw certain states from the Union, who are “in arms against the Government,” and expressly charging that the above named Senators “have failed to appear in their seats in the Senate, and to aid the Government in this important crisis, and it is apparent to the Senate that said Senators are engaged in said conspiracy for the destruction of the Union and Government, or with full knowledge of such conspiracy have failed to advise the Government of its progress or aid in its suppression.” The resolution was agreed to 32-10, July 11, 1861.

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<sup>92</sup> S.Rept. 102-223, 102d Cong., 1st Sess., at 36 (1991).

<sup>93</sup> S.Res. 338, 88<sup>th</sup> Cong., as amended, Section 2(d)(3).

<sup>94</sup> The resolution of expulsion as it pertained to William K. Sebastian was “revoked and annulled” by the Senate, on March 3, 1877, note S.Rept. 513, 44th Cong., 1st Sess. See *Senate Election, Expulsion and Censure Cases*, *supra* at 30.



3. John C. Breckinridge of Kentucky. December 4, 1861.

The resolution of expulsion provided that Breckinridge “has joined the enemies of his country, and is now in arms against the Government he had sworn to support,” and was agreed to 37 - 0.

4. Jesse D. Bright of Indiana. February 5, 1862.

Bright was charged with writing a letter in 1861 recommending an arms manufacturer to Jefferson Davis, President of the Confederacy, arguably demonstrating disloyalty to the United States. The Judiciary Committee considering the expulsion resolution recommended against expulsion; however, the full Senate after a lengthy debate voted to expel 32 - 14.

5. Waldo P. Johnson of Missouri. January 10, 1862.

Resolution of expulsion was referred to the Judiciary Committee which found that Mr. Johnson’s failure to take his seat at the beginning of the session, and his failure to rebut allegations and indications of disloyalty to the Union, provide strong presumptive grounds against his fidelity to the Union. The expulsion resolution was adopted by a vote of 35 - 0.

6. Truett Polk of Missouri. January 10, 1862.

The Judiciary Committee reported the expulsion resolution which had been referred to it, concluding that Polk had written in a secession newspaper in favor of Missouri’s joining “her Southern sisters,” that he had failed to present himself to the Senate at the beginning of the session to rebut implications of disloyalty to the Union, and had in fact “gone clandestinely within the lines of the enemy” of the Union. The resolution of expulsion was adopted 36-0.

## Censure

1. Thomas Pickering of Massachusetts. January 2, 1811.

Senator Pickering had made a speech on the floor of the Senate in which he read from a letter from the French Minister of Foreign Affairs, which was a confidential communication from the President to the Senate. Although there was then no written Senate rule concerning confidential communications,<sup>95</sup> the resolution charged Pickering with reading certain documents while the “Senate was in session with open doors” and concerning which “the injunction of secrecy not having been removed,” and in so doing committed a “violation of the rules of this body.” The resolution, after the Senate accepted an amendment striking the word “palpable” before the word “violation” and disagreed to an amendment seeking to add the word “unintentional” before the word “violation,” was agreed to by a vote of 20 - 7.

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<sup>95</sup> S. Doc. 92-7, *supra* at 6.

2. Benjamin Tappan of Ohio. May 10, 1844.

Tappan had delivered a document, furnished to the Senate under order of secrecy, to an individual to make available to the press. The resolution finally agreed to stated that Tappan, “in furnishing for publication in a newspaper documents directed by an order of the Senate to be printed in confidence for its use, has been guilty of a flagrant violation of the rules of the Senate and disregard of its authority.” The resolution was agreed to by a vote of 38 to 7.

3. John L. McLaurin and Benjamin R. Tillman of South Carolina. February 28, 1902.

On the floor of the Senate on February 22, 1902, after having exchanged disparaging remarks directed towards one another, Tillman struck McLaurin in the face and they both fought until separated by several persons. Immediately after the incident a resolution was adopted by a vote of 61 - 0 declaring both Senators “in contempt of the Senate,” and referring the matter to the Committee on Privileges and Elections with instructions to report to the Senate what action should be taken. The Chair ruled that the Members would not be recognized unless on the motion of another Member and agreed to by a majority of the Senate. The Committee on Privileges and Elections then met and recommended a resolution of censure “for disorderly behavior and flagrant violation of the rules of the Senate during the open session of the Senate,” and that such Senators are “so censured for the breach of the privileges and dignity of this body.” The order of February 22 judging them in contempt was declared no longer in force or effect. The resolution for censure, and what amounted to, in effect, a six-day suspension, was agreed to by a vote of 54 - 12 on February 28, 1902.

4. Hiram Bingham of Connecticut. November 4, 1929.

A special subcommittee of the Judiciary Committee investigated the facts concerning the Senator’s placing on the Senate payroll, first as his deputy and later as a clerk of a committee, an individual who worked as a paid employee for a trade association, the Manufacturers Association of Connecticut, having a direct interest in tariff legislation before that committee. The employee had access to secret committee deliberations because of his position. The subcommittee report (S.Rept. 43, 71st Cong., 1st Sess.) did not aver that the relationship violated any law or Senate rule. However, the chairman of the full Judiciary Committee introduced a resolution (S.Res. 146, 71st Cong.) condemning the actions of the Senator which “while not the result of corrupt motives on the part of the Senator from Connecticut, is contrary to good morals and senatorial ethics and tends to bring the Senate into dishonor and disrepute, and such conduct is hereby condemned.” The resolution was agreed to 54 - 22.

5. Joseph R. McCarthy of Wisconsin. December 2, 1954.

In 1951 and 1952 Senator McCarthy was under investigation by the Subcommittee on Privileges and Elections of the Rules and Administration Committee pursuant to a resolution of expulsion concerning conduct during an election, and since being elected to the Senate. Senator McCarthy first sought to

bring formal charges against his accuser, and then challenged the investigation as designed to expel him “for having exposed Communists in Government.” Although the subcommittee eventually made no disciplinary recommendation, it criticized the Senator for deliberately setting out “to thwart the investigation.” In 1954 a resolution to censure Senator McCarthy was introduced and amended to include 46 separate counts of alleged misconduct. S.Res. 301, 83rd Cong., 2d Sess. The Select Committee to Study Censure examined censure in five categories of charges including contempt of the Senate and obstruction of the legislative process. S.Rept. 2508, 83rd Cong., 2d Sess. After floor debate, the full Senate voted to “condemn” McCarthy on two counts, for his “non-cooperation with and abuse of the Subcommittee on Privileges and Elections” in 1952 and for “abuse of the Select Committee to Study Censure.” The modified resolution was adopted by a vote of 67 - 22.

6. Thomas J. Dodd of Connecticut. June 23, 1967.

The Select Committee on Standards and Conduct investigated allegations of unethical conduct concerning the Senator’s relationship with a private businessman with interests in West Germany; the conversion of campaign contributions to personal use; the free use of loaned automobiles; and the acceptance of reimbursements from both the Senate and private sources. The Committee recommended censure on the use of campaign funds for personal purposes and the double reimbursements. Although no law nor Senate Rule prohibited the use of campaign funds for personal use, the Committee found that the testimonial dinners in question were political in character, and that the Senator was “presumed” to have knowledge of their political character, and thus should not have used the proceeds for his own personal purposes. S.Rept. 193, 90th Cong., 1st Sess. (1967). After debate on the resolution, and a rejection of Senator Tower’s amendment to substitute a “reprimand” for a “censure,” among other proposed amendments, Senator Dodd was censured for having engaged in a course of conduct of “exercising the influence and power of his office as a United States Senator ... to obtain, and use for his personal benefit, funds from the public through political testimonials and a political campaign.” Such conduct, although not violative of any specific law or Senate rule in force at that time was found “contrary to accepted morals, derogates from the public trust expected of a Senator, and tends to bring the Senate into dishonor and disrepute.” S.Res. 112, 90th Cong. The vote was 92 - 5.

7. Herman E. Talmadge of Georgia. October 11, 1979.

The Select Committee on Ethics investigated charges of financial irregularities in the office of Senator Talmadge, concerning excess official reimbursements, inaccurate financial disclosure and reporting, failure to timely and properly file campaign disclosures, and the personal use of campaign funds, potentially in violation of various federal laws and Senate rules. The Committee found that Senator Talmadge “either knew, or should have known, of these improper acts and omissions, and, therefore, by the gross neglect of his duty to faithfully and carefully administer the affairs of his office, he is responsible for these acts and omissions.” S.Rept. 96-337, 96th Cong., 1st Sess. 18 (1979). The Committee recommended a finding to the full Senate that the conduct is “reprehensible and tends to bring the

Senate into dishonor and disrepute and is hereby denounced.” The Senate adopted S.Res. 249 by a vote of 81 - 15.

A “denouncement” was expressly recommended because the Committee felt that the facts were “distinguishable from those of earlier matters in which the Senate ‘censured’ or ‘condemned’ a Member”, and that the judgment of the Committee and the Senate concerning such conduct could be made using “words that do not depend on analogy to dissimilar historical circumstances for interpretation.” S.Rept. 96-337, *supra* at 18. The action of the Senate formally adopting a resolution disapproving of conduct by way of “denouncing” the Member’s conduct, is categorized by historians and parliamentarians in the Senate as a “censure” of that Member.<sup>96</sup>

8. David F. Durenberger of Minnesota. July 25, 1990.

The Select Committee on Ethics recommended to the full Senate a “denouncement” of the Member, referral of the matter to the Senator’s party conference “for attention,” and restitution of certain moneys from the Senator for “knowingly and willingly” engaging in conduct “which was in violation of statutes, rules and Senate standards and acceptable norms of ethical conduct.” S.Rept. 101-382, 101st Cong., 2d Sess. 14 (1990). The two principal findings by the Committee concerned (1) “a mechanism to evade the statutory limits on honoraria” through a publishing and “book promotion” arrangement with a publisher whereby fees charged groups before whom the Senator made traditional honoraria-type appearances were directed to the publisher who would in turn pay the Senator quarterly “stipend” payments, ostensibly for book “promotions,” which exceeded the statutory honoraria limits; and (2) for abuse of the Senator’s office and misuse of funds through a pattern of concealment and other conduct indicating an absence of good faith in receiving official Senate reimbursements “for staying in a condominium which was essentially his personal residence.” S.Rept. 101-382, *supra* at 11, 13-14. The Committee also made findings of violations concerning failure to disclose travel reimbursements from private parties; improper acceptance of gifts of travel from persons with interests in legislation; and improper conversion of campaign contributions to personal use. The full Senate accepted the Committee’s recommendation in S.Res. 311, 101st Congress, on July 25, 1990 by a vote of 96 - 0. As noted above, the action of the Senate formally adopting a resolution disapproving of conduct by way of “denouncing” the Member’s conduct, is categorized by historians and parliamentarians in the Senate as a “censure” of that Member.<sup>97</sup>

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<sup>96</sup> See Riddick, Floyd M. (Parliamentarian Emeritus), *Senate Procedure, Precedents and Practices*, S. Doc. No. 97-2, 97th Cong., 1st Sess. 219 (1981); Fruman and Riddick, *Riddick’s Senate Procedure*, S. Doc. No. 101-28, at 270 (1992).

<sup>97</sup> *Riddick’s Senate Procedure*, S. Doc. No. 101-28, *supra* at 270. Subsequent to the Senate action, Senator Durenberger in 1995 was indicted and pleaded guilty to a misdemeanor charge of misuse of public funds.

## Conclusion

Expulsions in the United States Senate, as well as in the House of Representatives, have been generally reserved for the most serious misconduct of a Member of Congress, historically concerning disloyalty to the government, or the conviction (or evidence) of an offense involving official corruption and/or the abuse of one's official position in Congress.

Other than expulsion, a formal "censure" by the Senate is the strongest statement of disapproval and rebuke that the Senate, as an institution, invokes upon one of its Members. It may be possible that in addition to a formal censure the Senate may also require financial restitution from a Member, limit a particular privilege of a Member, or under current practice, recommend to the appropriate party conference the diminution of seniority status of a Senator. Although there is no specific disability that automatically follows a censure by the Senate, the public reprobation and formal rebuke by one's peers in the Senate may have arguably contributed to the unsuccessful reelection efforts of Senators subject to censure in recent times.<sup>98</sup>

The action of the full United States Senate formally adopting, by a vote requiring the majority of Members present and voting, a resolution disapproving of a Senator's conduct is considered by parliamentarians and historians as a "censure" of that Member. There is no precise, technical requirement concerning the required words in a resolution of censure, nor is there an official "hierarchy" or ranking of terms employed in such a resolution. The Senate has thus "censured" its Members by way of a resolution "condemning", "censuring" or "denouncing" the Member or the conduct of the Member, as well as by way of resolutions which do not include any express term of opprobrium. In practice and perception, however, although there is no official ranking or officially recognized hierarchy of terms employed, it may be contended that the connotation of the verb "condemn" in a censure resolution is more severe than the term "censure," based in large part on the association of the term "condemn" with the discipline imposed by the Senate on the late Senator Joseph McCarthy; while the connotation of the term "denounce" in a censure resolution may be one of a less severe form of "censure" because of extenuating or mitigating circumstances that have been recognized in past disciplinary actions adopting that particular term.

The authority and grounds for censure extend to misconduct which may or may not violate an express statute or a written Senate ethics rule. The full Senate has thus censured Members when the conduct was found to be contrary to "acceptable norms of ethical conduct in the Senate", contrary to "good" or "accepted morals" and

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<sup>98</sup> Senator Bingham, censured in 1929 was an unsuccessful candidate for re-election in 1932; Senator McCarthy, censured in 1954, died in 1957 while serving out his term of office; Senator Thomas Dodd, censured in 1967, was an unsuccessful candidate for re-election in 1970; Senator Talmadge, denounced in a censure resolution in 1979, was defeated for re-election in 1980; Senator Durenberger, denounced in a censure resolution in 1990, announced on September 16, 1993, that he would not seek re-election. Note *Biographical Directory of the United States Congress, 1774 - 1989*, S. Doc. No. 100-34 (1989).

“senatorial ethics”, to “derogate from the public trust expected of a Senator”, and/or to be “reprehensible” conduct which brings the Senate into “dishonor and disrepute.”