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A FEW YEARS AGO the word "Communist" brought to one's mind the cartoonist's conception of a bearded anarchist, clothed in black from head to foot, drawing his cloak about him with one hand, and holding a bomb with a lighted fuse in the other. The word "Communist" no longer paints such a picture in the mind. Experience has shown us that Communists of today are people from every walk of life and we can no longer expect them to identify themselves by their dress and soap box orations. The Communist party now seeks to spread its influence in a more surreptitious, but nonetheless sinister way. The ferreting out and exposure of Communists has become one of the prime concerns of our government due to the magnitude to which the Communist menace has grown, both abroad and here in our own country.

The Problem

In uncovering subversive activities and, by so doing, protecting the American way of life, the government has come face to face with a dilemma. On the one hand, few will deny that stamping out Communism is a very real and necessary function of our governmental agencies. On the other hand, there is the fact that governmental agencies are hamstrung by the protection against self-incrimination afforded by the Fifth Amendment of the Federal Constitution.[1] Suspected Communists are summoned

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[1] U.S. CONST. amend. V. ". . . No person . . . shall be compelled in any criminal case to be a witness against himself . . ."

before legislative committees and questioned with regard to their activities and Communist affiliations. Invariably the proceedings are stalemated by the witness' simple expedient of refusing to answer on the grounds that the answer might tend to incriminate him. Liberty loving Americans observe these activities and cry out in protest, some advocating the repeal of the Fifth Amendment because it:

> . . . clearly serves no good purpose as far as innocent, law-abiding citizens are concerned but is being used exclusively as a cloak for the protection of an endless procession of Communists, spies and traitors.[2]

It should be noted at this point that this view is held not only by irate laymen, wringing their hands at the apparent futility of our lawmakers to root out Communists, but has been advocated in the past by imminent legalists who felt that "that curious survival, the privilege not to testify against oneself, will finally be seen for what it is, and will then disappear."[3] The bootless cries of panicky citizens are easily dismissed, but the cold logic of legal writers is sometimes difficult to shrug away. In opposition to those who seek to abolish the privilege against self-incrimination there are those who staunchly support the privilege. Chief Judge Cardozo, the year before he left the New York Court of Appeals to become a member of the United States Supreme Court, stated this side of the conflict with these words:

> The privilege may not be violated because in a particular case its restraints are inconvenient or because the supposed malefactor may be a subject of public execration or because the disclosure of his wrongdoing will promote the public weal.
>
> It is a barrier interposed between the individual and the power of government, a barrier interposed by the sovereign people of the state; and neither legislators nor judges are free to overleap it.[4]

Simply stated, the problem is this. Congress' need to investigate is "more critical now than at any time in the history of the

[2] Letter to the Editor of the Chicago Daily News, as cited in Hoffman, *Whom are we Protecting? Some Thoughts on the Fifth Amendment*, 40 A.B.A.J. 582, 584 par. 4 (1954).

[3] McCormick, *Tomorrow's Law of Evidence*, 24 A.B.A.J. 507, 511 (1938).

[4] Doyle v. Hofstader, 257 N.Y., 177 N.E. 489, 491 (1931).

world";[5] yet there is the need to temper Congressional zeal with the sobering thought that the constitutional privilege is not one to be taken lightly but is one which "grows out of the high sentiment and regard of our jurisprudence for conducting . . . investigatory proceedings upon a plane of dignity, humanity and impartiality."[6] How may the problem be solved? Perhaps it would seem that the simplest solution would be to abolish the germane phrase of the Fifth Amendment and give vent to these "immediate interests"[7] which are exercising such "hydraulic pressure"[8] and stamp out the Communist menace which threatens the security of our nation. At first blush, this would appear to be no time to subscribe to an "on the fence" philosophy such as that set forth by Chief Justice Marshall in *United States* v. *Burr:*

> When two principles come in conflict with each other, the court must give them both a reasonable construction, so as to preserve them both to a reasonable extent. The principle which entitles the United States to the testimony of every citizen, and the principle by which every witness is privileged not to accuse himself, can neither of them be entirely disregard.[9]

But before summarily subscribing to the abolition of this "expression of one of the fundamental decenies in the relation we have developed between government and man",[10] perhaps it would be well to examine the privilege in more detail and give further consideration to the arguments advocating its abolition or retention.

The Privilege—Pro and Con

The major objections to the privilege against self-incrimination were set out by the New York Constitutional Convention Committee in 1938 in its consideration of the problem:[11] (1) The

[5] United States v. Emspak, 95 F. Supp. 1012, 1016 (D.C. 1951), *aff'd*, 203 F. 2d 54 (D.C. Cir. 1952), *rehearing denied.*

[6] United States v. White, 322 U.S. 694, 698 (1944).

[7] Northern Securities Co. v. United States, 193 U.S. 197, 400 (1904), (dissenting opinion).

[8] *Id.* at 401.

[9] United States v. Burr, 25 Fed. Cas. No. 14, 692e, at 39-40 (C.C.D. Va. 1807).

[10] Griswold, *The Fifth Amendment: An Old and Good Friend,* 40 A.B.A.J. 502, 503 (1954).

[11] New York Constitutional Convention Committee, Hon. Charles Poletti, Chairman; Vol. IX, Problems Relating to Judicial Administration and Organization: Chap. XII, Privilege Against Self-Crimination, at 920 (1938), as cited in 8 WIGMORE, *supra* note 12, at 314.

privilege is a hiding place of crime; (2) only the guilty have use for the privilege; (3) the accused no longer needs the protection due to the publicity given to criminal trials, the rule that the accused shall be represented by counsel, and the facilities for appeal; and (4) the privilege causes a trial to become a game consisting of the introduction of technicalities. In addition to the above objections there are those who feel that there is no real *reason* for not compelling the accused to testify against himself and that such a rule is repugnant to common sense and logic:

> Logically, why *should* not a person charged with a crime be obliged to give what explanation he can of the affair? Why *should* he have the privilege of silence? Doesn't he owe a duty to the public the same as any other witness? If he is innocent he has nothing to fear; if he is guilty—away with him![12]

As Wigmore points out, in dealing with the privilege against self-incrimination there must be a distinction made between: (a) questioning an ordinary witness, (b) questioning by preliminary inquisition one who has not been formally charged, and (c) questioning an accused who has been duly placed on trial by indictment. This paper is concerned with only the first two, since those sumoned before Congressional committees have not been indicted nor formally charged in any way. The privilege against self-incrimination is abhorrent to the advocates of its abolition primarily for the following reason:

> Why should we accord such a privilege to the Communist who is out to destroy the very government that gives him this right to refuse to answer incriminating questions? . . . If a person is innocent of the charge against him, why should he refuse to answer questions? And if he is guilty, why let him refuse?[13]

Why, indeed, let him refuse? "It is the duty of a citizen to cooperate with the government. Traditionally, the honest man has scorned the refuge of the Fifth Amendment. . . ."[14] The argu-

[12] TRAIN, COURTS, CRIMINALS, AND THE CAMORRA, 19 (1912), as cited in 8 WIGMORE EVIDENCE 314 (3rd ed. 1940).

[13] Inbau, *Should We Abolish the Constitutional Privilege Against Self-Incrimination?*, 45 JOUR. CRIM. LAW 180, 181 (1954-55).

[14] Hoffman, *Whom Are We Protecting? Some Thoughts on the Fifth Amendment*, 40 A.B.A.J. 582, 585 (1954).

ments for the abolition of the privilege are persuasive, but before deeming them conclusive, it is necessary to review the arguments for its retention. In this writer's opinion, the conditions giving rise to the privilege show the foremost danger in its abolition. The real danger underlying the discarding of the privilege as no longer necessary lies in the fact that, without the protection granted by it, there might result a

> . . . *system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof.* . . . The exercise of the power to extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. If there is a right to an answer, there soon seems to be a right to the expected answer,—that is, to a confession of guilt. Thus the legitimate use grows into the unjust abuse; ultimately, the innocent are jeopardized by the encroachments of a bad system.[15]

This writer is not overly impressed with the argument that the value of the privilege against self-incrimination lies in the fact that it "lends substance to the benevolent and protective principle of the common law that no one is to be deemed guilty until so proved,"[16] but is extremely impressed with the logic of an argument for the privilege's retention which uses as its foundation the likelihood of abuse of a rule giving prosecutors or investigative bodies the right to demand a witness' testimony.

The methods of uncovering Communism could very easily degenerate into a process of "witch hunting" without the constitutional safeguards furnished by the Fifth Amendment. While there is little merit in retaining the privilege solely because of its antiquity or merely because we "have through the course of history developed a considerable feeling of the dignity and intrinsic importance of the individual man,"[17] the history of the privilege certainly furnishes ample evidence of the disregard of the dignity of man without such a limitation on methods of uncovering crime. The strongest of all the arguments for the abolition of the privilege—that the innocent have no need of the privilege and that it,

[15] 8 WIGMORE, EVIDENCE 309 (3d. ed. 1940).
[16] *Supra* note 11.
[17] Griswold, *supra* note 10, at 503.

therefore, serves only to protect the guilty—may be met by a hypothetical situation set out by Dean Griswold.[18] The situation is essentially this: Professor X is a college teacher, an idealist and slow to recognize realities. He is a native born American, well-educated, sincere, and loves his country. He joined the Communist party in the middle 1930's while it still appeared on the ballot as a legitimate political party. He joined the Communist party because he hated Fascism and felt that the Communists were fighting Fascism in Spain at this time and that, by so doing, the Communists were indirectly guarding this country against Hitlerism. He was a member of a Communist cell which was primarily composed of teachers, like himself. The Communist Party knew that the teachers were, for the most part, political innocents, and that they would recoil from any proposal of violence or sabotage. The party, therefore, did not attempt to subject the group to discipline or "party-line propaganda" but allowed the cell to keep its meetings on a high intellectual plane, and kept the sordid aspects of the Marxist doctrine in the background. From time to time there were things Professor X did not like, but then, he reasoned, no political party is perfect. After World War II, Professor X drifted away from the group. He did not formally resign, however, but simply stopped going to meetings. By 1950 he realized that he was wrong and that the party had used him as an unwitting dupe. Nevertheless, he had been a member of the Communist Party.

Professor X is summoned before a Congressional committee and is asked whether he *is* a member of the Communist Party. He truthfully answers "No". Then he is asked whether he was *ever* a member of the Communist Party. While the Internal Security Act of 1950 did not make membership in a Communist organization a violation *per se* of the Act,[19] he knows that a number of Communists have been convicted under the Smith Act of 1940[20] and that the Internal Security Act of 1950 was enacted after his membership. Further, there is the possibility of state prosecution based upon evidence given before Congressional committees. Considering all these things, Professor X pleads the Fifth

[18] Griswold, *supra* note 10, at 504 *et seq.*
[19] 64 STAT. 987 (1950) (codified in scattered section of 8, 18, 22, 50 U.S.C.).
[20] 54 STAT. 670, 671, 18 U.S.C. sec. 10, 11, 13 (1940).

Amendment. Professor X is certainly *morally* innocent and probably even *legally* innocent, but rather than take a chance on supplying links in his own chain of conviction, he has chosen to remain silent. Is Professor X justified in claiming the privilege? Considering his attitude and intent in joining the Communist Party and the other facts of the case, the writer agrees with Dean Griswold that he is justified. Returning to the original argument of those seeking to abolish the privilege—that the innocent have no need of the privilege—it is believed that this example demonstrates a situation where an innocent person does have need of the privilege against self-incrimination.

Also, consider the innocent person whose heart is pure, but whose intelligence may be lacking. He has done nothing, but if he is forced to testify, a clever interrogator can twist his testimony and distort his explanation to the extent of rendering his testimony a virtual confession of guilt sufficient to warrant his conviction in a subsequent proceeding. If investigative bodies could be sure that every person brought before them was guilty, then the argument that the guilty do not deserve the privilege and the innocent do not need it would be conclusive. Then, we could say that the privilege

> . . . helps to create that peculiar air of unreality which hangs about jury trials in a criminal court. It makes it possible to go through a certain amount of shadow-boxing in a case where the defendant is plainly guilty.[21]

This is the basic argument against the privilege but it seems to ignore one extremely important consideration. How are we to determine when the defendant is so "plainly guilty" that he is no longer entitled to the privilege? If the accused is "plainly guilty" why is his testimony needed? It is submitted that one may appear to be "plainly guilty" and still be innocent. That the Fifth Amendment, in its application, protects the guilty as well as the innocent, cannot be disputed. However, the privilege against self-incrimination is representative of our legal system which would rather free ten guilty men than convict one innocent man. Since it is oftentimes very difficulty "to distinguish between the lions and the lambs when they lie down together behind the Fifth

[21] McCormick, *Tomorrow's Law of Evidence*, 24 A.B.A.J. 507, 511 (1938).

Amendment,"[22] the basic need for the privilege against self-incrimination still exists. Furthermore, its existence is justified for the purpose of stimulating "the police and prosecution into a search for the most dependable evidence procurable by their own efforts."[23] Any action taken toward the abolition of the privilege against self-incrimination at this time would likely be a reflexive action, mirroring the exigencies of the immediate situation and taken on the "basis of aroused emotions rather than intelligent reasoning."[24] To become "driveling victims of mob-insanity"[25] and cast aside a basic liberty because of the Communist threat "may well destroy the very thing we are trying to preserve—democracy itself."[26] However, in preserving the privilege, it is well to observe Dean Wigmore's admonition:

> [W]e must resolve not to give it more than its due significance. We are to respect it rationally for its merits, not worship it blindly as a fetish. We are not merely to emphasize its benefits, but also to concede its shortcomings and guard against its abuses . . . The privilege cannot be enforced without protecting crime; but that is a necessary evil inseparable from it, and not a reason for its existence.[27]

The emergency today is one of momentous importance. It would be futile to say that it is not. It will be argued today, as it has been in the past, that "to deny Congress power to acquaint itself with the facts is equivalent to requiring it to prescribe remedies in darkness."[28] This writer believes, however, that when the "demands of the democratic parliament for adequate information and a successful investigation",[29] conflict with the basic need for protection against the "essential and inherent cruelty of compelling a man to expose his own guilt,"[30] that the latter must emerge superior. Other means must be found to overcome the difficulty encountered when a suspected Communist pleads his

[22] Hoffman, *supra* note 14, at 582.
[23] Inbau, *supra* note 13, at 181.
[24] *Ibid.*
[25] Pittman, *The Colonial and Constitutional History of the Privilege Against Self-Incrimination in America*, 21 VA. L. REV. 763, 783 (1934-35).
[26] Inbau, *supra* note 13, at 181.
[27] 8 WIGMORE, *supra* note 15, at 317.
[28] Landis, *Constitutional Limits on the Congressional Power of Investigation*, 40 HARV. L. REV. 153, 221 (1926).
[29] Ehrmann, *The Duty of Disclousure in Parliamentary Investigations: A Comparative Study*, 11 U. CHI. L. REV. 1, 3 (1943).
[30] Brown v. Walker, 161 U.S. 591, 637 (1896).

Constitutional privilege; ways which may solve the problem without destroying a right which is one of the essential differences between the American form of government and the form of government which is seeking to overthrow it.

Tentative Solutions to the Problem

Since the privilege against self-incrimination should be retained, what remedies are available? How may the pleading of the privilege before Congressional hearings on subversive activities be precluded? One solution to the problem might lie in the passage of appropriate legislation by Congress declaring that the privilege does not apply to hearings before Congressional committees since such hearings are not criminal proceedings as such. A strict interpretation of the words "criminal case"[31] might sustain this, since Congressional committees do not have the power to convict or imprision. To say, however, that one must testify before a body because that body cannot imprison him is not only inconsistent with the purpose and spirit of the privilege and contrary to court decisions on the matter,[32] but repugnant to common sense.

Another solution to the problem might lie in the declaration by Congress, again by appropriate legislation, that the privilege, while applying to committee hearings generally, does not apply to hearings on subversive activities specifically. Such legislation might be initially unconstitutional, because the Supreme Court has expressly ruled that the privilege extends to questions about Communist affiliations,[33] but if it felt the need it could reverse itself and declare such legislation constitutional. The Supreme Court limited the right of freedom of expression in those situations presenting a danger to the security and morale of the country,[34] and it is not inconceivable that the Court might feel the present situation so extreme as to again warrant a stifling of the rights of a few for the benefit of many. A principle such as this, once estab-

[31] *Supra* note 1.
[32] United States v. Jaffe, 98 F. Supp. 191 (D.C. 1951); United States v. Fitzpatrick, 96 F. Supp. 491 (D.C. 1951).
[33] Rogers v. United States, 340 U.S. 367, 375 (1951); Blau v. United States, 340 U.S. 159 (1950).
[34] Dennis v. United States, 341 U.S. 494 (1951); Schenck v. United States, 249 U.S. 47 (1919).

lished, is too easily expanded to the point where the pleading of the privilege would depend upon whether or not Congress has acted or failed to act with regard to the particular type of hearing, the particular subject matter of the hearing, and the particular class of persons whose testimony is required. In the writer's opinion, fundamental privileges granted by the Constitution are not to be placed upon such uncertain grounds.

Since the purpose of the privilege is to prevent a witness from being forced to incriminate himself, the privilege might be circumvented by declaring that the testimony and records of Congressional hearings are no longer a matter of public record and, by so declaring, keep the hearings entirely secret, even from governmental agencies such as the Federal Bureau of Investigation. This action would be consistent with the reason usually given as to the purpose behind the existence of legislative investigatory bodies, that they are necessary to determine what legislation is needed.[35] Congress could determine the type of legislation necessary and, at the same time, by preventing any further use of the records, guarantee against a conviction of the witness at some later date. If future conviction were precluded, then the witness could not plead the privilege on the ground that his testimony might incriminate him. Considering, however, that the purpose of Congressional committees is not merely to obtain information essential to remedial legislation, but to expose Communists as well,[36] to render the records inaccessible would defeat this very important function of the Congressional hearing.

The solution to the conflict between the fundamental right of the privilege against self-incrimination and the need for exposing Communist activities advanced by Congress is the granting of immunity to certain persons in exchange for their testimony.[37]

[35] McGrain v. Daugherty, 273 U.S. 135, 160 (1927); see Landis, *supra* note 74.

[36] The following are reports illustrating Congress' power of exposure cited in Note, 47 COL. L. REV. 416, 427n. 110 (1947):

"While Congress does not have the power to deny to citizens the right to believe in, teach or advocate communism, facism, and nazism, it does have the right to focus the spotlight of publicity upon their activities. . . ." H.R. REP. No. 2, 76th Cong., 1st Sess. 13 (1939).

"This committee is the only agency of Government that has the power of exposure. . . . There are many phases of un-American activities that cannot be reached by legislation or administrative action . . ." H.R. REP. No. 1, 77th Cong., 1st Sess., 24 (1941).

[37] 68 STAT. 745 (1954), 18 U.S. C.A. sec. 3486 (Supp. 1954).

This, it is submitted, is the most logical and satisfactory solution to the problem.

Immunity—Advantages and Disadvantages

The snarl which results when the need for investigation and information runs afoul of the privilege against self-incrimination has been untangled by the granting of immunity. It is not a new innovation, either in England[38] or this country.[39] The granting of immunity precludes the pleading of the privilege in that the privilege protects against compulsory self-incrimination. If the witness is granted immunity from prosecution as to any crimes about which he may testify, his testimony cannot possibly incriminate him. If his testimony cannot possibly incriminate him, then he has no right to invoke the privilege and his testimony may then be demanded with the penalty of contempt being imposed if the witness refuses.[40] It is apparently well settled that the immunity granted must be *complete* immunity. The first federal immunity statute, passed in 1857, rendered the witness immune from prosecution as to "any fact or act touching which" the accused might be required to testify.[41] This statute was succeeded by one passed in 1862 which provided that "no pleading of a party, nor any discovery or evidence obtained from a party" could be used against him in "any criminal proceeding" in any court.[42]

This act was negated by the decision in *Counselman* v. *Hitchcock*[43] which ruled an identically worded statute[44] unconstitutional on the ground that a statute preventing the use of one's testimony against him would not prevent the use of his testimony to search out *other* evidence which *can* be used against him. The court said that, in view of the privilege against self-incrimination, a statute, to be vaild "must afford absolute immunity against

[38] Trial of the Earl of Macclesfield, 16 How. St. Tr. 767, 1147 (1725).
[39] Brown v. Walker, 161 U.S. 591 (1896); Counselman v. Hitchcock, 142 U.S. 547 (1892).
[40] For a discussion of Congress' power to punish for contempt, see Potts, *Power of Legislative Bodies to Punish For Contempt*, 74 U. PA. L. REV. 691 (1926).
[41] 11 Stat. 156 (1857), as cited in Adams v. Maryland, 347 U.S. 179 m. 2 (1954).
[42] 12 S9(9. 333 (1862), as cited by King, *Immunity for Witnesses: An Inventory of Cavets*, 40 A.B.A.J. 377 m. 1 (1954).
[43] 142 U.S. 547 (1892).
[44] Act of February 25, 1868, 15 STAT. 37, as cited in Counselman v. Hitchcock, 142 U.S. 547, 555 (1892).

future prosecution for the offense to which the question relates."[45] Three fairly recent decisions, the *Fitzpatric*,[46] *Jaffe*,[47] and *Adams*[48] cases reiterate this view on the ground that the immunity statute in effect at that time did not give the full protection afforded by the Fifth Amendment since, it too, merely excluded the use of the witness' testimony and did not completely prohibit future prosecution.[49] Thus, it appears that once a witness is granted absolute immunity from further prosecution he must testify, but unless the immunity is complete, he may refuse. Congress, generally, has failed to take cognizance of this requirement until recently. The Act of August 20, 1954 provides that no witness, once granted immunity, "shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing" concerning which he is compelled to testify.[50]

The Act of 1954, briefly, operates in the following way: First, the witness must claim his privilege. Next, the investigating body must notify the Attorney General of the United States of its intent to grant immunity and give him an opportunity to notify the body of any investigations being carried on by that department which might be hampered by a grant of immunity to the particular witness. The committee or joint-committee must then secure the approval of the United States district court for the district in which the hearing is being held and such approval is entered into the record as an order requiring the witness to testify or produce evidence. In no case may immunity be conferred unless a majority of the members present before either of the Houses of Congress, (or two-thirds of the members of the full committee, if the hearing is before a committee) authorize such grant by an affirmative vote. The statute does not extend to prosecutions for perjury committed while giving testimony or producing evidence under its immunity, but as previously stated, it clearly confers immunity from prosecution and, in this writer's opinion, will be held valid and will preclude the pleading of the privilege against self-in-

[45] Counselman v. Hitchcock, 142 U.S. 547, 586 (1892).
[46] United States v. Fitzpatrick, 96 F. Supp. 491 (D.C. 1951).
[47] United States v. Jaffe, 98 F. Supp. 191 (D.C. 1951).
[48] Adams v. Maryland, 347 U.S. 179 (1954).
[49] 62 STAT. 833, 18 U.S.C. sec. 3486 (1952). "No testimony given by a witness before either House, or before any committee of either House . . . shall be used as evidence in any criminal proceeding against him in any court, except in a prosecution for perjury committed in giving such testimony . . ."
[50] *Supra* note 37.

crimination by any witness upon whom immunity under the statute is conferred.

The Act of August 20, 1954, has, like any immunity statute, certain objectionable features in its application.[51] Briefly stated, they are as follows: (1) the moral questionability of "doing business" with Communist underlings and "stool pigeons"; (2) the difficulty of determining, beforehand, whether or not the information the witness possesses is of sufficient value to justify the immunity bargain; (3) broad immunity legislation might result in "immunity baths", whereby the guilty take advantage of an immunity against prosecution by worming their way into a committee hearing on one pretext or another and then purge themselves of guilt by testifying with respect to a great many "transactions, matters or things" some of which may be relevant and some of which may not be so relevant. By the dictum in the *Adams* case,[52] one might succeed in such a maneuver if he were careful to insure that his testimony was not offered without ever being questioned at all and that it was not a "spontaneous outpouring of testimony";[53] (4) from the witness' point of view, there is the consideration that, while the immunity prohibits *criminal* prosecution, it does not bar *civil* actions, such as disbarrment of attorneys[54] or deportation of aliens;[55] and (5) again from the witness' point of view, there is the social stigma which attaches to one who is compelled, through an immunity grant, to admit that he is or was a Communist. In most cases this social disgrace would elicit no sympathy, but remembering the predicament of Professor X, it should be noted that such an admission may work a hardship on certain individuals. These, briefly, are the objections to the granting of immunity.

[51] For an excellent discussion of the undesirable aspects of the granting of immunity, see, King, *Immunity for Witnesses: An Inventory of Caveats,* 40 A.B.A.J. 377 (1954).

[52] *Supra* note 48.

[53] *Supra* note 48, at 181.

[54] In re Rouss, 221 N.Y. 81, 116 N.E. 782 (1917); *cert. denied* 246 U.S. 661 (1918).

[55] Harisiades v. Shaughnessy, 342 U.S. 580 (1952); Carlson v. Landon, 342 U.S. 524 (1952).

Conclusion

Considering the situation in its entirety, however, this writer is drawn to the conclusion that the grant of immunity furnishes a workable and satisfactory means of retaining the privilege, and at the same time, insures effective investigation of Communist activities by Congressional committees. The undesirable characteristics of the immunity grant shrink to insignificance when compared with the dangers inherent in the complete abolition of a right so fundamental as the privilege against self-incrimination. But, even if the granting of immunity were not a feasible solution to the problem, the abolition of a principle so representative of the American legal system would still be unwarranted and inexcusable. The Constitutional privilege against self-incrimination must be preserved at all costs. It must not be made to bend or give way "because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment".[56] Resting fundamental liberties on such uncertain ground could well result in the gradual deterioration and final destruction of the freedoms we are so earnestly striving to preserve. It is submitted, therefore, that any compromise of basic rights based on the exigency of the present Communist threat must be rejected as too inherently dangerous to tolerate.

[56] Northern Securities Co. v. United States, 193 U.S. 197, 400 (1904) (dissent).