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By James R. Richardson*

The Committee System in General

In writing on present day legislative committees of Congress it would be an entirely unrealistic approach to forego comment on the attendant publicity which forms the setting for many of the more important committee hearings. This background of publicity cannot be ignored for undoubtedly it has an effect on the testimony of witnesses, the behavior of committee members and on public opinion.

The holding of a committee hearing in a "Hollywood premiere" atmosphere, with standing room only available well in advance of the opening, may conceivably result in a defeat of its purpose. Not infrequently the public may feel it has witnessed a comedy of errors or a modern day witch hunt, according to how events move forward at the hearing on any particular day.

As to committee members themselves, one may be led to suspect, possibly not without some justification at times, that the nationwide publicity is better calculated to achieve favorable advertising for such members than to further their investigating.

Witnesses may be born actors or they may be shrinking violets. What then as to the effect of television and newsreel cameras, klieg lights, flash bulbs and a packed committee room? It may confuse honest witnesses. It may color the testimony of witnesses. Or it may mean that no testimony at all will be forthcoming.

In one case a defendant, cited for perjury as a witness before a subcommittee, argued that it was not a competent committee in

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that it lacked proper decorum due to the aforementioned medicine show props.[1] The court felt that the argument was not entirely without merit, but found that no facts were proved which would justify it in holding that the committee was incompetent to act.

In yet another case the defendants were cited for contempt in refusing to testify before a committee investigating certain criminal activities in which they were suspected as participants.[2]

A jury was waived and upon trial by the court it was held that the defendants, hardened criminals all, were justified in refusing to testify under the lights and cameras. The court's opinion that such atmosphere and paraphernalia might well disturb or distract any witness into making statements today which he recognizes as erroneous tomorrow has much to be said for its soundness.

Note that the cases are not necessarily conflicting in principle though contrary in result. In the former the defendant sought to subsequently raise the objection as an excuse for perjury. In the latter the defendants relied on the conditions in the committee room as an excuse for not testifying.

In these preliminary observations it will be recognized that reference has been indirectly made to the most widely known committees, namely; The Committee on Unamerican Activities of the House of Representatives,[3] and The United States Senate's Special Committee to Investigate Organized Crime in Interstate Commerce.[4]

To the average man congressional committees mean no more than the hearings he views on television or newsreel, or reads about in the daily newspaper. And as we have attempted to point out he is often conveyed a false picture of the true function and procedure of committee action in general. He may conclude that a committee hearing is a type of prosecution in which it is sought to oust a man from his job or from the country, or that it is a springboard for political aspirations rather than as an aid to the legislative process.

[1] United States v. Moran, 194 F. 2d 623 (C.A. 2d 1952).

[2] United States v. Kleinman et al, 107 F. Supp. 407 (D.Ct. D. of C. 1952).

[3] H.Res. no. 5, 79th Cong. (1945)—Authorized in part, "to investigate subversive and unamerican propaganda that attacks the form of government as guaranteed by our Constitution."

[4] S.Res. 202 (May 3, 1950)—Authorized and directed a special committee of five members to "make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce in furtherance of any transactions which are in violation of the law . . ."

The answer is that two committees form only a small part of the whole, and perhaps those named necessarily proceed in the manner adopted in order to function effectively and accomplish desired objectives.

Another misconception which might arise from committee action of recent years is that Congress is trying out a new pair of wings. To the contrary Congressional investigative committees have been authorized since the session of our first Congress. There is nothing new about committee action. It is the fundamental method of parliamentary procedure for "passing the buck."

In 1792 Congress appointed an investigative committee with the right "to call for such papers, records and persons as may be necessary to assist their inquiries."[5] From that date to 1929 Congress authorized more than three hundred committee investigations to implement the performance of its legislative functions,[6] and from that date on committee action has grown rather than lessened. The legislative committee system has become so firmly entrenched as an integral part of our law making bodies as to have earned the distinction of being called, "the eye, the ear, the hand, and very often the brain of the house.[7]

In order that legislation keep abreast of the times and meet the requirements of a country that is making tremendous strides forward politically, socially and economically legislation must be intelligently pre-planned. Congress now remains almost constantly in session in the face of demands made by large masses of proposed legislation, or new conditions, or critical problems that raise the question of the advisability of legislation. World tension, new developments in science, business and industry, and new philosophical concepts of government all add to the legislative burden and statutory regulation.[8]

It was inevitable that under such pressure Congress would more and more turn to and rely on its committees as the solution

[5] Annals of Congress, 1792.

[6] Dimock, CONGRESSIONAL INVESTIGATING COMMITTEES, 47 JOHN HOPKINS UNIVERSITY STUDIES IN POLITICAL SCIENCE, No. 1, 147 (1930).

[7] Horack, *The Committee System,* 3 IOWA APP. HIST. SER. 538.

[8] Statutory Law is rapidly replacing the common law in our jurisprudence. In 1875 more than 40% of the cases reaching the United States Supreme Court were common law cases. But by 1947 controversies before this Court not resting on statutes were reduced almost to zero.—Felix Frankfurter, *Some Reflections on the Reading of Statutes,* 47 COL. L. REV. 527 (1947).

to the need for smooth legislative functioning and sound legislative programs.

There are numerous advantages in congressional legislation through the investigating committee system. Firstly, and perhaps most important, the system contemplates a broad share the work program to lighten the individual load of congressmen. Secondly, it permits allocation of proposed legislation on specialized subjects to experts or near experts in the field. And thirdly, it tends toward giving representation to minority groups in the law making body.

Committee type legislation is in harmony with and, theoretically at least, serves to further the objectives and ideals of a democratic form of government. Not only is the legislative body, through committee hearings and investigations, enabled to more clearly define the problem before it and enact corrective legislation, but individuals as well may, through lobbying brought out into the open, express their views for or against, and thus does public opinion help to mold the law. Lobbying is disassociated from the buttonholing of congressmen in corridors and smoke filled hotel rooms. And it might be pointed out that ill effects alone do not result from the vast publicity that follows the activities of our committees investigating crime and subversive activities. Perhaps the spotlight focused on cancerous-like growths in our democracy will cause them to wither and die.

THE SCOPE OF LEGITIMATE COMMITTEE ACTION

Why do congressional committees hold investigations? This is the sixty-four dollar question. This is the question that intrigues both layman and lawyer alike, especially the latter.

We can start with the thesis that the congressional committee constitutes a constructive adjunct to an enlightened, progressive legislative policy, whereby proposed legislation is finally submitted to Congress in a well considered form with recommendations.

Congressional committees found their origin in the need for a diversified plan of study for proposed legislation. At one time it was said that in order for a legislative committee to act within its express or implied powers, legislative action must be reasonably anticipated as an outcome of the investigation.

This position is no longer tenable, for while it is clear that a committee of Congress may consider proposed legislation it is equally well-settled that it may carry on an investigation with the objective of determining the need for legislation.[9] The presently accepted rule seems to be that the power of congress to investigate is as broad as its constitutional power to legislate.[10] The power of congress to investigate by means of a committee of its own is no less restricted than the power it may validly confer an administrative official.[11]

Consider this statement by a committee chairman, "When we find a Communist or an espionage agent in government or in a defense installation we will expose him. Period."[12] The expressed investigative purpose seems rather definitely aimed toward housecleaning and ultimate prosecution rather than a legislative purpose.

In one very recent case the court said, "It may be that a congressional committee does not even have to have a legislative purpose, but may conduct hearings solely to inform the public. So far as I am aware, no court has ever held that a congressional committee may compel the attendance of witnesses without having a legislative purpose but it is not necessary to decide the question in these cases."[13] We may safely state that in a field where Congress may legislate, it has the power to investigate, though specific legislation may not be directly contemplated.[14]

A case which furnishes an interesting example of a committee attempting to function where the purpose was not legislative, is that of *Kilbourn* v. *Thompson.*[15] Kilbourn was brought before a

[9] McGrain v. Daugherty, 273 U.S. 135 (1927).

[10] Townsend v. United States, 68 App. D.C. 223, 95 F. 2d 352 (1938).

[11] Barsky v. United States, 167 F. 2d 241 (D.C.C.A. 1947)—The congressional power of inquiry is not unrestricted. Some reasonable cause for concern must appear in investigation of subversives.

[12] A.P. Dispatch, Wash. Jan. 5.

[13] United States v. Kleinman et al, 107 F. Supp. 407 (D.Ct. D.C., 1952).

[14] United States v. Di Carlo, 102 F. Supp. 597 (D.C.N.D. Ohio, 1952).—But, as Congress is without power to legislate upon subjects exclusively within the reserved powers of the States it can not investigate those subjects, except as they may affect matters within the scope of the powers granted to the federal government.

[15] 103 U.S. 168 (1880).

It has been held that the House of Representatives was engaged in a legitimate constitutional inquiry under impeachment proceedings of a U.S. District Attorney and could appoint a special committee to investigate the charges.—U.S. ex rel Marshall v. Gordon, 235 F. 422 (D.C. N.Y., 1916). Submitted as an example of legitimate investigation without legislative purpose.

House committee which was authorized, by resolution, to investigate a real estate pool which had made a settlement operating to the disadvantage of numerous creditors, including the Federal Government.

Kilbourn refused either to answer questions or produce papers which resulted in his being jailed for contempt. On habeas corpus proceeding it was held that the subject matter of investigation lent itself more to judicial than legislative action. Further, that there was no power in either house of Congress, on the allegation that an insolvent debtor of the United States was interested in a private business partnership, to investigate the affairs of that partnership. And consequently no power to compel the attendance of a witness before a committee to testify on the subject.

INTERIM COMMITTEES

Briefly, the various types of legislative committees include permanent or standing committees concerned with legislation affecting specified governmental agencies as agriculture, taxation, or military affairs; special or temporary committees appointed for a definite purpose, as to consider a specific bill only; joint committees appointed by concurrent resolution of both houses of Congress for the purpose of achieving unified, prompt action on some specific matter of concern; committee of the whole house, wherein the body resolves itself into a committee of its entire membership to act informally without restraint of parliamentary rules of procedure; the steering committee, sometimes called a sifting committee, usually composed of chairmen of standing committees and occupying a very forceful position through its power to determine what bills may come to the floor of the house; conference committees composed of members from each house, meeting in joint conference to seek accord or compromise of conflict on specific bills; and interim committees designed to function while the legislative body is not in session.

The foregoing is not an all inclusive breakdown on legislative committees, but it should sufficiently designate types and purposes to illustrate the problem posed by interim committees, designed to function during adjournment and report back to another session. Thus the legislative body projects itself beyond the limits of any particular session.

In the leading case of McGrain v. Daugherty it was held that since the Senate was a continuing body whose members are elected for a term of six years and so divided into classes that the seats of one-third only become vacant at the end of each Congress, two-thirds always continuing into the next Congress, a valid interim committee could be appointed to report back to the next session.[16]

Naturally we must have a validly constituted committee in order for it to function, but in discussing investigative powers it is logical to assume a valid committee, and hence, the question is properly only incidental to the main subject of inquiry herein.

COMMITTEE POWERS

The Constitution makes provision for a Congress consisting of a Senate and a House of Representatives, and invests it with all legislative powers which "shall be necessary and proper for carrying into execution these powers and all other powers vested by the Constitution in the United States or in any department or officer thereof."[17] Other provisions show that, while bills can become law only after being considered and passed by both houses of Congress, each house is to be distinct from the other, to have its own officers and rules, and to exercise its legislative functions independently.[18]

But there is no provision expressly investing either house with the power to make investigations through committees, or otherwise, to the end that it may exercise its legislative functions advisedly and effectively. The question then arises whether this power is so far incidental to the legislative function as to be necessarily implied. The Daugherty case provided an affirmative answer wherein the court stated, "We are of the opinion that the power of inquiry, with process to enforce it, is an essential and appropriate auxiliary to the legislative function."[19]

It is the duty and obligation of Congress to enact statutes, within its permissive sphere, which then become rules of conduct for those who are affected by them. It is not to be denied that legislative bodies can legislate more wisely and efficiently if they

[16] 273 U.S. 135 (1927).
[17] U.S. CONST., Art. 1, Secs. 1, 8.
[18] U.S. CONST., Art 1, secs. 2, 3, 5, 7.
[19] *Supra* note 16.

have full information and facts bearing upon needed legislation, or upon proposed legislation. It follows then that in the absence of implementing statutes, now available, the courts were on firm ground in implying this power to a Congress impressed with the duty of carrying out the legislative process.

Certainly the implied power to investigate through committee hearings would be barren and fruitless without the right to demand and enforce the presence of witnesses and the production of papers and records. An inquiring body seeks to become informed, and human experience teaches us that such information will not be voluntarily forthcoming, even though as Dean Wigmore stated the proposition, "the public has a right to every man's evidence."[20]

The question thus presented is whether or not Congress through its own legal process may compel a private individual to appear before it or one of its committees for the giving of testimoney and the production of papers and records in furthering its legislative duties under the Constitution.

As early as 1795 this power was utilized by Congress. One Robert Crandall and Charles Whitney were taken into custody of the House of Representatives on charges of attempting to bribe a House member.[21] Whitney was discharged shortly without trial. Crandall, however, was found guilty of contempt and breach of the privilege of the House. He was reprimanded by the Speaker and was committed to the custody of the Sergeant at Arms subject to further orders of the House. Later, upon his petition to be discharged, he was released on "payment of fees."

In 1832 the well-known historical figure Samuel Houston, having been arrested and tried by the House of Representatives for assaulting a member on the floor, was "reprimanded and discharged on payment of fees."[22]

In 1865 one A. P. Field was taken into custody for contempt in assaulting a member of the House and was reprimanded and discharged upon payment of fees.[23]

Again in 1870 one Patrick Wood for a simliar offense was jailed for three months by order of the House.[24]

[20] WIGMORE, EVIDENCE Sec. 2191 (3rd. ed. 1940).
[21] 5 Annals, 4th Cong. 1st Sess. 166-195.
[22] 8 Debates, 22nd Cong. 1st Sess. 2512.
[23] 70 Globe, 38th Cong. 2nd Sess. 991.
[24] 94, 95 Globe, 41st Cong. 2nd Sess. 4316.

These examples serve to show that Congress very early recognized its inherent right to punish a private citizen for contempt of that body.[25]

Then in a fairly recent decision involving the House Committee on Surplus Property a witness was cited by the House for contempt for failure to bring records before the Committee as required by process.[26] Therein it was held that Congress, in enacting a statute making it a misdemeanor to wilfully fail to honor a committee subpoena and providing for citation to the appropriate United States District Attorney, was thereby only supplementing the contempt power implied to the houses of Congress, the enforcement of which prior to the enactment of the statute was troublesome and cumbersome.[27]

In one case the defendant advanced the novel argument that the congressional power to punish for contempt is limited to the removal of an existing obstruction to the performance of its duties; that the power to punish a witness ceases as soon as the obstruction has been removed or its removal becomes impossible as where a witness who having been duly requested to produce papers, destroys them after service.[28] (The latter part of this argument is analagous to and as worthy as that of the boy, on trial for murder of his parents, who pleaded, "be merciful on me a poor orphan").

The court in answer stated that where the offending act was of a nature to obstruct the legislative process, the fact that the obstruction has since been removed, or that its removal has become impossible is without legal significance.

Or, as very aptly put in other words by Chief Justice Vinson, "a subpoena is not to be regarded as an invitation to a game of

[25] The Supreme Court has described the power of Congress to punish for contempt as an essential and inherent right where the act of contempt is such as to tend to obstruct the performance of legislative duties.—Jurney v. McCraken, 294 U.S. 125 (1935).

[26] Fields v. United States, 164 F. 2d 97, cert. den. 333 U.S. 839 (1948).

[27] U.S.C. Title 2, Sec. 191—The Speaker of the House of Representatives, President of the Senate or the chairman of any committee of either house may administer oaths to witnesses on any matter pending before them. . . .

U.S.C. Title 2, Sec. 192—One summoned as a witness or to produce papers before either house of Congress or committee thereof who wilfully makes default, or who having appeared refuses to answer any question pertinent to the issue under inquiry shall be deemed guilty of a misdemeanor. . . .

U.S.C. Title 2, Sec. 194—The facts on any defaulting witness to be certified to the proper District Attorney for appropriate action by the presiding officer of the Senate or House.

[28] Jurney v. McCracken, 294 U.S. 125 (1935).

hare and hounds, where the witness is to testify or produce only when cornered at the end of the chase."[29]

It is true that the power to punish for contempt is narrow and rather well defined as to congressional committees. No act is punishable unless it is of a nature to obstruct the performance of the duties of the lawmaking body. There may, of course, be a lack of power to punish for contempt because the committee had no legislative duty to perform,[30] or because the act complained of is deemed not to be of a character to obstruct the legislative process.[31]

With respect to the statute above cited,[32] it is significant to note that the power to punish for contempt is not delegated to the committee itself, but rather the committee reports to its creating body, which in turn makes referral to the federal District Attorney.

It is said that the inherent power of Congress to punish for contempt was never doubted, but the statute was passed because imprisonment limited to the duration of the session of the body that imposed the penalty for contempt was not considered sufficiently severe for contumacious witnesses.[33]

The conclusion to be reached is that legislative punishment for contempt is not precluded by an act making such a statutory offense, and Congress has not divested itself of the power to punish directly for contempt of itself or committees.[34] However, the committee itself has no power to punish for contempt, for refusal to testify before a committee is a contempt of the appointing body.[35]

[29] United States v. Bryan, 339 U.S. 323 (1949).—A witness cannot be required to produce papers which he does not have, unless he is responsible for their unavailability. But where an executive secretary had custody of records of an association under investigation by a congressional committee her refusal to produce them under subpoena was a contempt of that group.

[30] Kilbourn v. Thompson, 103 U.S. 168 (1880).

[31] Marshall v. Gordon, 243 U.S. 521 (1917).

[32] *Supra* note 27.

[33] See, Remarks of Repr. Orr, 43 Globe, 34th Cong. 3rd Sess. 404.
The purpose of the statute as being merely to supplement the power of Congress itself to punish for contempt has been judicially recognized.—In Re Chapman, 17 S.Ct. 677, 41 L.Ed. 1154 (1897).

[34] Jurney v. McCracken, 294 U.S. 125 (1935).

[35] In Re Davis, 58 Kan. 368, 49 Pac. 160 (1897).

COMMITTEE PROCEDURE AND EVIDENCE IT MAY REQUIRE

Committee hearings as to formality and procedure follow the rules of administrative agencies rather than duly constituted judicial bodies, and do not consider themselves bound by strict rules of procedure and evidence.[36] This is permitted as they are fact finders rather than acting in the roll of prosecutor. If the contrary were true it would necessarily be by force of statute, as committees exercise a purely inquisitorial function similar to the grand jury and not as a trial tribunal.

The common law rule followed in many states to the effect that a witness in an action at law may refuse to answer a question that tends to degrade or render infamous does not apply to hearings before congressional committees by force of a specific statute.[37]

But the constitutional guarantee against self-incrimination[38] has been held applicable to evidence adducible at committee hearings.[39] And the privilege against self-incrimination has been construed to extend not only to answers that would in themselves support a conviction under a federal criminal statute, but likewise embraces those which would furnish a link in the chain of evidence needed to prosecute the claimant for a federal crime.[40]

The claim of immunity from self-incrimination should be sustained unless it is perfectly clear from a careful consideration of all the circumstances in the case, that the witness is mistaken and that the answer could not possibly have a tendency to incriminate.[41]

As to whether or not an answer might tend toward self-incrimination poses a question for the court rather than the witness. The witness may not of his own say-so establish that the hazard of incrimination exists. But it is for the court to examine all the

[36] A witness may be required to answer a question which calls for hearsay evidence.—Ex Parte Parker, 74 S.C. 466, 55 S.E. 122 (1906). A privileged communication in a court of law is not so regarded in a committee hearing.—Ex Parte Lawrence, 116 Cal. 298, 48 Pac. 124 (1897).

[37] U.S.C. Title 2, Sec. 193—No witness is privileged to refuse to testify on the ground that the answer may tend to disgrace or render infamous. Brown v. Wallace, 161, U.S. 591 (1896).

[38] U.S. CONST., Amend. 5; "No person . . . shall be compelled in any criminal case to be a witness against himself."

[39] United States v. Licavoli, 102 F. Supp. 607 (N.D. Ohio, 1952).

[40] Hoffman v. United States, 341 U.S. 479 (1951).

[41] United States v. Costello, 198 F. 2d 200 (C.A. 2d 1952).

circumstances and determine if silence on the part of the witness, when directed to answer a question, was justified.[42]

Congress sought to avoid this constitutional barrier by a statute whose function was to provide an immunity in subsequent criminal proceedings to witnesses before congressional committees, in return for which it was thought witnesses could be compelled to give self-incriminating testimony.[43]

That purpose was nullified, according to a very recent decision,[44] by the Supreme Court's decision in Counselman v. Hitchcock,[45] where in construing a statute, identical in all material respects, the Court held it was not a sufficient substitution for constitutional guaranties of immunity. A witness who is offered only partial protection of a statute rather than complete immunity from prosecution for any act concerning which he testifies, may claim his privilege and remain silent with impunity. Apparently the attention of Congress has not been called to the anomaly presented by the continued existence of a statute which is identical to the "immunity bargain" declared invalid in the Counselman Case.[46]

As the situation now stands, if Congress feels that the benefits to be gained from a full disclosure of facts by a witness before a congressional committee offsets the advantages to be gained by a possible prosecution in the future for a past crime, then it is incumbent upon Congress to grant complete immunity by revising the statute in view of the Counselman decision reiterated in the Bryan case.

The cases on immunity from self-incrimination present a variation of the problem which is worthy of comment and necessary to complete this phase of the picture.

The problem is presented by the familiar question, "are you now or have you ever been a member of the Community Party?"

[42] Rogers v. United States, 340 U.S. 307 (1951).

[43] U.S.C., Title 18 Sec. 3486.—"No testimony given by a witness 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 . . ."

[44] United States v. Bryan, 339 U.S. 323 (1952).

[45] 142 U.S. 547 (1892).

[46] R.S. 860; R.S. 859; 2 U.S.C. 192.

The statute originally gave complete immunity from self-incrimination. This was deleted in 1862 (12 Stat. 333) providing restricted immunity which was held not sufficient in the Counselman Case and later codified as 2 U.S.C. 192.

The witness in the case under consideration declined to answer and was cited for contempt of the investigating committee.[47] The Smith Act[48] does not make being a Communist criminal so the refusal to answer would necessarily be based on a claim of privilege other than immunity from self-incrimination.

It has been argued that the guarantee of freedom of speech assured by the First Amendment also encompassed the right to not speak, that is, to remain silent. If this novel argument were accepted in full the judiciary would be hamstrung, to say nothing of investigations. But if this right were recognized, as it may well be, it would not be an unrestricted right. Even as freedom of speech is restricted so would the right to remain silent be, as where the information sought to be elicited bore on possible legislation to avert a substantive threat to the national welfare.[49]

Perhaps a sounder argument would be based on the right to pursuit of happiness, and thus on the right of privacy and to remain silent on private beliefs and associations. The answer is found in yet another case where the right of congressional committees to inquire is firmly stated as an essential of the legislative process.[50]

The court in the above case held however that, in balancing the public interest against private security, the right to inquire is not unrestricted though the breadth has increased considerably in recent years.[51]

One obvious limitation on an investigation into communistic leanings or subversive activities is that some reasonable cause for concern must appear.[52] This observation causes us to be squarely confronted by the "clear and present danger rule" propounded by Mr. Justice Holmes in the Schenck[53] case and extending on

[47] Lawson v. United States, 176 F. 2d 49 (C.A. D. of C., 1949); cert. den. 339 U.S. 934, 70 S.Ct. 663; rehear. den. 339 U.S. 972, 70 S.Ct. 994.

[48] 54 Stat. 670, 18 U.S.C. 2385—makes it criminal to advocate, advise, abet or teach the overthrow of any government in the United States by force.

[49] Lawson v. United States, 176 F. 2d 49 (1949).

[50] Barsky v. United States, 167 F. 2d 241 (C.A. D. of C., 1947).
The permissive breadth of governmental inquiry was indicated many years ago when the Supreme Court held that requiring information concerning a business is not regulation of that business.—Interstate Commerce Commission v. Goodrich Transit Co., 224 U.S. 194 (1912).

[51] Davis, *The Administrative Power of Investigation*, 56 YALE L. JOUR., 1111 (1947), containing an exhaustive survey of the cases.

[52] Barsky v. United States, 167 F. 2d 241 (1947).

[53] Schenck v. United States, 249 U.S. 47 (1919).

through the line of cases cited and discussed in *Bridges* v. *State of California*.[54]

However, as pointed out in the Barsky case the "clear and present danger" line of cases dealt with statutes that actually imposed a restriction on speech or publication. It would be sheer folly for an existing government to delay investigating or refrain from inquiry until threats or potential threats to its security became a "clear and present danger." And for the judiciary to hold that the legislative branch could not investigate until such emergency status existed would be absurd.

There is a vast difference between the necessity for inquiry and the necessity for action. The latter may be only when danger is clear and present, but the former is when danger is reasonably represented as potential.

Another limitation on information which may be brought forth upon inquiry by a congressional inquiry is that in the words of the statute it be "pertinent to the issue under inquiry."[55] A witness is not liable for contempt unless he refuses to answer a pertinent question. A resolution which authorizes an investigation by committee may be narrow on a specific restricted subject. Again the wide scope of the inquiry may be spelled out in broad and comprehensive language of a resolution which contemplates a general investigation as, "to make a full and complete study and investigation of whether organized crime utilizes the facilities of interstate commerce."[56]

Suffice it to say that the witness may not attack the vagueness of the resolution on the ground that he cannot thereby determine the pertinency of a proposed line of questioning. Pertinency relates to the particular question and not to unasked possibilities.[57]

The basic concept of the American system, both historically and philosophically is that government is an instrumentality created by the people, who alone are the original possessors of rights and who alone have the power to create government.[58] It follows

[54] 314 U.S. 252, 62 S.Ct. 190 (1941). See also Dennis v. United States, U.S.

[55] U.S.C. Title 2, Sec. 192, ". . . or who having appeared refuses to answer any question pertinent to the issue under inquiry shall be deemed guilty of a misdemeanor. . . ."

[56] S. Res. 202 (May 3, 1950).

[57] Barsky v. United States, 167 F. 2d 241 (1947).

[58] DETOCQUEVILLE, DEMOCRACY IN AMERICA, c. 4 (1875).

that this government must have and retain the power to inquire into potential threats of itself, not alone for the selfish reason of self-preservation, but for the basic reason that, having been established by the people as an instrumentality for the protection of the rights of people, it has an obligation to its creators to preserve itself.

Congressional investigative committees, aside from their excuse for existence as just stated, produce a by-product. They can do much to focus the general public opinion on this important phase of the legislative process, molding public opinion which shapes the law and thus providing an additional guarantee for the continuance of our democratic form of government.