

Investigations in Operation:

THE UN-AMERICAN ACTIVITIES COMMITTEE

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THE PROGRAMS of most standing committees of Congress are largely determined for them by the number, kind and importance of bills referred to them for consideration. This has never been true of the Un-American Activities Committee. Its change in 1945 from a special investigating committee to a standing committee gave it a certain measure of substantive jurisdiction over a particular legislative area,¹ but it has never functioned primarily as a "legislative" committee. Instead, it has been a curious congressional phenomenon—a permanent "investigating" committee. In its own legislative area, it has had little work to perform.² Rather, the Committee has had to devise a program of its

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¹ Title I of the Legislative Reorganization Act of 1946, 60 Stat. 812 (1946), defines the powers and duties of the Committee in much the same language as the House Resolution which gave it permanent status in 1945. According to the Act,

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.

"The Committee on Un-American Activities shall report to the House (or to the Clerk of the House if the House is not in session) the results of any such investigation, together with such recommendations as it deems advisable.

"For the purpose of any such investigation, the Committee on Un-American Activities, or any subcommittee thereof, is authorized to sit and act at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any subcommittee, or by any member designated by any such chairman, and may be served by any person designated by any such chairman or member."

It is not clear from this language, however, just what legislative jurisdiction the Committee was intended to have. Moreover, jurisdiction over bills dealing with espionage is clearly granted to the House Judiciary Committee.

² In the 80th Congress, however, a subcommittee under Representative Nixon did give consideration to the Mundt-Nixon Bill and certain other legislative proposals which had been

own in order to keep busy. This it did in varying ways in each of the three Congresses between 1945 and 1950. In the 79th Congress, devising was held at a minimum and as a result the Committee had relatively little work to do. In the 80th Congress, an extensive program was devised and the Committee concerned itself with many matters of considerable significance. In the 81st Congress, the Committee thought up a great many things to do, and kept quite busy, but its work attracted little attention, for in the main it was not concerned with important issues in which the public was deeply interested.

THE COMMITTEE'S OWN VIEW OF ITSELF

The Un-American Activities Committee's own view of itself has been marked by confusion. In part, at least, this is understandable. Insofar as it was and is primarily an investigating committee rather than a legislative committee it has necessarily been bothered by the uncertainties and lack of a common tradition that have always troubled all such committees. Secondly, as a committee charged with the assignment of discovering the extent of subversive activity it has occupied no enviable position, for the subject matter with which it deals is exceedingly nebulous. Nevertheless, the Committee's views of itself have been remarkably varied, and at times some of its members have gone far afield in their conceptions of the Committee's purposes.

Congressional investigating committees have traditionally been regarded as having three proper functions: they may seek information that will enable Congress to legislate wisely; they may undertake to check administrative agencies, with particular respect to the enforcement of law or the expenditure of public funds; and they may attempt to influence public opinion. The Un-American Activities Committee has certainly shown an interest in all of these functions—an increasing interest in the order in which the functions are named. But always its interest in public opinion has been paramount. The Committee has been concerned lest the American people fail to share its understanding of the nature of subversive activity and the many forms it may take, or appreciate the seriousness of the threat offered by this activity to the "American way of life" as seen by itself.

In addition to these three functions the Committee has tried to exercise two others. First, it has tried in a non-statutory way to define subversive

referred to the Committee. In the 81st Congress the Committee was responsible for the Wood Bill which passed the House and was ultimately absorbed into the McCarran Act. But this type of activity has never loomed large in the Committee's program.

or "un-American" activity and thereby to set the standards of American thought and conduct with respect to orthodoxy and heresy in politics. Second, it has tried in varying ways to take over the function of administrative or judicial agencies in the enforcement of public policy with respect to subversive activity.

It is difficult enough to devise wise and workable statutes dealing with such specific and traditional forms of anti-social conduct as espionage, sabotage, sedition, and treason. But when it comes to defining by exposure and illustration the norms of proper thought and conduct in a democratic society, the undertaking, the results of which are almost certain to be unfortunate, becomes an almost hopeless one. To tell a committee in its charter of authority and instructions that its concern shall be "the extent, character, and objects of un-American propaganda activities in the United States" and "the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution" is to give it a virtually impossible assignment. From time to time the Committee has concerned itself with such matters as the content of Hollywood films, the programs of radio news commentators, and the text-books used in American schools. In most of these instances the Committee's chief purpose has seemed to be the establishment of patterns of American, as against un-American, activity which would be controlling in the development of our national life, public and private.

The Committee's efforts to usurp the functions of administrative and judicial agencies have taken many forms, but almost always have grown out of its desire to put the accusing finger on specific individuals whom it deems guilty of subversive activity.³ The investigative arm of the Com-

³ In its Interim Report on Hearings Regarding Communist Espionage in the United States Government, 80th Cong. 2d Sess. (1948) (hereafter cited as Interim Report) there is an interesting analysis of the relative roles of the FBI, the grand jury, and the Un-American Activities Committee. It is said that "the FBI is a fact-finding and investigating agency and not an exposure agency. . . . Its duties are to find and record the facts so they will be available to police officers, law-enforcement officials, and the prosecuting agencies of Government. It is not a vehicle for reporting to the public on the extent of nefarious activities." With respect to the grand jury it is asserted that its methods of fact-finding involve secrecy and that it rests with the Attorney General to determine what evidence is submitted to it, and what verdicts will be asked for. "At best, the grand jury is not a vehicle for reporting to the public on the extent of un-American activities in a free republic." And then in a lengthy analysis of the role of the House Committee the Report states:

"As contrasted with the FBI and the grand jury, the House Committee on Un-American Activities has a separate and a very special responsibility. It functions to permit the greatest court in the world—the court of American public opinion—to have an undirected, uncensored, and unprejudiced opportunity to render a continuing verdict on all of its public officials and to

mittee's staff has always regarded itself as a "little" FBI. Ex-FBI men have provided part of its personnel, and its methods and interests have been comparable to those of the FBI. Moreover, it is this kind of work that the staff has performed most efficiently. In unearthing the details of the disposition of Alger Hiss's Ford roadster, or of John Howard Lawson's organizational interests and activities the staff is seen at its best.

The incongruity of a congressional committee operating as though it were a detective agency has at times occurred even to members of the Committee. During the last phase of the communist espionage hearings in 1948, Representative Hébert (D., La.) noted that the Committee is not responsible for apprehending criminals; but he did think that it is "charged with the responsibility of bringing to the attention of the proper authorities the fact that a crime has been committed."⁴ But even this statement shows a concern for the specific (pointing out that a crime has been committed), rather than the general (in this instance the extent and seriousness of communist infiltration of the federal service). The general may properly be illustrated by the specific, but it is the former and not the latter that should be the central concern of a congressional investigating committee.

At other times the Committee has moved forward one step through the traditional law-enforcement process and has regarded itself as having a grand jury function. This view of its role is to be seen in certain of its public hearings where it has listened to evidence suggesting wrong-doing by an individual—evidence usually gathered and presented to the Committee by members of its own staff—has then given some sort of opportunity to the suspect to explain away the evidence against him, and has subsequent-

evaluate the merit of many in private life who either openly associate and assist disloyal groups or covertly operate as members or fellow travelers of such organizations. It is as necessary to the success of this committee that it reveal its findings to the public as it is to the success of the FBI that it conceal its operations from the public view.

"The functioning of the Communist espionage rings in Government provides a dramatically vivid illustration of the functions of the three foregoing public institutions in their rendering of the service they are created to perform.

"The FBI functions to find and assimilate all of the facts available to that organization and to make them available to the prosecuting agencies of the Federal Government. The Federal grand jury functions to consider the evidence selected from these facts by the Attorney General and to pass judgment upon whatever verdicts it is asked to make by the Attorney General. The House Committee on Un-American Activities functions to alert the public concerning the existence and operation of these espionage practices, and to point up and propose the necessary new legislation to provide our country with greater safeguards and to enable it to protect itself against the constantly changing tactics and practices of world-wide and world-dominated communism and its American ramparts." *Ibid.*, at 1-2.

⁴ Hearings Regarding Communist Espionage in the United States Government, Part Two, 80th Cong. 2d Sess. 1,424 (1948) (cited hereafter as *Communist Espionage Hearings*).

ly "indicted" or cleared him in a printed report upon the proceedings. The grand jury analogy has actually been used by Committee members in so many words. For example, Representative Rankin (D., Miss.) has been fond of calling the Committee "the grand jury of America."⁵

Throughout the eighteen-month life of the federal grand jury (June 1947 to December 1948) that indicted Alger Hiss and eleven members of the Communist Party hierarchy the Un-American Activities Committee was attempting to cover much the same ground as was this grand jury. Many of the same witnesses were heard by both groups. In December 1948, after Whittaker Chambers had produced the pumpkin papers, competition between the two groups was particularly keen.⁶ Indeed, the sense that the un-American Activities Committee was functioning as a grand jury was so strong that in a presentment handed down in April 1949, the successor grand jury directed an implied criticism against the Committee.⁷

In December 1948 Representative Mundt (R., S.D.) protested against the suggestion that there was anything improper in the House Committee's activity paralleling that of the grand jury and insisted that the Committee would continue its efforts to track down and punish those who had delivered the State Department documents to Chambers.⁸ Representative Nixon also attempted to justify the Committee's encroachment upon the grand jury's province by pointing out that, due to the running of the statute of limitations, the grand jury might not be able to return any indictments and that accordingly the Committee had a "solemn responsibility" to find out who the guilty persons were.⁹ However, this position involved prejudgment of the difficulties that the grand jury might encounter, and is a rationalization that would justify unlimited encroachment by a congressional committee upon the jurisdiction of a grand jury under almost any circumstances.

⁵ 91 Cong. Rec. A4456 (1945); 93 Cong. Rec. 1131 (1947); Communist Espionage Hearings 537.

⁶ Consult N.Y. Times § 1, p. 1, col. 8 (Dec. 11, 1948), and Washington Post § M, p. 5, col. 5 (Dec. 12, 1948) for reports of the conflict.

⁷ In complaining about the large numbers of witnesses before it who refused to testify on the grounds of self-incrimination, the grand jury said, "This, such witnesses have unquestionably done because they have been alerted through the publicity given by other investigating bodies to the circumstances which the grand jury must examine in secrecy. . . . Having seen at firsthand the difficulties in arriving at the truth concerning espionage violations when witnesses have been alerted by publicized charges and countercharges, the grand jury recommends that all investigating bodies conduct their inquiries into espionage in secret." N.Y. Times § 1, p. 10, col. 4 (April 27, 1949).

⁸ N.Y. Times § 1, p. 2, col. 5 (Dec. 11, 1948).

⁹ Communist Espionage Hearings 1,420.

At other times Committee members have seemingly viewed the Committee as a final court of justice sitting in judgment on individuals accused either of specific offenses against the law or of more general offenses against the public good or safety.¹⁰ It may readily be admitted that in such statements Committee members were using the word "court" very loosely and did not intend to suggest that they regarded themselves as a court of law. Nonetheless, their very use of the word, in however broad a context, reveals a tendency to think of a hearing as being primarily concerned with establishing the guilt or innocence of particular individuals who are charged with specific offenses.

This is not to say that because an issue has in some way been actively brought within the jurisdiction of the judicial arm of the government, legislative committees must be precluded from simultaneous examination of the issue. The United States Supreme Court attempted to sanction somewhat that position in 1880 in *Kilbourn v. Thompson*.¹¹ But the *Kilbourn* decision has been a much criticized one and in its more recent rulings bearing upon congressional investigations the Court has insisted upon no such extreme separation of functions between the courts and investigating committees. The trouble with the Un-American Activities Committee is that it has not only been active in the same field as has the judiciary but that it has actually tried to usurp the judicial function, i.e., the trial and punishment of transgressors against the law. The Committee might properly in 1948 have concerned itself with the espionage problem at the same time as did the federal grand jury. But its concern should have been with the broader aspects of the problem—the extent and seriousness of the evil, the adequacy of existing statutes protecting against the evil, and the adequacy of the record being made by administrative and judicial agencies in the enforcement of these statutes. The Committee has concerned itself with the adequacy of existing statutes and has from time to time made recommendations for their revision or for the enactment of new laws. But these recommendations have seldom gone beyond the generalization stage. The Mundt-Nixon-Wood Bill is the only carefully worked out piece of legislation ever proposed by the Committee.

Finally, there is no doubt that the Committee has concerned itself

¹⁰ During the Communist espionage hearings Representative Hébert told one witness "you are now before the greatest open court in this country." A little later he said, "Miss Bentley has made these charges. . . . Now, you have your opportunity in open court to tell this lady that you have never seen her before. . . ." Communist Espionage Hearings 846, 847. Mundt also stated at one point that a witness had "his opportunity, in the best court of this country, which is the court of public opinion." *Ibid.*, at 892.

¹¹ 103 U.S. 168 (1880).

with the adequacy of law-enforcement machinery. But in the communist espionage hearings, which have been singled out as an example, this concern was not particularly helpful. A political antagonism between the Committee and the Department of Justice was apparent from the start, and the Committee lost no time in making a virtual declaration of war against the Department. Subsequently, the oral statements of Committee members and the printed passages in its reports referring to the Department of Justice were all so shrill and venomous that they had virtually no value in providing a basis for calm, intelligent evaluation of the Department's efforts, successful or unsuccessful, to ferret out espionage agents in the federal service.

PLANNING OF THE COMMITTEE'S AGENDA

At no time has any member of the Un-American Activities Committee or of its staff seemingly had the interest or the understanding to try to map out a systematic program of investigation or a workable scheme of carrying out such a program. Instead the Committee has held itself in readiness to jump this way or that depending upon day-to-day developments, upon the political atmosphere of the moment, or upon the mere whim of the chairman or of staff members. Usually it has moved fearlessly ahead where the persons or subjects under investigation are weak and defenseless. Where resistance is encountered, or where the object of investigation is itself strong and influential, the Committee has avoided undertaking any inquiry, or has suddenly ceased activity already under way.

It is true the Committee has had its perennial interests. Staff work, in particular, has been carried on aimlessly in certain fields such as communism in education. Although the staff has periodically considered subversive content in textbooks, the matter has never been brought to a head in public hearings or in the publication of a formal report.

Early in 1947 the Committee's chairman, J. Parnell Thomas (R., N.J.), announced an "eight-point" program of research and investigation for the Committee that ranged rather widely and called for inquiries into atomic espionage and into communist influence in the public service, in Hollywood, in labor unions, and in education; for the development of a counter-educational program against subversive propaganda, and for building up the files and staff of the Committee so that better service might be rendered to members of Congress. But this program was little more than a hasty listing of certain subjects that had been of perennial interest to the Committee.

In January 1948, in a radio speech Thomas stated that he was "recommending" a "twelve-point" program to the Committee for the coming year. Five of the points proposed continuation of the existing investigations into communism. The other seven points proposed to investigate and report to the public about alleged communist and communist-front activities; to initiate legislation which would break up the communist conspiracy and strengthen governmental authority to deal with espionage; to conduct hearings on anti-racial and anti-religious propaganda; and to hold a conference of inter-American delegates which would work out "a hemispheric unity of purpose" in legislating against the spread of communism.¹² However, many of these proposals were not carried out during the year.

The reference to the hearings which were to look into racial and religious prejudice is an interesting one. These hearings were to be conducted by a subcommittee under Representative McDowell (R., Pa.). Seemingly this is the same subcommittee to which there are scattered references as a subcommittee on fascism.¹³ There is no evidence that this subcommittee ever functioned. Certainly it held no public hearings and it published no reports.

When the Democrats reorganized the Committee in the 81st Congress, it was announced that the "eight-point" program was being abandoned. Thereafter, the Committee remained as busy as it had ever been, but the random character of its program of hearings and publications became even more pronounced than it had been under the Thomas regime.

The Committee's program, whether systematic or random, has been largely controlled by the Chairman or Acting Chairman and by the top members of the Committee's staff. The inactivity of the Committee in the 79th Congress was seemingly Chairman Wood's doing, whereas the spectacular activities of the Committee in the 80th Congress were largely stimulated by Thomas.

On the other hand, because, among other reasons, even the most vigorous members of the Committee have never given it their undivided attention, and because other congressional interests have occupied much of their time, Committee members have always been dependent upon the staff for guidance and suggestions. Such staff members as Ernie Adamson,

¹² 94 Cong. Rec. A65 (1948). There is no evidence that the Committee itself ever formally approved this twelve-point program. However, on April 6, 1948, the Committee apparently approved at an executive session a very similar program. This latter program also proposed investigation of Gerald L. K. Smith and his associates, and "the state of security in Panama." N.Y. Times § 1, p. 4, col. 7 (April 7, 1948).

¹³ Consult note 22 *infra*.

Robert Stripling, and Benjamin Mandel have had much to do with shaping the Committee's program through the years. These men seem always to have been in close rapport with the Chairman and the flow of ideas has been two-directional. Thus there is no indication that the Committee's program has ever been the handiwork of any one person.

Two indications of the random manner in which the Committee picks subjects for investigation are seen in its use of the "fishing expedition" and in its sensitivity to requests for Committee activity submitted by outside organizations. The Committee's staff has engaged in a more or less continuous checking of private organizations on the chance that now and then one of them may be found to be engaging in subversive activity and thus warrant the Committee's closer attention. This casting of a wide net to catch an occasional fish was particularly evident during the 79th Congress when Ernie Adamson was head of the Committee's staff.¹⁴

The Committee has several times indicated that it will honor any request from respectable individuals or organizations that it pursue a particular line of investigation.¹⁵ When, in 1949, it requested American colleges and universities to submit lists of the textbooks and readings used in certain courses, the excuse was offered that the Committee had been requested to make such a survey by the National Council of the Sons of the American Revolution and that it could not very well ignore this re-

¹⁴ Adamson wrote a series of letters to numerous organizations demanding that they submit various records and papers to the Committee for examination. The text of a letter addressed to the Veterans Against Discrimination was read into the Congressional Record by Representative Ellis Patterson. The letter, dated January 29, 1946, was as follows:

"Gentlemen:

Would you please be good enough to send me a list of your officers and your managing committee?

Several of your circulars have been sent to us by citizens of your city and I note that you refer to democracy several times. I wonder if you are sufficiently familiar with the history of the United States to be aware that this country was not organized as a democracy and that section 4 of article 4 of the Constitution reads in part as follows:

'The United States shall guarantee to every State in this Union a Republican form of government.'

Is it your purpose to ask for an amendment of the Constitution or do you propose to conduct a propaganda campaign against the administration of the provisions of the Constitution?

Yours very truly,

ERNIE ADAMSON
Chief Counsel."

92 Cong. Rec. A508 (1946).

¹⁵ "The committee has formulated the policy of investigating complaints received from American citizens who have the interests of the United States foremost in their hearts and minds. . . . Any organization which advocates the establishment of the fascist system of government in the United States will be investigated by the committee upon receipt of information that such an organization does exist." H.R. Rep. No. 2233, 79th Cong. 2d Sess. 2 (1946).

quest from such an eminent and respected organization. However, the Committee has not been consistent about honoring all such requests from the outside. Many requests from liberal sources that alleged native fascist groups be investigated have been totally ignored. On the other hand, it is unlikely that any investigation has actually been undertaken solely because it was requested by an outside organization. The request for action from the National Council of the Sons of the American Revolution was in all likelihood little more than a convenient peg upon which Chairman Wood decided to hang his go-ahead order, for the staff had always shown an interest in textbooks. In the end, the Committee has done what it has wanted to do and has refrained from doing those things it did not want to do.

PROCEDURE IN HEARINGS

The Un-American Activities Committee in the six years of its existence as a permanent committee has not developed a systematic body of procedures in the conduct of its hearings. This is made evident when the Committee's practice is checked on the following points: use of open and closed hearings; use of the full committee and of subcommittees for the conduct of hearings; techniques used in the questioning of witnesses; rights accorded witnesses.

In fairness to the Un-American Activities Committee it should be pointed out that the issue of open hearings versus closed hearings in the conduct of a legislative investigation is a perennial one that has never been really settled. The open hearing is frequently attacked on the grounds that if it has not been preceded by closed hearings or by careful spade work on the part of a committee's staff it is likely to prove an aimless and fruitless proceeding, and that it permits irresponsible witnesses to slander innocent people by suddenly introducing their names into the testimony without warning. For these reasons it is argued that the real search for information by an investigating committee can most successfully be made in closed sessions, and that public sessions, if held at all, should be little more than carefully staged performances in which a committee gives publicity to information which it feels the people should have.¹⁶ On the

¹⁶ In an interview with the author, William P. Rogers, chief counsel during the 80th Congress of the Investigations Subcommittee of the Senate Committee on Expenditures in the Executive Departments—the "Ferguson Committee"—took this position. He laid great stress upon the use of executive hearings to screen testimony, to prevent the publicizing of unwarranted charges, and to give a committee a chance to decide the directions in which it wants to move. He said, for example, that when the Ferguson Committee heard Elizabeth Bentley and William Remington in public hearings in 1948, all seven members of the subcommittee understood and agreed upon the purposes the public hearings were to serve: providing an

other hand, closed hearings are frequently attacked as "star chamber" proceedings. It is argued that in such sessions witnesses are easily browbeaten and denied essential rights, and are then helpless against the later use a committee may make of their testimony in stories "leaked" to the press or in published reports.¹⁷

The trouble with the Un-American Activities Committee is not so much that it has used open hearings or closed hearings as it is that it has used both types freely and frequently without having had any clear understanding of the proper use of either or any consistent rule as to their use. While no record has ever been made public of the number or kind of closed hearings conducted by the Committee, enough is known to support the statement that it has made extensive use of both types. Occasionally a hearing which has been started as a closed one has been turned into a public session; or vice versa, the audience has been dismissed and a public hearing turned into an executive one.¹⁸ Again, the record of a closed hearing has in numerous instances been made public after the passage of time. Such developments were relatively common, for example, in 1948 during the communist espionage hearings. At one point during these hearings, Representative Mundt, who was Acting Chairman at the moment, tried to state the Committee's policy in the following words:

It is an established policy of the House Committee on Un-American Activities that whenever possible, and in the public interest, public business shall be conducted publicly. We have adopted the policy, therefore, of taking the public into our confidence whenever that can be done in hearings of this type, without injury to anybody's individual character, or without injury to the public interest.¹⁹

answer to the question as to how a person like Remington, concerning whom charges of disloyalty had been lodged with the proper authorities as early as 1945, could under the President's loyalty program make progress in the government and gain a post of great responsibility.

¹⁷ See Excerpts from Hearings Regarding Investigation of Communist Activities in Connection with the Atomic Bomb, 80th Cong. 2d Sess. 13-15 (1948) (cited hereafter as Atomic Espionage Hearings), for an interesting colloquy between Dr. Martin Kamen and Mr. Stripling. Dr. Kamen requested an open hearing in order to minimize the number of misquotes in the press. Both Stripling and the Chairman (Thomas) refused to grant the request, stating that Kamen had no right to an open hearing, and that a closed hearing would be more advantageous to the witness.

¹⁸ The Committee started to hear both Whittaker Chambers and Elizabeth Bentley in executive sessions in their initial appearances but voted to open them to the public after they were under way. As Stripling tells the story the decision to turn the Chambers hearing into a public session was taken as casually as follows:

"[A]fter 15 minutes of [Chambers'] story one of the members interrupted.

" 'Hell,' said the member, 'why is this in executive session? This should be in the open.' "

Stripling, *The Red Plot Against America* 92, 100 (1949).

¹⁹ Communist Espionage Hearings 1386.

This was a sound enough generalization but there is little evidence that the actual choice between open and closed hearings at that time was being made on the basis of this policy statement alone. During the August phase of the communist espionage hearings the Committee seemingly used the closed hearing upon occasion for the sensible reason that it did not quite know where it was going or what would come out of the testimony of witnesses. There was always the possibility that the Bentley-Chambers story of Communists in the federal service would blow up in the Committee's face. Accordingly, it is not surprising that such a session as the first Chambers-Hiss confrontation scene was held privately in a New York hotel room on August 17. The transcript of this session was made public on August 25.

When the Committee was reorganized in the 81st Congress in 1949, it was announced that greater use would be made of executive sessions.²⁰ The indications are that this policy has been carried out and that most of the public hearings since 1949 have either followed executive hearings in which the ground has already been explored, or have been based upon more careful and systematic staff studies than had been made in previous years. On the other hand, the decision to move back and forth from executive to public sessions is still seemingly made upon occasion in rather casual fashion.²¹

The Committee's use of subcommittees has been most informal, and it is difficult to generalize about the record beyond saying that there is no systematic or logical pattern. At no time since 1945 has a careful attempt been made to break up the total jurisdiction of the Committee into logical segments and to create subcommittees to facilitate an across-the-board approach to the Committee's assignment. There have been substantive subcommittees,²² which, however, were apparently created by the Chair-

²⁰ Late in April 1949, Chairman Wood (D., Ga.) stated: "Because of the nature of certain phases of the espionage hearings, the committee will find it necessary to hold a large number of executive sessions. This does not mean that the evidence will not be made public. The committee has found it necessary to hold these executive meetings in order to develop certain leads which could not be fully developed at public hearings." N.Y. Times § 4, p. 7, col. 4 (May 1, 1949).

In an interview with the author on June 27, 1949, Frank S. Tavenner, the Committee's counsel, emphasized the desirability of using preliminary executive hearings and of making thorough preparations before holding public hearings. He said that it was even desirable that executive hearings should sometimes be conducted by one-man subcommittees so that the confidential character of the testimony could be preserved.

²¹ For example, consult 1 Hearings Regarding Communist Infiltration of Radiation Laboratory and Atomic Bomb Project at the University of California, Berkeley, Calif., 81st Cong. 1st Sess. 362 (1949).

²² In the 80th Congress the Committee made use of a subcommittee on national security under Chairman Thomas which issued the Condon report, and a subcommittee on fascism

man of the full committee on the spur of the moment, and functioned as *ad hoc* committees. At no time in its entire history has the Committee ever listed or identified its subcommittees in a printed document.

A much more common use of subcommittees is seen in the day-by-day conduct of the Committee's hearings, public and executive. Even the widely publicized Hollywood hearings and the Hiss-Chambers hearings, at least on certain days, were actually conducted by subcommittees.²³ The explanation has presumably been the inability to muster a quorum (five members) of the full Committee. To avoid subsequent legal complications in such a situation the practice has been to announce that a hearing is being conducted by a subcommittee, which is sometimes as small as one man, and sometimes large enough to qualify as a session of the full Committee.²⁴ It is fair to take the communist espionage hearings of 1948 as a test in this respect, for certainly no hearings ever held by the Committee attracted more interest from its members. During the two phases of these hearings, the Committee held sessions on twenty-seven different days.²⁵ On only seven of these days were the hearings conducted

under Chairman McDowell which seemingly did nothing, and a subcommittee on legislation under Chairman Nixon (R., Cal.) which conducted hearings on the Mundt-Nixon and related bills. There are only scattered references to the McDowell Subcommittee. For example, there is a letter in 93 Cong. Rec. A2839 (1947), from McDowell to Representative Sabath (D., Ill.), thanking the latter for suggestions covering the work of the subcommittee, and stating that work had been started drafting "the various parts of a report" on fascism. No such report was ever published. See N.Y. Times § 1, p. 4, col. 3 (Jan. 12, 1948) for another reference to this subcommittee.

²³ The printed record of the communist espionage hearings suggests that the first hearings in August and the Interim Report of August 28 were the responsibility of the full committee. However, the volume in which the text of the December hearings was published and the Second Report of December 31 both carry references to a "Subcommittee" consisting of six members (all of the members of the full Committee except Thomas, Wood, and Peterson (D., Fla.)) with Mundt as Chairman. The jurisdiction of this Subcommittee is not mentioned. However, even during the August phase of the hearings many sessions were actually conducted by subcommittees which were sometimes as small as one man.

²⁴ In *Christoffel v. United States*, 338 U.S. 84 (1949), the Supreme Court, by a five-to-four vote, upset a conviction of Christoffel for perjury before a congressional committee on the ground that there was a lack of evidence showing the presence of a committee quorum at the time the alleged perjury took place. The conviction had been based upon a District of Columbia perjury statute, and the Supreme Court held that in the absence of a quorum a committee of the House of Representatives was not a "competent tribunal" within the meaning of the language of the statute. Even before this decision was rendered the Un-American Activities Committee was always careful to indicate where a quorum was not present that a session was being conducted by a subcommittee. Moreover, in any contempt proceeding against a recalcitrant witness appearing before a subcommittee, the subcommittee has always carefully reported back to the full Committee and proper action has then been taken by the latter. In *United States v. Bryan*, 339 U.S. 323 (1950), the Court by a five-to-two vote held that the government need not prove the presence of a quorum in the prosecution for contempt of a witness of the Un-American Activities Committee.

²⁵ This reference is to the sessions that were public and to those executive sessions the record of which was ultimately made public. The Committee held a number of additional executive hearings which were never made public.

by the Committee itself, the sessions on the other twenty days being conducted by various subcommittees. Attendance of Committee members has always been spotty,²⁶ and, during these particular hearings, only four of the nine members of the Committee, Mundt, Nixon, McDowell, and Hébert, were regular in their attendance.

The Un-American Activities Committee's treatment of its witnesses has ranged widely. To begin with, it has often observed a distinction between "friendly" and "hostile" witnesses. Soon after its creation in 1938 the Dies Committee established a pattern for the contrasting treatment of these two types of witnesses. Friendly witnesses were allowed to ramble at length and to tell their stories in their own words. They were seldom asked embarrassing questions, and often were asked few questions of any type. Hostile witnesses were often denied the right to make prepared statements or to testify informally at any length, and the Committee quickly learned to subject them to vigorous, penetrating cross-examination.²⁷

In general the Committee has followed the traditional and sensible plan of letting a staff member initiate the questioning of a witness and develop the main lines of testimony which the Committee seeks from the witness, with Committee members joining in the questioning as the hearing proceeds. But adherence to such a systematic mode of procedure has depended upon the care with which a hearing has been prepared, upon rapport between staff and Committee members, and upon the idiosyncrasies of particular representatives. It was always difficult to restrain Representative Rankin so as to allow an orderly development of testimony. In the 79th Congress Rankin was often allowed to proceed at will and he disrupted more than one hearing by his irrational and prejudiced questioning of witnesses. In the 80th Congress Chairman Thomas, and in his absence such men as Mundt and Nixon, kept Rankin pretty well suppressed. But at all times the Committee has had more than its share of incompetent and irresponsible legislators as members, and this has had a pronounced effect upon the questioning of witnesses.

Committee and staff members alike have at times shown a good deal of facility and cleverness in the handling of witnesses, particularly of the un-

²⁶ Representative Wood was present at no hearing from July 31 to December 14. Representatives Peterson and Vail (R., Ill.) were absent a good deal of the time. Representative Rankin was present during the first few days of the hearings but was absent during most of the month of August and was not a member of any subcommittee except during December when five of the twenty-seven days of hearings occurred. Chairman Thomas missed three of the seven days of hearings by the full Committee and was present on only eight of the twenty days of subcommittee hearings.

²⁷ For an example of the treatment of a hostile witness consult Ogden, *The Dies Committee* 95 (1943).

friendly variety. But often the questioning has been of the type that would do credit to a lawyer cross-examining a witness in a criminal case rather than the type that elicits for a congressional investigating committee information that will enable it to cope wisely with a difficult social problem. Here, too, the extent to which hearings have been *personalized* has been a liability.

Examples of every possible type of treatment of a witness and of techniques of questioning are readily found. Monologues by witnesses, intelligent cross-examination, bitter and unfair questioning, half-hearted questioning, ineffective questioning, are all easily illustrated. The Committee has been particularly prone to let ex-Communists indulge in monologues. Ogden points out that when Benjamin Gitlow appeared before the Dies Committee in 1939 "much of the testimony was merely a monologue by the witness, punctuated by more or less innocuous questions on the part of counsel or of members of the Committee."²⁸ When Louis Budenz appeared before the Committee in 1946, he was allowed to talk at great length, and almost no effort was made by the Committee to guide him. He was allowed to develop in great detail his thesis that there is a "conspiratorial apparatus" that lies back of the regular Communist Party organization. His testimony had the ring of sincerity and accuracy and it unquestionably dealt with a highly significant aspect of the communist movement. But his presentation was long-winded and disorderly, and the Committee showed itself largely unable to direct his testimony on to topics that should have been of great interest to a congressional body anxious to acquaint itself concerning all phases of communist organization and tactics. The Committee has also made the mistake of allowing ex-Communists, such as Budenz, Chambers, and Bentley, to tell their stories in piecemeal fashion, and to reveal significant bits of information as they happened to think of them or as suited their purposes. It is perhaps using the advantage of hindsight and demanding of members of the Un-American Activities Committee an intelligence and sophistication which few people possessed at the time to suggest that in the period 1946-1948 the Committee did not make the most of its opportunity to query these witnesses vigorously and systematically. The Committee was always somewhat awed by the Budenzes and Chambers and it allowed itself to be maneuvered into the position of regarding these men as "committee witnesses" upon whom it depended substantially for the development of its hearings concerning espionage in the public service, in atomic laboratories, and so forth. At times it was seemingly afraid to question these

²⁸ *Ibid.*, at 138.

witnesses vigorously for fear that their usefulness as witnesses for the prosecution might be impaired. Had the Committee questioned Chambers as vigorously as it questioned Alger Hiss during the first phase of the communist espionage hearings it might well have compelled Chambers to produce the pumpkin papers months before he did, or have uncovered significant bits of information concerning espionage in the government service that came to light only much later during the two Hiss trials.

Half-hearted or otherwise poor questioning is readily illustrated. The questioning of Donald Hiss and Mrs. Alger Hiss in 1948 are illustrative. The Committee had indicated great interest in hearing Mrs. Hiss and had seemingly gone to great lengths to arrange a session at which she could be present and testify. But when the hearing was finally held only one member of the Committee, Nixon, was present, and his questioning was exceedingly brief and perfunctory. The entire printed record of the hearing occupies less than two pages.²⁹

The Committee's failure to press Hiss and other witnesses for information pertaining to Hiss's actual record as a State Department official would also seem to illustrate poor questioning. This policy may have been deliberate, i.e., the Committee may have been afraid that it would discover no evidence of wrong-doing by Hiss as a public servant and that such a line of questioning might boomerang in his favor. Or it may have felt that as an alleged espionage agent Hiss would have been careful not to let his communist sympathies affect his day-to-day work so that as a man above suspicion he could function more effectively as an espionage agent. But such explanations are not quite adequate. The espionage angle did not loom large until the December phase of the hearings. At first the Chambers testimony merely stressed the idea that Hiss was a Communist who had risen to a high post in the government. Moreover, as a staff member of the United States delegation to the Yalta Conference, as Secretary General of the San Francisco Conference, and as chief of the State Department Office of Special Political Affairs, Alger Hiss offered a splendid target for questioning concerning the substance of his ideas and his policies. The Committee's relative lack of interest in developing this line of questioning is not easily explained.³⁰

²⁹ Communist Espionage Hearings 930-33, 942-43, 955. Nixon later admitted to the author that persistent questioning of Mrs. Hiss at this point might have elicited significant testimony from her. As it was, Mrs. Hiss was exceedingly vague, could remember almost nothing, and Nixon apparently gave up questioning her as a bad job almost at once.

³⁰ There were exceptions. At one point, Representative Mundt asked a series of questions which obtained from Hiss the information that he had helped draft portions of the Yalta agreement, that he had opposed the idea of giving three votes to the Soviet Union in the

Again, the questioning of the hostile witnesses during the Hollywood hearings does not impress one as having been shrewd or intelligent. The Committee allowed the witnesses to set the tone of the proceedings, matched their truculence and emotionalism, and by pressing the question concerning membership in the Communist Party, seemed content to let them refuse to answer questions and to run the risk of punishment for contempt, when a more clever approach might have encouraged them to be more articulate on points of real significance to the subject under examination. For example, a sophisticated attempt to question Albert Maltz concerning an article in *The New Masses*, in which he counselled tolerance toward writers of the non-communist left, and a subsequent article recanting this view, might well have been a better approach from the point of view of informing the American people of the danger of allowing motion picture scripts to be written by persons who have submitted to the intellectual slavery imposed by allegiance to communism, than the course actually followed. At times, even the goal of contempt citations was endangered, for the questioning got out of hand to such an extent that the Committee seemed to be forgetting the necessity of establishing a clear factual showing that the witnesses were refusing to answer pertinent questions.

There has been continuous controversy over the issue of the rights to be enjoyed by persons appearing before the Committee. In part, this controversy reflects the absence of an established pattern for the conduct of hearings by congressional committees generally. Moreover, many of the specific criticisms directed against the Un-American Activities Committee could almost as easily have been made against virtually every investigating committee which has dealt with controversial subject matter. There has been a tendency to take all such committees to task for their failure to grant to witnesses the procedural rights which are customarily extended in the criminal courts. The need for procedural reform in the conduct of congressional investigations is undeniable. But the fact remains that up to the present there has been no general agreement as to the rights that a congressional committee should extend to its witnesses and few if any specific committees have ever gone so far as to grant their witnesses the same status they would enjoy in a courtroom.*

Nonetheless, the Un-American Activities Committee has had more than

United Nations General Assembly, that he had had nothing to do with the formulation of the State Department China policy in 1945, and that he had played a part in determining the veto provision of the United Nations charter. Communist Espionage Hearings 657.

* Consult Galloway, Proposed Reforms, page 478 supra.

its share of difficulty over procedural issues and this almost certainly reflects an unusual degree of carelessness or irresponsibility on the part of the Committee. It is perhaps unfair to lay too much stress upon the remark made by Chairman Thomas in an unguarded moment when he told an obstreperous lawyer who was serving a witness before the Committee as counsel: "The rights you have are the rights given you by this committee. We will determine what rights you have and what rights you have not got before the committee."³¹ And yet Thomas' angry remark is not too far away from the truth, at least with respect to the particular Committee which he headed. In *The Red Plot Against America*, Stripling recognizes that upon occasion the Committee with which he was identified used vigorous methods in the treatment of its witnesses. But he insists that this was really the fault of the witnesses, who "provoked" Committee members to the use of controversial methods. He writes,

The Committee hears, by and large, a type of witness completely foreign to other Congressional committees in search of information. More often than not it is faced with subversives and fellow travelers who are superbly well trained and well advised in the incitement of public sentiment. The reactions of some members of the Committee to their type of testimony have been provoked very artfully.³²

There has been more controversy over the right of witnesses before the Committee to enjoy the assistance of counsel than over any other single procedural issue. While there were moments when the Committee seemed to be close to denying a witness the right to counsel completely,³³ it was generally willing to allow a witness to be accompanied by counsel if he insisted upon it. But it extended this right very grudgingly in many instances, it frequently cast reflections upon witnesses because of their insistence upon enjoyment of the right, it attempted to discredit particular attorneys appearing before it, and it confined counsel to the narrow role of advising a client only with respect to his constitutional rights.³⁴

The Committee's general irritation with witnesses who insist upon being

³¹ Communist Espionage Hearings 1310.

³² Stripling, *The Red Plot Against America* 160 (1949).

³³ In 1945, during the examination of Jacob A. Stachel in the Communist Party Hearings, Chairman Wood stated: "The policy of this Committee, with all due regard, is never to recognize counsel in these hearings." *Investigation of Un-American Propaganda Activities in the United States Communist Party, 79th Cong. 1st Sess. 36 (1945)*. At other times, witnesses were not allowed to bring lawyers into the Committee room, but were allowed to go out and consult counsel about answers to questions involving legal matters. *Investigation of Un-American Propaganda Activities in the United States: Executive Board, Joint Anti-Fascist Refugee Committee, 79th Cong. 2d Sess. 1, 27 (1946)* (cited hereafter as *Joint Anti-Fascist Refugee Committee Hearings*).

³⁴ *Hearings Regarding Hans Eisler, 80th Cong. 1st Sess. 2, 3 (1947)*.

accompanied by counsel has been many times indicated. When, for example, Alger Hiss in his fourth appearance before the Committee was, for the first time, accompanied by counsel, there was an unmistakable undertone of displeasure on the part of Committee members that the witness should have availed himself of this privilege. While Hiss was testifying, "an unknown person" conferred with Hiss' counsel, and Chairman Thomas abruptly interrupted the proceedings and demanded identification of this person.³⁵ When Thomas was quizzing Hiss as to whether he should or should not have been able to recognize a photograph of Whittaker Chambers at an earlier hearing, Hiss' lawyer tried to break into the exchange of remarks and was bluntly told by Thomas, "Never mind, you keep quiet."³⁶ Another time he was silenced by Mundt who said, "I object, Mr. Chairman. I want Mr. Hiss to finish his statement without any interruption by counsel. You may speak afterwards."³⁷ Earlier during the communist espionage hearings, Mundt congratulated Lauchlin Currie for having appeared before the Committee without counsel. He said, "I would like to have the record show that Mr. Currie, in addition to having answered questions in a forthright manner, came here without benefit of counsel to whisper in his ear the answers he should give to the committee. I think that is very commendable."³⁸

The Committee has also upon a number of occasions shown considerable interest in the private negotiations between a witness and his counsel and has not hesitated to encroach upon what is generally recognized, in judicial procedure at least, to be a confidential relationship. For example, both Mundt and Hébert showed great interest in Henry Wadleigh's dealings with his counsel. Wadleigh appeared before the Committee without counsel, stating, in response to a question, that by mutual agreement he and his counsel had parted company that morning. Mundt and Hébert were both interested in finding out how Wadleigh had first engaged his attorney and why he had later decided to dispense with his services.³⁹

During the Hollywood hearings the Committee frequently indicated its

³⁵ Communist Espionage Hearings 1082-83.

³⁶ *Ibid.*, at 1143.

³⁷ *Ibid.*, at 1161.

³⁸ *Ibid.*, at 875. For other interesting examples of situations where the role of counsel was limited to advice on constitutional questions and not to advising on answers to specific questions consult Communist Espionage Hearings 842, 845, and Atomic Espionage Hearings 3-4. In contrast note the treatment of Eric Johnston in the Hollywood hearings. Mr. Stripling was very solicitous in pointing out the witness's right to have counsel (Paul McNutt) sit next to him. Hearings Regarding the Communist Infiltration of the Motion Picture Industry, 80th Cong. 1st Sess. 304-5 (1947) (cited hereafter as Hollywood Hearings).

³⁹ Communist Espionage Hearings 1432, 1438, 1444-45.

displeasure with the role being played by counsel, particularly during the appearance of the unfriendly witnesses upon the stand. At one point the questioning of Albert Maltz was interrupted and Robert W. Kenny, who with Bartley Crum had appeared with Maltz as his counsel, was suddenly called to the stand and sworn. The Committee then proceeded to question him at some length concerning an article that had appeared in the *Washington Times-Herald* the same day to the effect that Kenny was advising all of the unfriendly witnesses to refuse to say whether they were members of the Communist Party. Kenny refused to say whether he had advised his clients not to answer the question concerning Party membership, pleading that the Committee was encroaching upon the privacy of the client-counsel relationship. Thereupon, Thomas proceeded to read Kenny the federal conspiracy act, implying that Kenny and his clients might have committed a criminal offense if they had deliberately agreed that the latter as witnesses should place themselves in contempt of the Committee by refusing to answer its questions.⁴⁰

Perhaps the most serious conflict between the Committee and its witnesses over the issue of counsel took place during the communist espionage hearings in 1948 when the Committee was hearing William Rosen and his wife. Chambers had accused Hiss of having disposed of a 1929 Ford roadster by giving it to a member of the Communist Party, instead of lending or giving it to Chambers as claimed by Hiss. Committee investigators discovered from the records of the Department of Motor Vehicles in the District of Columbia that Hiss had transferred title to the car to the Cherner Motor Company in July 1936, and that on the same day the Company had transferred title to a William Rosen. As a witness before the Committee, Rosen refused to answer all significant questions on the ground of self-incrimination. The hearing was an acrimonious one and Rosen's counsel, Maurice Braverman, interrupted the questioning a number of times. Finally, Stripling demanded that Braverman be sworn so that the Committee could question him. Braverman refused to be sworn, on the grounds that as Rosen's counsel it was improper for the Committee to

⁴⁰ Hollywood Hearings 367 et seq. Kenny ultimately took the position that the newspaper article was not entirely accurate. Thereupon, the following exchange took place between Thomas and Kenny (at 369):

"The Chairman. I will tell you, Mr. Kenny, as chairman, I want to let you know that you squirmed out of this one temporarily, but if the committee should determine that is a violation of this Conspiracy Act, then the committee will take it under consideration referring the matter to the United States attorney.

"Mr. Kenny. That is right, Mr. Thomas. I might say that the committee has squirmed out of one too, because I am sure that committee did not intend to invade the sacred province of relationship between attorney and client.

"The Chairman. Oh, no; and neither would you want to commit conspiracy."

seek to turn him into a witness, and also that he was entitled to obtain his own counsel if he were going to appear as witness.⁴² In the face of this resistance by Braverman the Committee backed down. But a little later when Mrs. Rosen was on the stand much the same situation developed again:

Mrs. Rosen. I refuse to answer this question on the ground that any answer I give may tend to incriminate me.

The Chairman. I am getting pretty sick of this refusing to answer questions on the ground that it might incriminate you, when some of the questions haven't got anything to do with whether or not this person is a member of the Communist Party. You will have to be more responsive.

Mr. Stripling. Mr. Chairman, perhaps counsel can explain to the committee why the witness is answering in this manner.

Mr. Braverman. Are you asking me?

Mr. Stripling. Yes.

Mr. Braverman. I merely advised my client as to what I think are her constitutional rights.

Mr. Stripling. Will you tell the committee why answering whether or not she is a member of the Communist Party will incriminate her?

Mr. Braverman. I feel I have a right to advise my client to the best of my ability, Mr. Stripling.

* * *

Mr. Braverman. Mr. Stripling, I can only repeat I have a right to advise my client to the very best of my ability.

Mr. Stripling. And that is your answer?

Mr. Braverman. That is my answer.

Mr. Stripling. And you intend to appear here with further witnesses?

Mr. Braverman. As long as I have the right to practice law and unless I am barred by this committee. I don't know on what grounds that could be.

Mr. Stripling. I think counsel coming before this committee should come here in good faith, and I think the committee should now consider whether you are here in good faith.

Mr. Braverman. I believe I am here in good faith.

* * *

The Chairman [Thomas]. Mr. Counsel, will you stand and be sworn? Please stand and be sworn, because we want to ask some questions about this matter and it is very important and we want sworn testimony.

Mr. Braverman. Mr. Thomas, I will state as I stated before, that I am not here as a witness. I am here as counsel.

The Chairman. From now on you are here as a witness.

Mr. Braverman. Before I appear as a witness I would like the privilege of consulting counsel and being represented by counsel before this committee.

The Chairman. Is your counsel present now?

Mr. Braverman. No.

⁴² Communist Espionage Hearings 1215-16.

The Chairman. Do you refuse to be sworn?

Mr. Braverman. I refuse to be sworn and appear as a witness until I have the right of counsel. I want counsel present to advise me.

The Chairman. I will have to insist that you be sworn now. Raise your right hand or I will hold you in contempt.

Mr. Braverman. I am sorry, I do not want to be in contempt of this committee, but if I am sworn as a witness I want the right to consult counsel.

The Chairman. We want to ask you two or three simple little questions and we think the testimony should be sworn testimony, so if you will just please oblige the committee by raising your right hand—

Mr. Braverman. If this committee will allow me the right to have counsel present when I am here as a witness, I will be happy to be sworn as a witness.

Mr. Stripling. The witness has just given the committee a dissertation of his familiarity with the rights and privileges of witnesses. I don't think he needs counsel.

The Chairman. Do you have questions you want to ask him?

Mr. Stripling. Yes.

The Chairman. I think it should be sworn testimony.

Mr. Stripling. I do, too.

Mr. Braverman. Mr. Thomas, I can repeat I have a right to be represented by counsel, if I appear here as a witness. I have not been subpoenaed. I appear here as counsel.

The Chairman. The rights you have are the rights given you by this committee. We will determine what rights you have and what rights you have not got before the committee. I insist you be sworn at the present time. So please raise your right hand.⁴²

In spite of this threatening language by Thomas, Braverman still refused to be sworn and once more the Committee backed down. However, it now proceeded to subpoena Braverman in the usual manner and on the next day he appeared as a witness accompanied by his own counsel. Braverman was then asked point-blank whether he was a member of the Communist Party and whether he had been put in touch with Rosen through the Party. Braverman refused to answer these questions, on the grounds that they encroached improperly upon the client-attorney relationship, and also encroached upon his rights under the First and Fifth Amendments.⁴³

During the 1949 hearings regarding communism in the District of Columbia, Representative Velde, in a seeming effort to discredit a witness's counsel, went so far as to imply that Clifford Durr, who represented the witness, John Anderson, as counsel, had perhaps earlier used his post as a member of the Federal Communications Commission to render an improv-

⁴² *Ibid.*, at 1308-10.

⁴³ *Ibid.*, at 1342-46. For other instances of Committee efforts to discredit particular attorneys appearing before it consult Hearings Regarding Hans Eisler, 80th Cong. 1st Sess. 158 (1947); and Hearings Regarding Communism in Labor Unions in the United States, 80th Cong. 1st Sess. 109, 122, 123 (1947) (cited hereafter as Labor Unions Hearings).

er favor to a business enterprise in which the witness was interested.⁴⁴

In the Committee's defense it may be said that in many of the instances where it came into conflict with counsel there was some reason to believe that attorneys representing witnesses were themselves members of the Communist Party, or were ready and able to help Communists utilize the self-incrimination ground as a means of avoiding testimony. But this was obviously not true in all such situations, and in any case it is exceedingly doubtful whether the Committee had sufficient provocation to concern itself with counsel to the extent that it did. In refusing to testify on the ground of self-incrimination or on other grounds, witnesses were running a considerable risk. As it turned out, in several hearings, notably the Hollywood one, numerous witnesses ultimately went to jail for their failure to answer questions. This would seem to constitute a sufficient hazard for a nonco-operative witness, without the necessity of threatening his attorney because of advice given a client. Thomas' action in bullying Robert Kenny by reading him the text of the conspiracy act remains one of the low points in the history of the Committee's procedures.

Attention should be given to the role that counsel has been permitted to play during Committee sessions. In general, counsel has remained silent and this is very much a part of the tradition of congressional investigations. Occasionally, counsel has tried to play the more active role common to attorneys in judicial proceedings. For example, in the Hollywood hearings there occurred an interesting attempt to use the motion to quash the proceedings. Three attorneys representing nineteen clients notified Chairman Thomas by wire that when the hearings opened on the first day they would move to quash the subpoenas on the ground that the investigation constituted an unlawful attempt to "control the content of motion pictures through censorship and political intimidation."⁴⁵ When

⁴⁴ "Mr. Velde. How long have you known your attorney, Mr. Durr?

"Mr. Anderson. I have known Mr. Durr about a year, I guess.

"Mr. Velde. Did you know him at the time he got this stock in WQQW?

"Mr. Anderson. I didn't know Mr. Durr. If I had met Mr. Durr, I would not have known who he was. I knew there was a Mr. Durr, but I didn't know him.

"Mr. Velde. Did you know he was on the Federal Communications Commission at that time?

"Mr. Anderson. I saw his name as a Government official from time to time.

"Mr. Velde. Do you know if he assisted in getting a license for Station WQQW?

"Mr. Anderson. I don't know that.

"Mr. Durr. Congressman, if you want to go into the question of my connection with Station WQQW, I will be glad to appear before this committee at any time.

"Mr. Velde. That is up to the committee. That is all."

Hearings regarding communism in the District of Columbia, 81st Cong. 1st Sess. 713 (1949) (cited hereafter as District of Columbia Hearings).

⁴⁵ N.Y. Herald Tribune § 1, p. 1, col. 6 (Oct. 6, 1947).

the hearings opened, Thomas refused to let Kenny or Crum argue their motion orally, but the Committee did accept a written brief. When the first unfriendly witness, John Howard Lawson, was heard a week later, Kenny renewed his efforts and the Committee in effect allowed him to make a short oral argument and to present "two additional evidences" of the illegality of the proceedings based upon the proceedings of the previous week, namely that the Committee was trying to dictate to producers the content of films, and to induce them to maintain a blacklist. Kenny asserted "both of these . . . indicate an unconstitutional purpose . . . to invade the domain protected by the first amendment. . . ."46 Upon hearing this oral argument Chairman Thomas announced that the Committee would go into executive session to consider the issue. It did so, and reconvened shortly, at which time the Chairman announced "the decision on the brief" in the following words:

No committee of Congress has the right to establish its own legality or constitutionality. A committee of Congress cannot disqualify itself from the provisions of the law. We operate under Public Law 601. We cannot set aside this law to suit the convenience of certain witnesses or their counsel. As a former attorney general of California you certainly know that your remedy, if any, is in the courts.⁴⁷

From time to time attorneys appearing before the Committee have asked for permission to question their clients or to cross-examine other witnesses, but invariably these requests have been denied.⁴⁸ During the communist espionage hearings the lawyer representing a witness, Alexander Koral, was in effect allowed to enter objections to one or two questions asked his client, but these objections were overruled, and Chairman Thomas soon put a stop to the procedure, insisting that counsel had no right to enter objections.⁴⁹

⁴⁶ Hollywood Hearings 288. In the written brief it was argued that the Un-American Activities Committee was illegal and unconstitutional "both in the manner in which the authority given to it by the Congress has been executed, and by the terms of that authority itself."

⁴⁷ Hollywood Hearings 289. During the Hollywood hearings, Paul V. McNutt as counsel for the Motion Picture Association asked for, and was given, permission to read a statement protesting statements made by Chairman Thomas while Eric Johnston, President of the MPAA, was testifying before the Committee, that Johnston or his assistants had brought pressure on the Committee to call off or postpone the Hollywood hearings. *Ibid.*, at 360-63.

⁴⁸ For example, during the Hollywood hearings when John Howard Lawson was called as a witness, his attorney, Bartley Crum, requested the right of cross-examination and asked the Committee to call back some ten witnesses who had testified during the first week of hearings so that they might be cross-examined. Thomas immediately denied the request. Hollywood Hearings 289.

⁴⁹ Communist Espionage Hearings 704-11. Thomas was characteristically rude in silencing Koral's attorney. The record bristles with such phrases as "You keep quiet a few seconds." "You will please be quiet." "I just want you to be quiet." Granted that the attorney was seek-

In the final analysis, an attorney representing a witness before the Un-American Activities Committee can do virtually nothing for him beyond advising him what his chances are of avoiding a successful prosecution for contempt if he refuses to answer certain questions put to him. It should be repeated again that virtually the same statement can be made about attorneys and witnesses appearing before any congressional committee. But because the Un-American Activities Committee has personalized its hearings to a degree that has seldom been reached by other committees of Congress the inability of counsel to render to a witness the kind of assistance he could give, were his client a defendant in a court trial, becomes a serious matter.

There has been much argument through the years over the right of witnesses before the Un-American Activities Committee to make prepared statements. The Committee has never recognized a general right on the part of witnesses to make oral statements. On the other hand, the Committee has usually been willing to receive from a witness and place in the record a written statement, provided the substance of the statement is regarded as pertinent to the matter under investigation, and provided the witness has co-operated with the Committee by answering its questions, or has not otherwise irritated or angered it. This policy was illustrated during the 79th Congress when the Committee heard Gerald L. K. Smith in January 1946. Smith asked to submit a rather long statement to which he had given the flamboyant title, "A Petition for Redress of Grievances and for an Investigation into Promoted Terrorism, Denial of Civil Liberty, Conspiracy against Freedom, Organized Character Assassination, Corrupt Practice, Organized Rioting, Etc." It was accepted for printing in the published volume of the hearing. This, however, did not satisfy Representative Rankin who insisted that he wanted to hear the statement. The Chairman (Wood) refused to deviate from the rule allowing only written statements. However, after continued insistence by Thomas and Rankin, before the hearing was over Smith was allowed to read long sections of it.⁵⁰

At the first public hearing conducted by the Committee during the 80th Congress Chairman Thomas told the witness (Gerhart Eisler): "It is

ing to play a role seldom if ever permitted attorneys representing witnesses before congressional committees, Thomas, here as elsewhere, seemed unable to control the proceedings in a manner befitting the dignity and tradition of an agency of the Congress of the United States.

⁵⁰ Investigation of Un-American Propaganda Activities in the United States (Gerald L. K. Smith), 79th Cong. 2d Sess. 23-24, 33 et seq. (1946) (cited hereafter as Gerald L. K. Smith Hearings).

not the policy of this committee to permit witnesses to make a statement. After you have completed your testimony, if you desire to make a statement, the committee will permit you to put it in the record at the conclusion of your testimony."⁵¹ Thereafter, Eisler refused to be sworn by the Committee. As a result he gave no testimony and the Committee did not receive his statement, although it was apparently distributed to newsmen in the Committee room by his attorney.⁵²

There have been many exceptions to the general policy outlined in the preceding paragraph. During the Hollywood hearing in 1947, the Committee vacillated greatly with respect to the making of statements. Many of the friendly witnesses had no statements. Those who did, such as Sam Warner and Louis Mayer, were usually permitted to read their statements at the beginning of their testimony.⁵³ Paul McNutt and Eric Johnston

⁵¹ Investigation of Un-American Propaganda Activities in the United States: Hearings on Gerhart Eisler, 80th Cong. 1st Sess. 2 (1947) (cited hereafter as Gerhart Eisler Hearings).

⁵² *Ibid.*, at 4. Another example of the Committee's practice in 1947 with respect to statements is seen in the following exchange of remarks which took place during the hearings concerning communism in labor unions (Labor Union Hearings 116-17).

"Mr. Stripling. I have questions I want to ask him, but he has asked permission to make a statement. I was going to ask him if his statement is in written form.

"Mr. McCrea. Yes, sir; it is.

"Mr. Stripling. Would you care to submit it to the chairman first? The procedure of the committee, Mr. McCrea, is to ask questions, then if the witness has a statement the committee will consider having him read it.

"(The statement referred to was handed to the chairman.)

"Mr. Stripling. Mr. Chairman, I suggest that the witness be permitted to read the statement.

"The Chairman. Any objection?

"(No response.)

"The Chairman. All right, Mr. McCrea; you may read the statement.

"Mr. Stripling. Mr. McCrea—

"Mr. Nixon. May I ask a question?

"The Chairman. Mr. Nixon.

"Mr. Nixon. The copies of the statement are already in the hands of the committee, and I think, for the record, that we should have an understanding as to the procedure; the statement is in order because it relates to the facts which have been brought out in this investigation, and it is an attempt by the witness to refute those facts. That is the reason that it is being read.

"The Chairman. The Chair agrees.

"Mr. Stripling. Is your statement the same as this press release which was distributed this morning?

"Mr. McCrea. Yes.

"Mr. Bonner. I would like to ask one question before the statement is read. Mr. McCrea, I am in favor of your reading the statement. After you read the statement, are you going to submit yourself to questions about this matter?

"Mr. McCrea. Yes; I would be glad to.

"The Chairman. All right; proceed."

⁵³ Hollywood Hearings 9, 70. Roy Brewer, a friendly witness who testified concerning the communist influence in Hollywood labor unions, was told at the beginning of his testimony that everything in his statement could be substantiated through questioning. However, at the end of his testimony he was permitted to read the statement. *Ibid.*, at 342, 356.

were permitted to read statements highly critical of the Committee at the beginning of their testimony.⁵⁴

When it came time to hear the ten unfriendly witnesses the Committee was seemingly unable to decide upon and follow any consistent policy. Each of the ten men had a prepared statement which he asked permission to read as soon as he took the witness chair. It may be presumed that all of the statements were highly critical of the Committee and contained vigorous language. In each instance the Chairman asked to see the statement and a cursory examination of it was made by him and other Committee members before he ruled on the witness's request. The first of the unfriendly witnesses, John Howard Lawson, was denied permission to read his statement. After a brief examination of it Thomas stated, "I don't care to read any more of the statement. The statement will not be read. I read the first line. . . . I refuse you [sic] to make the statement, because of the first sentence in your statement. That statement is not pertinent to the inquiry."⁵⁵ Dalton Trumbo, the second of the unfriendly witnesses, was similarly treated. However, with Albert Maltz, the third witness, the Committee suddenly reversed its policy and permitted him to read his full statement at the beginning of his testimony, even though it was bitterly anti-Committee.⁵⁶ Maltz was followed by Alvah Bessie who was permitted to read the opening and closing paragraphs of his statement, the remainder being received and incorporated in the printed record of the hearings.⁵⁷ Having made this generous gesture to two of the unfriendly witnesses, the Committee once more about-faced and the next four witnesses were all refused permission to read or submit their statements, the refusal being justified in each instance because the statement contained "vilification" or was not pertinent to the inquiry. The next-to-the-last of this group of witnesses, Ring Lardner, Jr., was told he could read his statement after the completion of his testimony, but he promptly got into the same squabble with the Committee over refusal to answer the question as to membership in the Communist Party as had his colleagues, and he was dismissed from the stand without further reference to the statement.⁵⁸ The last member of the group, Lester Cole, was denied permission to read or submit his statement.

During the communist espionage hearings in 1948 the Committee

⁵⁴ *Ibid.*, at 305, 360.

⁵⁶ *Ibid.*, at 364.

⁵⁵ *Ibid.*, at 290.

⁵⁷ *Ibid.*, at 383.

⁵⁸ *Ibid.*, at 480 et seq. Thomas indulged in some rather childish bargaining with Lardner. When the latter began to balk at answering the Committee's questions, Thomas said: "Now, Mr. Lardner, don't do like the others, if I were you [sic], or you will never read your statement. I would suggest. . . ." *Ibid.*, at 480.

adhered to a somewhat more consistent policy. Elizabeth Bentley, the first witness, had no prepared statement, and submitted at once to questioning. The second witness, Whittaker Chambers, had a statement which he was allowed to read almost immediately after he took the witness chair.⁵⁹ The third witness was Nathan Gregory Silvermaster who had been named by Miss Bentley as the leader of a group of communist espionage agents in the federal government. Upon being sworn, Silvermaster immediately asked for permission to read a statement. The statement was received and examined by the Committee and it appeared that Stripling and Rankin had objections to parts of it, although Mundt, who was acting as chairman, announced it might be read "at the proper time."⁶⁰ Almost immediately, however, Stripling informed the chairman that he would like to have the witness read his statement and this was done. In the course of this rather brief statement, Silvermaster said: "The charges made by Miss Bentley are false and fantastic. I can only conclude that she is a neurotic liar."⁶¹ Thereafter, Silvermaster refused to answer most of the questions put to him, including one as to whether he had ever known Miss Bentley, on the ground of self-incrimination. Representative Nixon in very telling fashion then proceeded to tax the witness concerning an inconsistency between his calling Miss Bentley's charges "false and fantastic" and his refusal to say whether he knew Miss Bentley or to say whether her specific charge that he had maintained a photographic laboratory in his home was true or not.⁶² It may well be that Stripling and Nixon saw the advantage of letting Silvermaster read his statement at an early stage in the hearing because of its flat repudiation of the Bentley charges, and in effect set a trap for him, knowing that he was going to refuse to answer specific questions on the ground of self-incrimination. In any case, this episode showed the advantage from the Committee's own point of view of first letting a witness read a prepared statement and then subjecting him to questioning over the ground covered in the statement. Had this same technique been used during the Hollywood hearings it is entirely possible that, by allowing the unfriendly witnesses to read their statements when they first took the witness stand, a basis would have been laid for questions which the witnesses would have found it difficult not to answer, or which, if not answered, would have placed them in a less enviable light than they actually occupied.

In the espionage hearings this technique was used effectively on William Ullmann and Abraham Silverman. Both made more or less categorical

⁵⁹ Communist Espionage Hearings 564.

⁶¹ *Ibid.*, at 590.

⁶⁰ *Ibid.*, at 587.

⁶² *Ibid.*, at 594, 604.

denials of the Bentley charges in their prepared statements, but both refused to answer questions as to the truth or falsity of specific charges made by Miss Bentley, on the ground that they might incriminate themselves in replying.⁶³ Virtually all of the other witnesses who testified during the espionage hearings who wished to read prepared statements were permitted to do so, either immediately upon taking the witness chair, or shortly thereafter.⁶⁴ A notable exception occurred on August 25 when the public confrontation between Alger Hiss and Whittaker Chambers took place. Soon after taking the stand in the morning Hiss asked to be allowed to read a statement. Thomas rather petulantly inquired whether the statement was the same as a letter which Hiss had sent to Thomas and had also released to the press. Stripling then advised Thomas to defer the reading of the statement. Hiss renewed his request several times, but it was not until the end of a long day's session, after Hiss had been subjected to prolonged and searching questioning, and after Nixon and Mundt had both made long statements of their own, summarizing the Hiss-Chambers case to date and drawing conclusions from the evidence submitted up to that point, that Hiss was allowed to read his statement.⁶⁵ This petty treatment of Hiss was certainly not fair under the circumstances. What is more important is that the statement, if introduced early in the day, might well have provided a basis for more intelligent questioning. In view of the spectacular developments in the Hiss-Chambers case that were to come months later, there is always the possibility that a different line of questioning might have resulted in an earlier dénouement in the case. In his statement, Hiss challenged the Committee to explore his record as a public officer carefully for evidence of wrongdoing. The failure of the Committee ever to do this in systematic fashion remains a weakness in its handling of the case. In this statement Hiss also asked permission to have certain questions put to Chambers. This permission was granted, but, perhaps because this development took place toward the end of a long and tiring day, Chambers was not pressed very hard to give full answers to some of the questions.⁶⁶

⁶³ *Ibid.*, at 774, 844.

⁶⁴ In addition to those already mentioned, prepared statements were read by Alger Hiss, *Communist Espionage Hearings* 642; Victor Perlo, *ibid.*, at 699; Duncan Lee, *ibid.*, at 723; Henry Collins, *ibid.*, at 805; Lauchlin Currie, *ibid.*, at 852; Harry White, *ibid.*, at 878; Bela Gold, *ibid.*, at 907; Sonia Gold, *ibid.*, at 913; Frank Coe, *ibid.*, at 916; and Donald Hiss, *ibid.*, at 928.

⁶⁵ *Ibid.*, at 1077, 1124, 1126, 1147, 1149, 1157, 1160.

⁶⁶ For example, one of the questions asked Chambers for a full bibliography of all his writings under every name he had used. Virtually no effort was made to get Chambers to answer this question, which was surely a significant one. *Ibid.*, at 1177, 1188. Nixon, who was putting

In 1949 during the course of the hearings concerning communism in the District of Columbia the Committee reverted to its earlier policy of not permitting the making of statements by witnesses who otherwise fail to co-operate with the Committee. For example, Rose Anderson was denied permission to make a statement because she had "not condescended to answer any of [the Committee's] questions."⁶⁷

The record which the Un-American Activities Committee has made since 1945 in squabbling with numerous witnesses over the making of prepared statements is outstanding for its futility. It may be granted that virtually all of the statements that were not allowed to be made were marked by vilification and distortion. Nonetheless, in refusing permission to certain witnesses to make such statements the Committee allowed itself to be drawn down to the level set by the truculent witnesses and opened itself to the charge of unfair treatment of them. In almost every instance banned statements were released to the press, and while they were seldom carried in full by many papers their content was certainly not effectively suppressed by the Committee's action in refusing to allow them to be read or received for the record. Moreover, it is difficult to see what possible harm could have been done in any instance by allowing a statement to be read publicly and placed in the printed record. At the worst, Committee members might have had to listen to outbursts of bombast and propaganda, but they could have done so in the knowledge that witnesses who resorted to extreme language in their statements were thereby condemning themselves far more effectively than the Committee itself could do. At best, the reading of the statements might have provided a basis for telling questioning of a witness, as was true in the cases of Silvermaster, Ullmann, and Silverman during the communist espionage hearings.

The Un-American Activities Committee has never recognized in any formal sense the right of cross-examination. In refusing to recognize this right the Committee has had the precedents on its side so far as the practice of congressional investigating committees is concerned. Nonetheless, the issue continues to be raised from time to time. During the Hollywood hearings, it came up repeatedly. At the very beginning of the hearings, Bartley Crum claimed the right for his clients and was flatly refused.⁶⁸ A few minutes later Paul McNutt got a more definitive ruling on the same

the questions to Chambers stated that Chambers should submit such a bibliography to the Committee at a later date, but there is no evidence that he ever did so, and if he did submit a list of his writings it was never made public.

⁶⁷ District of Columbia Hearings 698.

⁶⁸ Hollywood Hearings 4.

point when he was told that "[i]t is not the policy of the committee to permit counsel to cross-examine witnesses. You will only have the right, the solemn right, to advise your client, the witness, on his constitutional rights. Nothing else."⁶⁹

On the second day of the hearings, while John Moffitt, motion picture critic for *Esquire* magazine, was testifying, a "Mr. Katz," who announced that he represented a number of persons who had been subpoenaed, interrupted the proceedings, asked for permission to cross-examine Moffitt, and was ejected from the room.⁷⁰ Again at the beginning of the second week of hearings, Robert Kenny asked permission to recall a number of witnesses for cross-examination, and the request was abruptly denied.⁷¹

During the communist espionage hearings the following year, an interesting exchange of remarks took place between the Committee and one of its witnesses on the subject of cross-examination. The witness was Frank Coe, who had been named by Elizabeth Bentley as a member of one of the communist groups in the federal service with which she said she had been in touch as a communist courier. Coe denied all of Miss Bentley's charges against him, and answered all questions put to him by the Committee. In his prepared statement which he was allowed to read, he requested the right to cross-examine Miss Bentley and said:

I understand that this committee has previously decided against using such procedures on the ground that, though they may be incumbent on a court, they are not desirable for a legislative committee. It seems to me, however, that this committee does in fact function as a criminal court. Before this committee there are accusers and accused, just as in a court. The accused are punished. The grave and sensational charges which are made here are given wide publicity and that is a cruel punishment. It hurts the accused, his family, and his friends and associates.

The peculiarity of this court is that all who are accused before it are punished—the innocent and the guilty alike. Under the present methods of the committee, that result is inevitable. As the committee knows, these views are held by many people. I hope they will be given consideration.⁷²

A little later Coe renewed his request, and Mundt, who was acting as chairman, replied:

The position of this committee has been—and you explained it very clearly in your statement—that we are not functioning as a court, don't have the power, unfortunately, that a court does have, and so we have not made it a policy to cross-examine witnesses or to permit counsel to do so.

Had we the full authority of a court, certainly it would be easier to get down into the disputed evidence in this particular case. Since we do not have, we cannot adapt

⁶⁹ *Ibid.*, at 7.

⁷⁰ *Ibid.*, at 118-19.

⁷¹ *Ibid.*, at 289.

⁷² Communist Espionage Hearings 916-17.

ourselves to part of the rules of the court without having the authority that goes with being a court. Unfortunately, we cannot accept your request.⁷³

Thereupon Coe asked permission to read the questions he would have asked Miss Bentley had he been permitted to cross-examine her. At first, Mundt seemed inclined to grant this permission. But Stripling protested that such a procedure had never been followed by a congressional committee, and that granting the permission requested would establish a precedent. Thereupon, the Committee went into one of its characteristic "ornery" spells and refused even to let Coe make a further statement incorporating what he said were the correct factual answers to the questions he would have put to Miss Bentley. He was told he had already made one statement, that if he wanted to add to that statement he would first have to put it in writing, and finally Mundt stated that the Committee could not "stay here for stump speeches by anybody."⁷⁴ As has already been indicated, the Committee did later permit Alger Hiss to submit a list of formal questions which it then proceeded to put to Whittaker Chambers, although whether the Committee pressed for adequate answers is debatable.

Closely related to the right to cross-examination is the right to reply to adverse testimony given by other witnesses. Controversy over this latter right has been chronic in connection with the investigations of the Un-American Activities Committee because of its pronounced tendency through the years to allow certain of its witnesses great freedom in bringing the names of other persons into their testimony. The issue is really a double one: What can or should be done to prevent witnesses from naming other persons in a derogatory context and what right should persons so named have to reply?

The issue in both of its aspects presented itself during the first month of the Dies Committee's existence in 1938. At the first hearing of his committee, Dies announced that it would not permit "character assassination" or the "smearing of innocent people" by witnesses.⁷⁵ However, before the end of the month, Dies had somewhat revised his stand and was saying that voluntary witnesses would be allowed greater freedom in their testimony than would subpoenaed witnesses. Under this policy, before the year was out the Committee had settled into the habit of letting voluntary witnesses ramble in irresponsible fashion, making only perfunctory efforts to check the data submitted by them or to subject them to intelli-

⁷³ *Ibid.*, at 926.

⁷⁴ *Ibid.*, at 927.

⁷⁵ Ogden, *The Dies Committee* 51 (1943).

gent cross-examination.⁷⁶ So many "innocent people" were named by witnesses that any possibility of reply on their part became mechanically impossible, even if the Committee had shown interest in hearing such people, which it did not.

In no year since its creation in 1945 has the permanent Committee had a clean record in preventing witnesses from indulging in the irresponsible naming of other persons. Indeed, there is hardly a hearing in the six-year period covered by this study in which there are not to be found shocking instances of "character assassination."⁷⁷ In particular, there are numerous instances of a failure on the part of the Committee to honor the "right of reply." A flagrant example is found in the Hollywood hearings. One of the charges against the motion picture industry widely publicized by the Committee, even in advance of the hearings in Washington in October 1947, was that the Roosevelt Administration had brought improper pressure upon the industry to make pro-Soviet films. In particular, the charge was developed that Lowell Mellett used his authority as a high OWI official to compel Robert Taylor to play a part against his will in the film *Song of Russia*.⁷⁸ Mellett denied this charge and repeatedly requested the Committee to grant him a hearing. Mellett was particularly bitter when the Committee adjourned its Hollywood hearings without letting him testify, and asserted, "The committee deliberately avoided letting me give them the truth."⁷⁹

Perhaps the most vigorous attempt during the life of the Committee to curb irresponsible testimony and to guarantee a right of reply was made by Representative Hébert in 1948 during the Communist espionage hearings. While the first witness, Elizabeth Bentley, was testifying Hébert insisted that the persons whom she named should have a public hearing.⁸⁰ Hébert was not remarkably successful in his efforts to protect people by

⁷⁶ *Ibid.*, at 58, 62.

⁷⁷ This assertion is easily documented as any careful reader of the Committee's printed hearings will quickly discover. Strong as is the temptation to provide a definitive and systematic list of examples, the author is deterred from doing so by the desire not to give any further publicity to the people whose names have been so used.

⁷⁸ *N.Y. Times* § 1, p. 1, col. 6 (May 15, 1947).

⁷⁹ *Washington Post* § 1, p. 12, col. 1 (Oct. 31, 1947).

⁸⁰ "If anybody put in jeopardy an individual who is charged with being a Communist, I think, in fairness, that this individual should be allowed his day in court here in public hearing as well. Now, if you were in secret session or in executive session, and these names were used, then we owe them no obligation, but the minute that we allow a witness on the stand to mention any individual, that individual has a right to come before this committee and have his day in court, and every man or woman mentioned here this morning has a right to be subpoenaed to come here." *Communist Espionage Hearings* 537.

preventing their names from being mentioned in public sessions. The Committee's two star witnesses, Elizabeth Bentley and Whittaker Chambers, were given a free rein and were permitted to name persons without restraint and seemingly without any previous checking. Indeed, at times they were even encouraged by Committee members or investigators to drag in additional names.⁸¹ On the other hand, the Committee did apparently allow every person named by Bentley or Chambers to appear before the Committee and deny the charges, if he wished to do so. In fact, the Committee itself subpoenaed a number of these persons, only to have many of them refuse to confirm or deny the charges, on the ground of self-incrimination.⁸²

The generally equivocal attitude of the Committee on this issue of the right of reply was never made clearer than in the following statement in the Committee's *Interim Report* of August 28, 1948, on the communist espionage hearings:

It is the established policy of this committee to protect in every feasible manner the reputations and the sensibilities of innocent citizens. It is also an established fact that in conducting public hearings—and this committee deplores the use of star-chamber, secret sessions unless public necessity requires them—an occasional mention of some innocent citizen in connection with a nefarious practice will inevitably occur. When it does, we provide every opportunity for those mentioned to clear themselves of all suspicion in the same forum before the same publicity media as in the case of the original allegations. In addition we have frequently inserted memoranda in our files to protect those innocently accused elsewhere from unjust attack or suspicion.

At times, however, your committee is confronted with the necessity of running the risk that a few innocent people may be temporarily embarrassed or the risk that 140,000,000 innocent Americans may be permanently enslaved. When necessary to resolve the relative merits of two such risks as that, your committee holds to the position that its primary responsibility is to that great bulk of our American population whose patriotic devotion to our free institutions deserves the greatest diligence in being protected against those who would utilize our Bill of Rights and our American freedoms to destroy permanently these great safeguards of personal liberty and human dignity.⁸³

During the second phase of the communist espionage hearings in December 1948, Hébert again became concerned about preventing the naming of additional persons by witnesses; and the Committee made a pretense of following the policy of going into executive session to hear

⁸¹ *Ibid.*, at 575, 576, 1474.

⁸² There were a number of persons named by Bentley or Chambers who were not subpoenaed and did not appear as voluntary witnesses. Whether anyone in this category made an effort to be heard and was denied an opportunity to testify by the Committee is not clear from the record. It seems likely that every person who made an active effort to be heard was granted a hearing.

⁸³ *Interim Report* 3.

such names.⁸⁴ For example, during the questioning of Isaac Don Levine on the evening of December 8, Mr. Hébert expressed concern over the projection of new names into the hearings. Mr. Mundt suggested that Mr. Levine write on slips of paper any names which previously had not appeared in the record. These slips of paper were to be given to the investigator for submission to the Committee. However, Mr. Hébert was not satisfied with this solution and stated that if any new names were to be introduced, he would move for an executive session.⁸⁵ Subsequently, the Committee did go into executive session to receive from Levine the names of six additional persons, including that of Laurence Duggan, allegedly named by Whittaker Chambers to Adolf Berle in 1939. How little meaning this belated effort to protect such persons had was made clear two weeks later when Representatives Mundt and Nixon took it upon themselves to give out to the press within a matter of hours after Duggan's death the information that Levine had named him as a person accused by Chambers of being a member of a communist group in the Government.

Many of the weaknesses which are so apparent in the record of the Un-American Activities Committee are deep-seated and will not be easy to correct. Nonetheless, if the un-American activities investigation is to be continued there are certain organizational and procedural changes that might be made in an effort to improve the record of such an undertaking. It is beyond the scope of this article to discuss such a remedial program in detail but two or three obvious points deserve to be made.

In the first place, attention might well be given to improving the personnel and organization of the Committee's staff. All authorities on Congress now recognize the importance of adequate professional staffing to the successful operation of the legislature. Moreover, the Legislative Reorganization Act of 1946⁸⁶ did take a long step toward making such facilities available. The Un-American Activities Committee, along with the other committees of Congress, now has substantial financial and legislative authority to build up a permanent secretariat of high professional competence. In exercising this authority the Committee has made neither the best nor the worst record among congressional committees. But without seeking to criticize the particular personnel or organization of its present staff, it is clear the Committee could do much better than it has done

⁸⁴ The word "pretense" is used because in the questioning of at least one witness, Marion Bachrach, during this period, the Committee itself brought the names of many persons not hitherto identified with the espionage charges into the testimony.

⁸⁵ Communist Espionage Hearings, 1400-1.

⁸⁶ 60 Stat. 812 (1946).

in this respect. And with a more able staff to service its operations it is reasonable to expect that some of the weakness in program-planning, procedures, and techniques would at least be alleviated. Beyond that, further improvement in the mechanics of the Committee's operations is probably largely dependent upon certain general, Congress-wide reforms. Amendment of the Legislative Reorganization Act to subject all committees to a greater measure of organizational and procedural control is highly desirable. The committees of Congress are still in too many ways irresponsible "little legislatures" which go their separate and erratic ways as the whim of their chairmen or their members dictates. Similarly a solution to the problem of the rights of witnesses before congressional committees is in good part dependent upon the formulation of a code of fair procedures that will govern the operations of all committees. Numerous proposals for such a code have been made in the last two or three years,* but to date neither House of Congress has shown much of an inclination to act upon them. The problem is admittedly a more complex one than has been generally recognized and many of the specific proposals for procedural reform have been ill-considered ones. Care must be taken not to place unnecessary and unworkable restraints upon the committees. But in spite of the difficulty of evolving a satisfactory set of workable rules the time has certainly come when Congress must face and meet this responsibility. If it be true that the answer to the mistakes and abuses of the Un-American Activities Committee must and should be found in the national legislature itself, then further delay in the formulation and adoption by Congress of sound, sensible rules governing the organization and operation of its committees endangers the continuing usefulness and vitality of the investigating function—surely one of the most important functions of Congress.

* Consult Galloway, Proposed Reforms, page 478 *supra*.