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CONSTITUTIONAL LAW--INVESTIGATORY POWER OF CONGRESS--VALIDITY OF THE UN-AMERICAN ACTIVITIES COMMITTEE INQUIRIES INTO PROFESSIONAL AND POLITICAL AFFILIATIONS

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COMMENTS

CONSTITUTIONAL LAW—INVESTIGATORY POWER OF CONGRESS—VALIDITY OF THE UN-AMERICAN ACTIVITIES COMMITTEE INQUIRIES INTO PROFESSIONAL AND POLITICAL AFFILIATIONS—The recent probe into the motion picture industry by the House Committee on Un-American Activities and the resulting indictment of ten witnesses for contempt of Congress have served not only to keep this controversial committee in the publicity spotlight, but have also raised some constitutional questions which have long gone unanswered. The indictment of the ten recalcitrant witnesses under Title 2, section 192, of the United States Code[1] followed their citation for contempt by the House

[1] 52 Stat. L. 942, c. 594 (1938). "Every person who having been summoned

of Representatives[2] for refusal to give direct answers to the Committee's questions: "Are you a member of the Screen Writers Guild?" and "Are you now, or have you ever been, a member of the Communist Party?"[3] There is a good chance that some of these cases may reach the Supreme Court,[4] but in any event the problems involved warrant study at this time, particularly in view of the growing boldness of the committee in projecting its inquiries into a field dangerously near the dividing line between private affairs and legitimate Congressional objectives.[5]

as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months." This statute, in similar form, has been in force since 1857. 11 Stat. L. 155, c. 19, § 1. When this criminal sanction is invoked to punish contumacious committee witnesses, the usual procedure is for the committee to submit the fact of contempt to the House or Senate in the form of a report and move for adoption of a resolution directing that the presiding officer certify the statement of facts to the District Attorney. The latter must then bring the case before a grand jury for indictment. 52 Stat. L. 942, c. 594 (1938), 2 U.S.C. (1940) § 194. An alternative sanction is imprisonment of the witness for the duration of the session, by direct order of the House or Senate. Anderson v. Dunn, 6 Wheat. (19 U.S.) 204 (1821); Marshall v. Gordon, 243 U.S. 521, 37 S.Ct. 448 (1917). The fact that a contumacious witness has been imprisoned by direct order of the House or Senate will not preclude his punishment for the same contumacious act under the criminal statute. In re Chapman, 166 U.S. 661, 17 S.Ct. 677 (1897). The criminal sanction may be imposed even though the contumacious act no longer obstructs the legislative process. Jurney v. MacCracken, 294 U.S. 125, 55 S.Ct. 375 (1935).

[2] H. Res. 363, 367, 368, 369, 370, 371, 374, 375, 376, and 377, 80th Cong., 1st sess., 93 CONG. REC. 10878-10912 (1947).

[3] All ten of the witnesses were indicted for refusal to answer the question concerning membership in the Communist Party, and eight were indicted on a second count for their refusal to answer the question concerning membership in the Screen Writers Guild. N.Y. TIMES, Dec. 6, 1947, 1:6.

[4] On Feb. 16, 1948, after this paper was written, the Supreme Court denied certiorari in the case of Leon Josephson, who had earlier been convicted in a New York Federal District Court of contempt of the House Committee on Un-American Activities. Justices Douglas, Murphy, and Rutledge dissented from the order. N.Y. TIMES, Feb. 1, 1948, 2:5, 43:6. The decision to deny certiorari is probably indicative of the Court's view of the constitutionality of the committee itself, but would appear to have no necessary bearing on certain of the problems involved in studying the power of the committee to inquire into professional affiliations and political beliefs of the witnesses.

[5] " . . . Neither house is invested with a 'general' power to inquire into private affairs and compel disclosures. . . ." McGrain v. Daugherty, 273 U.S. 135 at 173, 47 S.Ct. 319 (1927).

I.

Although the House Committee on Un-American Activities has been in existence for nearly ten years,[6] the range of its investigatory power has never been determined by the Supreme Court.[7] The scope of the investigating authority of all Congressional committees, however, is limited by two general standards, one legislative, and the other constitutional. Any question asked of a witness must necessarily be pertinent to an investigation which meets both standards before a refusal to answer can be considered contumacious. Clearly, a Congressional committee has no power to investigate unless it has been granted that power by the House of Congress which created the committee. Similarly, a committee which has been granted the power to investigate cannot carry its investigations beyond the limits set by Congress in defining the subject-matter of the inquiry.[8] That aspect of the validity of an inquiry, however, can usually be readily ascertained simply by reference to the resolution authorizing the investigation, so that the principal problem is not with the scope of the inquiry as authorized by Congress, but with the constitutional capacity of Congress to grant the committee the authority which it seeks to exercise. Although there may be some possibility that even the broad language of the Congressional

[6] The committee was originally created as a special committee in 1938 by H. Res. 282, 75th Cong., 3d sess., 83 CONG. REC. 7568 (1938). It was continued by successive annual resolutions until 1945, when it was made a standing committee by H. Res. 5, 79th Cong., 1st sess., 91 CONG. REC. 10 (1945). The present committee is authorized by the Legislative Reorganization Act of 1946, 60 Stat. L. 812 at 828, § 121 (b) (1) (q).

[7] The validity of the committee's activities has recently been passed upon and upheld by the District Court of the United States for the District of Columbia. See United States v. Bryan, 72 F. Supp. 58 (1947); United States v. Barsky, 72 F. Supp. 165 (1947); and United States v. Dennis, 72 F. Supp. 417 (1947). The same court is scheduled to conduct separate trials of each of the ten Hollywood witnesses beginning Feb. 24, 1948. On Feb. 16, 1948, the trial court denied motions to dismiss the indictments and for change of venue, the defendants urging the motions to dismiss on the grounds that the committee itself is unconstitutional and had no power to inquire into political beliefs. N.Y. TIMES, Feb. 17, 1948, 30:6.

[8] "When evidence is taken by a committee, the pertinency of questions propounded must be determined by reference to the scope of the authority vested in the committee by the Senate." Barry v. United States ex rel. Cunningham, 279 U.S. 597 at 613, 49 S.Ct. 452 (1929). Resolutions authorizing investigations are not usually very restrictive. The member of Congress who introduces the resolution authorizing an investigation frequently becomes chairman of the investigating committee (as was true of the House Committee on Un-American Activities, Mr. Martin Dies introducing the resolution and then being named chairman), and the tendency is to draft resolutions providing such committees with broad powers. MCGEARY, THE DEVELOPMENT OF CONGRESSIONAL INVESTIGATIVE POWER 53 (1940).

authorization of the House Committee on Un-American Activities[9] does not warrant the committee's probe of individual professional and political affiliations in its investigation of Hollywood Communism, in general this problem will be laid aside in favor of the problem of the committee's constitutional power.

2.

The usual constitutional objection to the power of a Congressional committee to investigate a given subject is that the inquiry bears no relation to any valid legislative purpose.[10] The power of inquiry is only an auxiliary power of Congress; it is an implied power whose scope is limited to investigations "necessary and appropriate to make the express powers effective."[11] As a necessary corollary, the refusal of a witness to answer questions pertinent to an unconstitutional investigation cannot subject him to punishment for contempt.[12] The development of a standard by which to judge the limits of the Congressional investigative power has been quite slow, but the relatively few cases on the subject have indicated a progressive tendency to broaden the

[9] The committee is authorized to investigate "(1) the extent, character, and objects of un-American propaganda activities in the United States, (2) 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 (3) all other questions in relation thereto that would aid Congress in any necessary remedial legislation." 60 Stat. L. 812 at 828, § 121 (b) (1) (q) (1946). All earlier resolutions by the House were identical.

[10] The constitutional question may be raised by petition for habeas corpus seeking discharge under process of attachment issued to compel testimony [McGrain v. Daugherty, 273 U.S. 135, 47 S.Ct. 319 (1927)], or from imprisonment after trial for violation of 2 U.S.C. (1940) § 192 [In re Chapman, 166 U.S. 661, 17 S.Ct. 677 (1897)] but not before trial, [Henry v. Henkel, 235 U.S. 219, 35 S.Ct. 54 (1914)], or on motion to dismiss the indictment [U.S. v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58].

[11] McGrain v. Daugherty, 273 U.S. 135 at 173, 47 S.Ct. 319 (1927).

[12] Kilbourn v. Thompson, 103 U.S. 168 (1880). If a recalcitrant witness is to avoid punishment, either under the statute or by direct action of the House or Senate, he must either successfully challenge the validity of the investigation [Kilbourn v. Thompson, 103 U.S. 168 (1880)], or show that the questions were not relevant to the inquiry [Sinclair v. United States, 279 U.S. 263, 49 S.Ct. 268 (1929), holding also that the question of pertinency is one of law)], or possibly that his individual rights have been unduly infringed [Strawn v. Western Union Telegraph Co., (Oral opinion, S.Ct. D.C., 1936) 63 U.S. LAW WEEK 646 (1936)]. Schull, "Congressional Investigations and Contempts," 63 U.S. L. REV. 326 (1929). Of course, the committee or Congress may decide to take no action at all against the defiant witness. See, e.g., S. Rep. 43, pt. 10, 72d Cong., 1st sess., 72 CONG. REC. 11151 (1930); S. Rep. 24, 72d Cong., 2d sess., 75 CONG. REC. 1063 (1931); and 6 CANNON, PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, 2d ed., 500-503 (1936), concerning the successful challenge of a Senate committee by Bishop James Cannon.

permissive scope of the power.[13] The power of inquiry has been recognized where the purpose of the inquiry is to gather facts in connection with a possible impeachment,[14] or the censure or expulsion of a member of Congress,[15] or to aid in judging the qualifications or the validity of the election of a member.[16] Perhaps of greatest importance is the recognition of the power to inquire as a basis for possible future legislation,[17] and to determine the efficacy of laws already passed.[18] Moreover, it is immaterial that Congressional intent to acquire the information as an aid to legislation does not expressly appear, for if the subject-matter of the investigation is such that its results could be used in the aid of legislation, there is a presumption that it was so intended.[19] Whether the Court would go behind an expressed Congressional purpose in order to ascertain the existence or absence of an actual purpose to use the information in aid of legislation is a question pertinent to any inquiry into the validity of the House Committee on Un-American Activities. The committee is authorized to investigate "all other questions in relation [to subversive and un-American propaganda activities] that would aid Congress in any necessary remedial legislation."[20] A survey of the committee's accomplishments would indicate that it has not been of much aid to Congress in recommending "remedial legislation."[21] In fact, the committee's principal objective to date has seemed to be to expose to public view those persons and organizations which it considers subversive or un-American.[22] If the Court is willing to take at face value the statement of purpose which the House has provided for the committee's guidance, the result would appear to be to give Congress a power of almost unlimited inquiry, effectively emasculating the rule that a Congressional investigation must be linked to some constitutional Congressional function. But if the court goes

[13] For an analysis of the earlier cases, see LUCE, LEGISLATIVE ASSEMBLIES 499 et seq. (1924).

[14] See the dictum in Kilbourn v. Thompson, 103 U.S. 168 at 190 (1880).

[15] In re Chapman, 166 U.S. 661, 17 S.Ct. 677 (1897).

[16] Reed v. County Commissioners, 277 U.S. 376, 48 S.Ct. 531 (1928). The power to investigate elections includes primaries. United States v. Norris, 300 U.S. 564, 57 S.Ct. 535 (1937).

[17] McGrain v. Daugherty, 273 U.S. 135, 47 S.Ct. 319 (1927).

[18] Sinclair v. United States, 279 U.S. 263, 49 S.Ct. 268 (1929).

[19] McGrain v. Daugherty, 273 U.S. 135, 47 S.Ct. 319 (1927).

[20] Supra, note 9.

[21] The remarks of Representative Holifield in the debate on the Hollywood contempt citations would indicate that the Committee's record of recommendations was "exactly zero." 93 CONG. REC. 10898 (1947). Cf. OGDEN, THE DIES COMMITTEE, 2d ed., 229 (1945), summarizing the recommendations of the first report of the committee.

[22] 9 Hearings before Special Committee to Investigate Un-American Activities on H. Res. 282, 5447 (1939).

behind the expressed objective of the investigation, and if it then finds that the sole purpose of the committee is to focus public attention on activities which the committee considers subversive or un-American,[23] the question of whether the dissemination of information to the public is a valid Congresional function might be sqarely presented. A number of writers have aligned themselves with Woodrow Wilson's view that the informing function of Congress is more important than its legislative function,[24] arguing that informing the public is a legitimate Congressional objective which may itself support the validity of a Congressional investigation.[25] Clearly, "social leverage" is exerted very strongly by most Congressional investigations,[26] but a committee which operates solely as an organ for influencing public opinion would seem to run counter to the view that investigation is an auxiliary power only to the extent that it is necessary and appropriate to make effective the *express* powers granted to Congress.[27]

If, however, the committee's purpose is to aid Congress in the performance of its legislative function, it is unnecessary to decide whether dissemination of information can be fitted into any category of express Congressional power. Although the committee's record in aid of legislation has not been impressive,[28] the lower federal courts have not felt that fact to be a serious objection to the committee's validity.[29] Still, the information disclosed by the investigation might be an aid to Congress in legislating on such matters as seditious conspiracy, registration of organizations carrying on certain types of propaganda, and qualifications of government employees,[30] or as a basis for proposing Constitutional amendments.[31] Whether or not any *valid* Congressional action could result from the committee's investigations

[23] Definitions of the terms "subversive" and "un-American" are discussed in 47 COL. L. REV. 416 (1947).

[24] WILSON, CONGRESSIONAL GOVERNMENT, 15th ed., 303 (1900).

[25] MCGEARY, THE DEVELOPMENT OF CONGRESSIONAL INVESTIGATIVE POWER 23 (1940); DIMOCK, CONGRESSIONAL INVESTIGATING COMMITTEES 59 (1929); EBERLING, CONGRESSIONAL INVESTIGATIONS 8 (1928).

[26] Several of the indicted Hollywood witnesses have been discharged or suspended from their employment. N.Y. TIMES, Nov. 26, 1947, 1:2.

[27] McGrain v. Daugherty, 273 U.S. 135, 47 S.Ct. 319 (1927).

[28] See note 21, supra.

[29] United States v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58; United States v. Dennis, (D.C. D.C. 1947) 72 F. Supp. 417. See also Townsend v. United States, (App. D.C. 1938) 68 App. D.C. 223, 95 F. (2d) 352, cert. den., 303 U.S. 664, 58 S.Ct. 830 (1938).

[30] Other possible legislative results are suggested in United States v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58.

[31] Doubt is expressed in 47 COL. L. REV. 416 at 425 (1947) that a Congressional investigation could constitutionally be founded upon a purpose to propose constitutional amendments.

would not be in issue, for the court would certainly not pass upon the constitutionality of legislation before it had been enacted. Although the breadth of its language may raise some doubts, a lower federal court recently said: "If the subject matter under scrutiny may have any possible relevancy and materiality, no matter how remote, to some possible legislation, it is within the power of Congress to investigate the matter. Moreover, the relevancy and the materiality of the subject matter must be presumed."[32] Legislation directed at the suppression or control of un-American or subversive propaganda would be a drastic measure impinging on essential civil liberties, and could be drafted only after a thorough investigation of the "extent, character, and objects" of such propaganda if there is to be any hope of avoiding the impact of the First Amendment under the "clear and present danger" doctrine.[33] Ten years of such investigation may not be too long. The presumption of validity attaching to Congressional acts,[34] together with the importance of any legislation that might be indicated after a thorough inquiry into the entire range of subversive or un-American propaganda activities, would appear to be sufficient grounds for finding that the House Committee on Un-American Activities is, in general, conducting inquiries in aid of possible legislation and is therefore constitutionally valid.[35]

3.

Even assuming that a constitutional challenge to the existence and general conduct of the House Committee on Un-American Activities would be unsuccessful, there remains a question as to the power of the

[32] United States v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58 at 61.

[33] This doctrine permits Congress to curb individual freedom of speech, despite the mandate of the First Amendment, when such speech is "used in such circumstances and [is] of such a nature as to create a clear and present danger that will bring about the substantive evils that Congress has a right to prevent." Holmes, J., in Schenck v. United States, 249 U.S. 47 at 52, 39 S.Ct. 247 (1919).

[34] Justice Frankfurter, concurring, in United States v. Lovett, 328 U.S. 303 at 328, 66 S.Ct. 1073 (1946), remarked: " . . . the Court's duty [is] so to deal with Congressional enactments as to avoid their invalidation unless a road to any other decision is barred." The presumption has been variously expressed in many types of cases.

[35] Certainly the trial court would adhere to its prior decisions and uphold the committee. United States v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58; United States v. Dennis, (D.C. D.C. 1947) 72 F. Supp. 417. These decisions pass upon the possible constitutional arguments raised by the comment in 47 COL. L. REV. 416 (1947), which suggested that (1) Congress cannot undertake a completely unlimited inquisition into the area protected by the First Amendment, (2) the purpose of the committee to accomplish by publicity what cannot validly be done by legislation renders the whole investigation unlawful, and (3) a standard of guilt sufficiently definite to allow enforcement of the committee's demands by penal sanctions is not established.

committee to ask an individual witness to state his professional and political affiliation and to punish the witness for his refusal to answer. There are two possible objections to the power of a validly constituted Congressional investigating committee to ask such questions of a witness, first, that the questions are not pertinent to the inquiry, and second, that the questions infringe the witness's constitutional rights of privacy, or of freedom of thought and association. Whether a question is pertinent to the subject under inquiry is a matter of law for the court to decide.[86] One writer has pointed out that public hearings of Congressional committees are not usually necessary to the acquisition of information, but are merely a means of acquainting the public with the facts which the committee has already discovered.[87] That fact, however, would strike more at the validity of the committee itself than at the pertinence of its questions. If the existence of the committee is founded upon a valid legislative purpose, the fact that its questions would reveal information already known would seem to have nothing to do with the pertinence of the questions themselves. The problem of the relevancy of questions asked stands on a footing entirely distinct from the problem of Congressional power to direct the inquiry. Once the validity of the inquiry is sustained, the problem of pertinence must be separately determined. Although the burden of proving the relevancy of questions asked is on the prosecution in a contempt action,[88] relevancy does not depend upon the probative value of the evidence, but upon "whether the facts called for by the questions were so related to the subjects called for by the [resolution creating the committee] that such facts reasonably could be said to be pertinent to the question under the inquiry."[89] Under such a standard, it would seem that a question concerning a witness's membership in the Communist Party or in other organizations suspected of being Communist-dominated would be sufficiently pertinent to an inquiry into un-American activities to sustain the validity of the question. If, then, the questions asked the ten Hollywood witnesses were asked by a validly constituted investigating committee, and if the questions were pertinent to the committee's inquiry, it would follow that the witnesses must answer unless to compel them to do so would unlawfully invade their constitutional rights.

[86] Sinclair v. United States, 279 U.S. 263, 49 S.Ct. 268 (1929).

[87] MCGEARY, THE DEVELOPMENT OF CONGRESSIONAL INVESTIGATIVE POWER 67 (1940). That seems to be true of the Hollywood Communism investigation. After the recusant witnesses had refused to answer the propounded questions, records of their membership and activities in the Screen Writers Guild and the Communist Party were produced. See Hearings Regarding the Communist Infiltration of the Motion Picture Industry before the Committee on Un-American Activities, House of Representatives, under P.L. 601, § 121 Q(2), 80th Cong., 1st sess. (1947).

[88] Sinclair v. United States, 279 U.S. 263, 49 S.Ct. 268 (1929).

[89] Id. at 299.

Individual constitutional rights undoubtedly serve to check the methods which a Congressional committee may employ in conducting its investigations. Thus, the Supreme Court has said: " . . . while the power of inquiry is an essential and appropriate auxiliary to the legislative function, it must be exerted with due regard for the rights of witnesses,"[40] and "the principles that embody the essence of constitutional liberty and security forbid all invasions on the part of the government and its employees of the sanctity of a man's home and the privacies of his life."[41] The court has strongly indicated that the individual will be protected against "all unauthorized, arbitrary, or unreasonable inquiries and disclosures in respect of . . . personal and private affairs."[42] Thus, there is good reason to believe that the Fourth Amendment would protect from punishment a witness who refused to respond to an unreasonably broad subpoena duces tecum issued by a Congressional investigating committee.[43] The Fifth Amendment has also been suggested as a possible restriction on the power of inquiry, on the basis of the debatable validity of the statute purportedly protecting committee witnesses against self-incrimination.[44] That the First Amendment is a limitation on the House Committee on Un-American Activities was unsuccessfully argued in a lower federal court,[45] but it would nevertheless seem that there are some barriers of the right of privacy which the committee cannot transgress.

In its investigation of Hollywood Communism, the committee reflected upon its own authority to act and concluded that it could not disqualify itself.[46] Following that ruling, the committee proceeded with the examination of the ten witnesses who were later cited for contempt. In each case,[47] the only questions asked after preliminary

[40] Id. at 291.

[41] Id. at 293, quoting from Interstate Commerce Commission v. Brimson, 154 U.S. 447 at 478, 14 S.Ct. 1125 (1894), which in turn cited Boyd v. United States, 116 U.S. 616 at 630, 6 S.Ct. 524 (1886).

[42] Id. at 292.

[43] Strawn v. Western Union Telegraph Co., (oral opinion, S.Ct. D.C. 1936) 3 U.S. LAW WEEK 646 (1936); noted in 36 COL. L. REV. 841 (1936); and 45 YALE L. J. 1503 (1936). See also Hearst v. Black, (App. D.C. 1936) 87 F. (2d) 68. This point was recognized in United States v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58.

[44] 52 Stat. L. 943 (1938), 28 U.S.C. (1940) § 634; discussed in 14 UNIV. CHI. L. REV. 256 at 261 (1947). See also MCGEARY, THE DEVELOPMENT OF CONGRESSIONAL INVESTIGATIVE POWER 106 (1940). The Fourth and Fifth Amendments were urged by counsel as invalidating a Congressional investigation in Henry v. Henkel, 235 U.S. 219, 35 S.Ct. 54 (1914), but the case was disposed of on jurisdictional grounds.

[45] United States v. Bryan, (D.C. D.C. 1947) 72 F. Supp. 58.

[46] Hearings Regarding the Communist Infiltration of the Motion Picture Industry before the Committee on Un-American Activities, House of Representatives, under P.L. 601, § 121 Q(2), 80th Cong., 1st sess., at p. 289 (1947).

[47] Id. at 290 et seq.

interrogatories pertained solely to the witness's own political and professional associations. Each witness was refused permission to read a prepared explanatory statement, and each was denied the privilege of cross-examining his "accusers." When this procedure is compared with that followed in interrogating the witnesses who made the "accusations,"[48] there is little room to doubt that at least one of the committee's objectives was to brand the recalcitrant witnesses as members of organizations in which membership has never been legislatively condemned, in order to drive them from their jobs[49] and expose them to public censure.[50] Still, the questions cannot be said to be irrelevant to an inquiry into subversive or un-American activities. So long as pertinent questions are asked by a constitutionally valid investigating committee, embarrassment or irritation of the witness has never yet been held to justify his refusal to answer.[51] Legislative limitations upon the committee's procedure may be imposed to afford the witness a greater measure of protection against abusive methods,[52] but there is no clearly defined constitutional limitation upon the committee's choice of procedure so long as the committee is valid and its questions pertinent.

The present conception of the limits of Congressional inquisitorial

[48] Some of these accusing witnesses were permitted to make vituperative remarks and conduct a private name-calling campaign, and to give testimony of the rankest sort of hearsay. Id., 7-286.

[49] In this, the committee succeeded. Supra, note 26.

[50] An argument can be made that this kind of treatment of members of allegedly subversive groups who are called as witnesses involves an effective, if indirect, restraint upon freedom of expression. Others who hold views similar to those of the witnesses are served with notice that expressions of those opinions, or affiliation with organizations working to effectuate them, will subject such persons to similarly drastic economic and social consequences. Heretofore, persons of liberal views of a comparatively mild sort were free to express them, subject only to the threat of action for libel or slander if they misrepresented the facts about others, or to criminal prosecution in the event their expression gave rise to a "clear and present danger" to public peace and safety. Now, however, if a Congressional committee of the known predelictions of the Un-American Activities Committee is to be given free rein, an effective deterrent to the expression of opinion will be created, without regard to the clear and present danger test.

[51] See Townsend v. United States, (App. D.C. 1938) 95 F. (2d) 352 at 361.

[52] See, e.g., H. R. 4564, 80th Cong., 1st sess., Nov. 24, 1947, introduced by Representative Douglas; and H. R. 4641, 80th Cong., 1st sess., Dec. 4, 1947, introduced by Representative Holifield. The bills are identical, and would afford to committee witnesses the right of counsel and the right to make a statement as part of the record. The bills would also give to any person whose character or reputation had been adversely reflected upon a committee report or witness's statement the right to have the material stricken from the record or to cross-examine the persons responsible for the report or statement. Both bills were referred to the House Committee on Rules, which at this writing has taken no action.

power into private affairs seems to be that the inquiry cannot be "unauthorized, arbitrary, or unreasonable," and must be exercised with "due regard for the rights of witnesses."[53] These limitations remain undefined, but their strength would appear to depend in large measure on the purpose and methods of the investigation. The entire record of parliamentary investigations is "a history of the conflict between the claim for civil liberties and the submission to the civic duty of disclosure."[54] Something analogous to the "clear and present danger" doctrine may have to be developed in order to establish some sort of standard of reasonableness by which to judge the constitutional limits of Congressional inquiry into private affairs. Certainly, compelling a witness to answer questions concerning his membership in the Screen Writers Guild or the Communist Party is to permit an inquiry into private affairs, but the propriety of the inquiry could be justified by the need for legislative action upon the subject-matter investigated. If a clear and present danger, or some similarly-described urgent necessity for legislation can be shown, it may well be that individual civil rights must bow to public need. The point at which the Congressional right of inquiry overrides the individual right of privacy has never been clearly determined by the Supreme Court. The cases of the ten Hollywood witnesses would seem squarely to present that issue, and the time is certainly ripe for the court to decide it. It is difficult to predict the decision that the Supreme Court might reach on the question,[55] but the presumption of validity of the investigation,

[53] Supra, notes 40-42.

[54] Ehrmann, "The Duty of Disclosure in Parliamentary Investigation: A Comparative Study," 11 UNIV. CHI. L. REV. 1 at 3 (1943).

[55] In contrast to the constituency of the Court when Kilbourn v. Thompson, 103 U.S. 168 (1880), was decided, several members of the present Court have had legislative experience and contacts with Congressional committees. Landis, "Constitutional Limitations on the Congressional Power of Investigation," 40 HARV. L. REV. 153 (1926), attributes the restrictive effect of Kilbourn v. Thompson to the legislative inexperience of the Court. Chief Justice Vinson was a Representative from Kentucky from 1923-1929 and 1931-1933. Justice Burton was a Senator from Ohio from 1941 until his appointment to the Court. Justice Black was a Senator from Alabama from 1927 until his appointment to the Court in 1937, and was chairman of the Special Senate Committee to Investigate Lobbying. In connection with Justice Black's experience with contumacious witnesses, see Hearings before a Special Committee to Investigate Lobbying Activities, United States Senate, 74th and 75th Congresses, Pursuant to S. Res. 165 and S. Res. 184, 74th Cong., especially pp. 1963 et seq. (1935). Justice Black also wrote "Inside a Senate Investigation," 172 HARPERS 275 (1936). Prior to his appointment to the Court, Justice Frankfurter expressed his views in an article entitled "Hands Off Congressional Inquiries," 38 NEW REPUBLIC 329 (1924). The defeat of Justice Murphy for re-election as governor of Michigan in 1935 is attributed to the Dies Committee. OGDEN, THE DIES COMMITTEE, 2d ed., 77 (1945). Justice Jackson, when Attorney General, attacked the Dies Committee for its criticism of the Federal Bureau of Investigation. OGDEN, id. 83.

viewed in the light of known wide-spread propaganda activities of groups and organizations of various shades of extreme political opinion in the United States, may well lead the court to uphold the validity of the inquiry and the pertinence of the questions, and to affirm the duty of the witnesses to answer. At least a decision at this time would afford a much-needed clarification of the constitutional power of inquiry when it conflicts with personal rights of privacy.

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