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From observation and investigation in fourteen of the principal cities of our country, it appears that most large city government is in the hands of an entrenched machine that has perpetuated itself in office for many years. Obviously such a situation is not conducive to the best law enforcement. In fact, the Kefauver Committee has found that the most corruption stems from the fact that police and city officials who have been long in office and who control law enforcement seem somewhat indifferent to the enforcement of gambling laws. They fail to realize or are intentionally and understandably blind to the proven fact, that, gambling, itself illegal in all states but one, provides vast sums of money to hoodlum elements with which these undesirables carry on more vicious forms of illegal activity such as the prostitution and narcotic trades. Our municipalities are making great strides in every field of city government except in law enforcement in some cases. Even in these circumstances, the Committee's revelations have awakened the citizenry and improvements have been noted in such cities as Chicago, Philadelphia, New York, Miami and many others.

The essential function of the Kefauver Committee was to obtain facts concerning the use of the channels of interstate commerce by organized criminals. The Report of the Committee issued on May 1, 1951, attests to the successful discovery of these facts, but the by-products of the most famous Congressional investigation of modern times have been great and many. These by-products may be thought of in terms of three general categories: *First,* the exposure to the public of criminal gangs and how they operate; *Secondly,* the individual instances wherein, as a direct result of Committee revelations, local grand juries have been formed and new state, as well as volunteer, crime commissions have sprung into action; and *Thirdly,* the novel and interesting legal questions which have arisen as a result of Committee hearings and procedures.

Perhaps the most interesting subjects to lawyers and the legal profession generally, which are closely identified with the Committee's hearings, are the legal issues raised by witnesses who have been cited for contempt of the Committee by the Senate, as well as the questions yet to

be determined concerning those witnesses whose testimony appears to be at variance with the facts.[1]

In order to fully appreciate the legal problems here involved it would perhaps be useful to review briefly the steps required by law to be taken by a Congressional Committee before it puts witnesses on the stand. First, the Committee must authorize the hearing pursuant to its own rules and those of the Senate. If there is lack of compliance with the rule, for example, that a majority of the Committee must approve the holding of a hearing, there is a possibility that a witness might successfully defend himself against perjury on the assertion that no competent tribunal exists, since the taking of testimony was not authorized by the majority of the Committee which alone has this power.[2]

In a recent case[3] the Supreme Court held that the quorum requirement with respect to the authorization of hearings is not fully applicable in an action for contempt, by reason of failure either to respond to a subpoena or to produce the books and records called for. The Bryan opinion seems to indicate that no quorum of the Committee would have to be present in order for a court to adjudge a person guilty of contempt for refusals to answer.

These issues become of material importance when it is recognized that a great many of the hearings of the Committee were conducted by a subcommittee of one (in the majority of instances, Senator Kefauver, the Chairman). Concerning a given resolution of the Committee authorizing a subcommittee of one to take testimony, objections most often raised by counsel for witnesses were twofold: *First,* that no quorum of the Committee was present; and *Secondly,* that the questions asked were not "pertinent" to the inquiry.

The Committee, by resolution early in its life, authorized the Chairman to issue and sign all subpoenas. Lawyers for prospective witnesses have raised questions as to his authority to do so. The Congressional practice has been for some time that Committee chairmen have the authority to issue subpoenas without any formal resolution, and a House precedent for this action dating back to 1837 has been long established.[4] S.R. 202, which established the Kefauver Committee, authorized delegation of the subpoena power to a subcommittee. In effect, therefore, the

1. The recent convictions of James J. Moran and Louis Weber for perjury before the Committee (New York, March 1951) are the first two of a number of scheduled perjury trials.
2. Christoffel v. U.S., 338 U.S. 84 (1949).
3. U.S. v. Bryan, 70 Sup. Ct. 724 (1950).
4. In re R. M. Whitney, 3 Hinds' Precedents, Section 1668.

Committee authorized the Chairman to act as a subcommittee of one in regard to the issuance of subpoenas.

With this brief background I now turn to an examination of the contempt problem itself as it relates specifically to the work of the Committee. There are certain fundamental precepts which must borne in mind: Witnesses appearing before a Congressional Committee have no privilege with respect to the Fifth Amendment as to answers that would tend to incriminate them only under state law.[5] The Committee was required to and did respect the privilege where an answer would tend to incriminate a witness under Federal law, even though under the present Congressional immunity statute, weak as it is, no Federal prosecution could result from any admissions made by the witness in response to such a question.

In my opinion, the great majority of the thirty-three witnesses cited by the Senate for contempt of the Committee asserted a privilege against incriminating themselves of state offenses, and it is my belief that the courts will not sustain these assertions upon individual examination of the law and facts. In *U. S.* v. *Hoffman,* decided June, 1951, the Supreme Court upheld the right of a witness to decline, upon the grounds of self-incrimination under the Fifth Amendment, to answer the question: "What is your business?" In that case, the evidence showed that the defendant, cited for contempt of a Committee of the Congress, properly asserted the privilege since the Court thought that his answer would tend to incriminate him of a Federal offense. Because of the unnecessarily broad scope of the opinion, however, it is believed that the decision will have a peculiarly limiting effect upon the contempt indictments currently pending. Mr. Justice Clark recommended that the Congress pass an effective immunity statute to avoid the necessity of not being able to obtain material information where a witness properly asserts his Constitutional privilege.

Court action for contempt of Congress[6] is based upon a certification to the Senate by the Committee, accompanied by a resolution and a report upon which the Senate votes. If the vote is in favor of the citation, the President of the Senate certifies the record to the United States Attorney for the District in which the contempt was committed, and Section 192 becomes applicable, providing, upon conviction, imprisonment for not less than one month nor more than twelve months and a fine of

5. U.S. v. Murdock, 284 U.S. 141 (1931); Feldman v. U.S. 322 U.S. 487 (1944); U.S. v. St. Pierce, 128 F.(2d) 979 (1942).

6. 2 U.S.C., Sections 192 and 194.

not more than one thousand dollars nor less than one hundred dollars for each count.

The question has arisen as to whether, once a contempt of the Committee has been committed, a United States Attorney may cause the indictment of the witness on his own motion,[7] or whether it is necessary for the United States Attorney to withhold action in presenting the matter to the grand jury until the contempt is certified to him by the President of the Senate. This question arises because Sections 192 and 194 present doubts about the proper procedure to be taken in such cases. If Section 192 stood alone, there would be no problem, because the general provisions of Title 28, U.S.C., require the United States Attorney to prosecute crimes against the United States and authorize grand juries to inquire into crimes brought to their knowledge and to return indictments. However, Section 194 provides in detail for the certification of contempts by the President of the Senate or the Speaker of the House to United States Attorneys, who, in turn, are to be directed to present the matter to the grand juries. The authorities are in conflict.[8] The Committee legal staff has tended toward the view that Section 194 is mandatory, rather than permissive, and that certification by the President of the Senate is necessary, although in the case of O'Hara it encouraged the United States Attorney for the Northern District of Illinois to proceed under Section 192 in the hope that the Court would clarify the confusion in favor of the more time-saving procedure adopted by Mr. Kerner, United States Attorney for the Northern District of Illinois.

Among the most interesting problems which the courts will be called upon to resolve in connection with contempts committed before the Committee are the refusals of certain witnesses to testify before the television cameras. In St. Louis, James J. Carroll, a self-described "betting commissioner" offered to testify fully and freely if the television cameras were turned off. In New York, Frank Costello objected to the televising of his face, and the television audience was treated to an excellent view of his well-manicured hands throughout his testimony. In Washington, Cleveland mobsters Morris Kleinman and Louis Rothkopf asserted that their right not to be televised was based, not upon the usual claim of incrimination under the Fifth Amendment, but rather that the televising of their voices and faces was an invasion of their right to

7. As in the case of U.S. v. Ralph J. O'Hara, indicted by the Grand Jury, Northern District of Illinois, December, 1950.

8. Ex parte Frankfeld, 32 F. Sup. 915 (1940); U.S. v. Josephson, 165 F.(2d) 82 (1947); In re Chapman, 166 U.S. 661 (1897).

privacy and, in addition, subjected them to varying degrees of "mike-fright," making it impossible for them to testify fully and frankly. The Committee has had reason to believe that none of these claims were honestly asserted.

Since these matters are now before the courts, or are in varying degrees of preparation for the courts, it would not be desirable to comment fully on the various defenses asserted. Nevertheless, I believe it fair and proper to comment that the courts have held that judges may not pass upon the propriety of a Congressional Committee's hearings unless they transgress authority committed to them by Congress, or ride rough-shod over the constitutional rights of citizens.[9] It is difficult to understand what substantive difference exists between a public hearing held in a room that accommodates thirty people, an auditorium that might accommodate five thousand people, or the televising and broadcasting of a public hearing in pursuit of a legal legislative purpose and conducted with dignity and propriety.

In spite of my belief, so stated, I should add that I privately hope that the Senate, the House, and the national associations of broadcasters and telecasters will soon create and put into effect a code of conduct which, by its limitations, will prevent the abuses many people legitimately feel might follow as a result of a widespread use of television at Congressional and other public hearings.

To the layman contradictory statements of witnesses as to a given set of facts firmly establish a case of perjury. As lawyers, we know that the contradictory statements elicited from witnesses at Congressional hearings[10] do not necessarily establish a case of perjury under the present perjury statute, 18 U.S.C., Section 1621, as interpreted by the courts. This Section requires the prosecuting attorney to prove that the witness knew his testimony was false at the time he gave it,[11] that the matter concerning which the perjured testimony was given was material to the issues,[12] and that there has been corroborative testimony on the part of other witnesses. In the face of these requirements it is obvious that much of the alleged perjured testimony given to the Committee must be tested by the rather rigid requirements of the statute, as distinguished from mere contradictory assertions before the Committee. In its Third Interim Report the Committee recognizes this fact.

9. Dennis v. U.S., 171 F.(2d) 986, cert. granted 337 U.S. 954 (1950); Eisler v. U.S., 170 F.(2d) 273, cert. dismissed 337 U.S. 954 (1948).

10. As, for example, the testimony of John Crane, Louis Weber, James Moran, and William O'Dwyer before the Committee in New York, March, 1951.

11. U.S. v. Otto, 54 F.(2d) 277 (1931); Fotie v. U.S., 137 F.(2d) 831 (1943).

12. Carroll v. U.S., 16 F.(2d) 951 (1927); Morford v. U.S., 176 F.(2d) 54 (1949); U.S. v. Hirsch, 136 F.(2d) 976; Marshal v. U.S., 176 F.(2d) 473 (1949).

Various immunity statutes have been enacted in order to obtain evidence which could not otherwise be obtained because of the prohibition of the Fifth Amendment of the Constitution against compelling a person "in any criminal case to be a witness against himself." The Committee has often expressed its opinion that the existing statutes do not afford complete immunity and thereby prevent a legislative committee from obtaining facts material to its inquiry. The Attorney General has recommended that Section 3486 of Title 18, United States Code, be amended to provide a complete bar against prosecution or penalty on account of any matter concerning which a person is compelled to testify after he has asserted his Constitutional privilege. It is highly necessary and desirable that such legislation be enacted at the earliest practicable date. The Committee was deprived of much useful and relevant information as a result of its inability to give immunity to witnesses engaged in interstate criminal activities, where policy would dictate the granting of immunity rather than subjecting a witness to the possibility of a conviction for contempt.

Another legal question broadly raised by counsel for hostile witnesses relates to the pertinency or relevancy of the questions asked to the scope of the inquiry. In cases in the Supreme Court, dating from 1929[13] and up to the present time,[14] it has been held that Congressional investigations are limited to questioning which is pertinent to the inquiry and within the scope of the authority of the resolution creating the Committee.

The standards of pertinency in an investigation such as one into organized crime are undoubtedly broad enough to cover all the questions asked by the Committee. In the Barsky case the Court held that books and records and correspondence of an association which collected relief funds, and which may have spent some of the funds for pro-Communist propaganda, were relevant to an inquiry under which a Committee of the House was authorized to inquire into "subversive and un-American propaganda that . . . attacks the principle of the form of government as guaranteed by our Constitution."[15]

It is believed that the Committee rightly held that events remote in time, such as a criminal record dating many years back, could easily be shown to have relevance to the pattern of organized crime today and to be within the scope of the Senate Resolution authorizing the Committee to function. The question of pertinency was raised largely by

13. Sinclair v. U.S., 279 U.S. 263 (1929).
14. Barsky v. U.S., 167 F.(2d) 241, cert. denied 334 U.S. 843 (1948).
15. 167 F.(2d), at page 247.

counsel whose clients were sought to be questioned on their activities in bootlegging days. They generally objected to these questions, saying that the events were remote in point of time and the records of the individual were before the Committee anyway; but it is obvious, as stated in the Third Interim Report of the Committee, that the pattern of organized crime operating in interstate commerce did not just come into being overnight. The associations and contacts which the criminal gangs of the roaring thirties established among themselves are the focal point of the arrangements maintained today by these selfsame individuals in the gambling, narcotic, counterfeiting, and white slave businesses. Therefore, events remote in time to which most of the objections by counsel were directed were obviously pertinent to the Committee's inquiry.

Again, other objections based upon relevancy were raised against attempts by the Committee to inquire into legitimate business activities of hostile witnesses. The argument there was that, since the witness was engaged in a legitimate business, it was without the scope of the Committee's authority to inquire into that business. This argument fails, in my opinion, for the same reason noted above in the case of objections directed to remoteness of events. The Committee obviously had the duty of ferreting out the extent to which racketeers and criminals had infiltrated legitimate businesses and the extent to which, in those businesses, they used methods of coercion, restraint, and monopoly.

It is clear from the record taken in fourteen states, covering activities in thirty-five states, that those relatively few witnesses who refused to answer questions on alleged Constitutional grounds in large part decided that they would rather risk a trial for contempt of the Senate than answer the Committee's questions about their activities, incomes, and associations. It may be that in some cases this gamble will pay off. It is to be hoped, however, that the courts will not reward the recalcitrant few by a strained interpretation of what appears to me perfectly clear law.

Finally, I should add a word about the critics. By and large the Committee's efforts have been widely applauded. In some cases, constructive criticism of the Committee's procedures have resulted in immediate improvements. But for those very few who saw in this work of monumental legislative proportions nothing but an opportunity to carp on personalities, I can only say that our democracy is a strange and wonderful thing. Whatever a critic's motives, and whatever the extent of public notice of his destructive comments, the record achieved by the

Committee in terms of doing the job it set out to do, with dignity and due regard for the rights of individuals, speaks for itself.

Renewed efforts by Senator Kefauver to procure the adoption of a Congressional Code of Conduct for Investigations attests to the desire of those most experienced in legislative inquiries that such inquiries, so necessary to our democratic way of life, be conducted in a fair and dignified manner.