2-1-1954

Introductory Statement

William T. Gossett

Follow this and additional works at: http://scholarship.law.nd.edu/ndlr

Part of the Law Commons

Recommended Citation

Available at: http://scholarship.law.nd.edu/ndlr/vol29/iss2/3

This Introduction is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.
present our Chairman, Mr. William T. Gossett, Vice-President and General Counsel of the Ford Motor Company.

Joseph O'Meara*

LEGISLATIVE INVESTIGATIONS: SAFEGUARDS FOR WITNESSES:
INTRODUCTORY STATEMENT

I appreciate Dean O'Meara's generous introduction. But he has assigned me too much credit. My contribution to the progress of the Bar upon this subject has been small, although my interest is large. I am grateful for the opportunity to participate with so distinguished a group in this Symposium.

Of the current questions before the American people, none has agitated us more than those revolving around the use of the legislative investigative process. They have aroused the hottest flames of emotion and partisanship; and no subject is better calculated to turn friendly discussion into angry disputation.

This is not the first time that the investigative process has been scrutinized critically by the American people. But heretofore the issue has been for the most part a domestic affair, uncomplicated by international tensions and sharp ideological contrasts. Today the issue has global dimensions. It has been debated ceaselessly, not only in this country, but abroad. The conflict has grown in intensity and now is clearly audible across national boundaries and around the world.

The debate has confused our friends and comforted our foes. The decisions America makes on the questions involved will say much to the peoples of the world about the strength and stability of our institutions — about the road this country plans to take in the months and years ahead.

* Dean of the Law School, University of Notre Dame.
We shall be concerned here with events; and events involve people and sometimes politics and parties. As a consequence, names may be brought into the discussion. Some of these names may carry overtones of political partisanship. But, as Dean O’Meara has said, this Symposium will be above emotionalism and partisanship. It will not be our purpose to promote or criticize any person, party or faction at the expense, or for the benefit, of any other.

Our purpose here is to discuss a problem that lies at the foundations of our society. The problem centers around those threats to justice under law that result from abuses of the investigative power — not around the exercise of the power itself.

In this Symposium our basic premise is that abuses have in fact occurred. This has been conceded by thoughtful and responsible men both in and out of Congress.

It follows that the Bar, as the traditional First Custodian of the liberty and dignity of the individual, has a compelling interest in the situation. We conceive it to be the duty of the legal profession by reason of its peculiar competence:

a. to identify the abuses,
b. to define them with precision,
c. and to suggest remedies that will neither hamstring legitimate investigation nor pervert basic principles of due process of law.

The legal issues are by no means simple; indeed, they are subtle and difficult to state with precision. One reason is that we are exploring a shadowland that lies between the legislative and judicial branches of government.

In this country, when an individual is brought into court, he has the benefit of a carefully constructed legal system — a system that we call due process of law. Due process stems from the common law and from the Bill of Rights. Un-
fortunately, the protection thus afforded to the individual in the courts has not been carried over into the investigative process. There, individuals are not afforded the safeguards to which, as a matter of right and not of grace, they are entitled in court.

Legislative committees are not courts, and their proceedings are not trials. There are striking similarities. Witnesses are heard, usually under oath; a transcript is kept; and counsel often is present.

The dissimilarities are even more striking. The committees have no uniform rules of procedure. They are not bound by the rules of evidence. There are no adversary parties to define the issues; and there need be no resolution of any issue that may be raised. Even if the committee makes a report and decides some or all of the issues involved, its determination is not binding upon the rights or duties of individuals, as the decision of a court would be.

Yet legislative investigations often affect directly and adversely the rights of individuals. This may come about in several ways. Through witnesses appearing before a committee or as a result of evidence developed by the staff, charges may be made against an individual. It is important to note that the so-called charges often amount to a mere assertion that the individual holds an unorthodox or unpopular opinion. But no charge, however serious, would place the individual in jeopardy in a strict legal sense. If, however, the charge is made public, his reputation may be imperilled. And the denial of an opportunity for the accused to appear and answer the charge, to face his accuser and to cross-examine him, may have a serious effect upon his standing and his ability to earn a livelihood. Almost without exception, committees have refused to allow confrontation or cross-examination of accusers. Even if the accused is allowed to appear and answer charges made against him, there is no assurance that equal publicity will be given to his denial. A court action for defamati
against an accuser probably would not be successful because of the degree of "privilege" conferred on both committee members and the witnesses before them.

Investigative committees have the right to compel individuals to appear before them and testify under oath. The failure of a witness to appear or to answer questions may be punished either by Congress itself or as a misdemeanor in the courts. And the giving of false testimony to a committee is punishable as perjury. On the other hand, a witness may refuse to testify only at his peril. In doing so he must either question the power of the committee or rely upon the constitutional safeguards of the First or of the Fifth Amendment.

Derogatory inferences are likely to be drawn from a reliance upon the privilege against self incrimination. And even a good faith belief by a witness that the committee has exceeded its authority is no defense if, in the opinion of the court having jurisdiction of the issue, the belief is without basis in fact. Experience has shown that courts are reluctant to place limitations upon the power of an investigating committee if the question put to the witness has possible relevance to the stated purposes of the investigation.

Thus, almost any form of self protection that a witness may assert is subject to serious practical limitations.

This brief discussion of the problem may serve to demonstrate the breadth and depth of the troubled waters on which we are embarking today. But the difficulties involved will not deter us from our quest for a solution. Our guide will be the

\[2 \text{ In re Chapman, 166 U.S. 661, 672 (1897).} \]
\[3 \text{ 18 U.S.C. § 1621 (Supp. 1952); United States v. Moran, 194 F.2d 623 (2d Cir. 1952), cert. denied, 343 U.S. 965 (1952).} \]
\[4 \text{ Sinclair v. United States, 279 U.S. 263, 299 (1929).} \]
\[5 \text{ Loew's Inc. v. Cole, 185 F.2d 641, 649 (9th Cir. 1950).} \]