INVESTIGATION OR INQUISITION: THE POWER OF LEGISLATIVE INQUIRY*

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Fury And The Mouse

Fury said to a mouse, That he met in the house,
"Let us both go to law: I will prosecute you.
Come, I'll take no denial; We must have a trial:
For really this morning I've nothing to do."

Said the mouse to the cur "Such a trial, dear Sir,
With no jury or judge, would be wasting our breath."
"I'll be judge, I'll be jury," Said cunning old Fury:
"I'll try the whole cause, and condemn you to death."[1]

It is a truism that the history of liberty is a history of the limitation of government power. There is no dearth in instances where power left untrammeled has caused the ruin of the powerless.

This vicious tendency finds credible demonstration in recent experience involving the legislature's exercise of its Constitutionally mandated power to conduct legislative inquiries in aid of legislation.[2] Reference is made here on the contemporary and, for their other more unsavory attributes, readily recollected Senate investigations like those inquiries involving supposedly high-class prostituted Filipino

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[1]Selections from Lewis Caroll's *Alice's Adventures in Wonderland.*

[2]*See* 1987 PHIL. CONST., Art. VI, Sec. 21.

women in Brunei to the death in the hands of government operatives of suspects to bank robberies.

Acting as a virtual inquisition, the legislature through such investigations has once more found justification for doing away with "unnecessary and even cumbersome procedural niceties"[3] at risk of violating certain constitutional rights of those "invited" to testify.

Given this, defining the exact bounds of this power has become a major area of concern. Where at the outset the very object sought to be accomplished by particular investigations is put in issue, the conduct of the investigations could be no less controversial.

The investigations referred to here deal more specifically with instances where the congressional hearings appear to have become adversarial in nature. In contrast, authors Frank Newman and Stanley Surrey in their book "Legislation: Cases and Materials" (1955), mention another type of investigation which they characterized as the "*ordinary, often routine, committee hearings on pending legislation.*" In this case, "the professed aim of the hearing is to obtain data and views on pending legislation." (emphasis provided).

The subject and conduct of legislative investigations has precipitated an appraisal, quite unpredictable it appears, of the meaning of liberty weighed against issues of public interest. This is true especially in so far as the investigations entail the testimony of persons who may thereby be subject to prosecution or whose testimony may be used elsewhere and have covered issues which have, or which may be, presented to the courts for resolution.

The interest in the issue is not a new or a novel one. There has been a long standing and still raging debate, particularly in the United States, regarding this matter.[4] Notwithstanding its apparently sturdy Constitutional and jurisprudential foundations, the power and its exercise continue to be challenged. At times paradoxically, the questions raised spring precisely from such Constitutional and

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[3]JULIUS COHEN, MATERIALS AND PROBLEMS ON LEGISLATION (1949).

[4]*See* R.S. Ghio, *The Iran-Contra Prosecutions and the Failure of Use of Immunity*, 45 STAN. L. REV. 229 (1992).

jurisprudential foundations, which, upon scrutiny, leave many questions unanswered or which answers inevitably usher further queries.

I. THE QUEEN'S CROQUET GROUND (ROOTS AND RATIONALE OF LEGISLATIVE INVESTIGATIONS)

The twelve jurors were all writing very busily on slates.
"What are they all doing?" Alice whispered to the Gryphon.
"They can't have anything to put down yet, before the trial's begun."

"They're putting down their names," the Gryphon whispered in reply,
"for they fear they should forget them before the end of the trial."

To trace the roots of the power of inquiry by the legislature, reference must be made to American and, by the historical relation, British precedents. As a legitimate offspring of the British Parliaments of the seventeenth century,[5] the power of legislative inquiry has developed in the United States first as an implied power as found by the Court[6] and later by express provision of the law.

The (American) Congressional Testimony Act of 1857,[7] as with subsequent modifications, shows very plainly that Congress intended thereby: (a) to recognize the power of either house to institute inquiries and exact evidence touching subjects within its jurisdiction and on which it was disposed to act; (b) to recognize that such inquiries may be conducted through committees; (c) to subject defaulting and contumacious witnesses to indictment and punishment in the courts, and thereby to enable either house to exert the power of inquiry "more effectually,"; and (d) to open the way for obtaining evidence in such an inquiry, which otherwise could not be obtained, by exempting witnesses required to give evidence therein from criminal

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[5]JUAN RIVERA, THE CONGRESS OF THE PHILIPPINES: A STUDY OF ITS FUNCTIONS, POWERS, AND PROCEDURES (1962).

[6]One of the earliest cited cases on the matter is the case of *Anderson v. Dunn*, 6 Wheat 204 (1821), where the US Supreme Court upheld the direct contempt authority of Congress without resort to the courts.

[7]PETER WOLL, CONSTITUTIONAL LAW: CASES AND COMMENTS (1981).

and penal prosecutions in respect to matters disclosed by their evidence.[8]

Article VI Section 21 of the 1987 Philippine Constitution grants the legislature the power to conduct investigations "in aid of legislation." The Constitution provides: "(t)he Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure."

Furthermore, even before the power was made explicit in both the 1973 and 1987 Constitutions, our Supreme Court has laid down the foundation for it in the leading case of Arnault v. Nazareno.[9]

Speaking through Justice Ozatea, the Court said, "the power of inquiry — with process to enforce it — is an essential and appropriate auxiliary to the legislative function."[10] The Court said that our form of government being patterned after the American system, we can properly draw also from American precedents in interpreting analogous provisions of the Constitution.[11]

And in upholding the power of Congress to compel testimony at risk of contempt to matters pertinent to the subject of inquiry, the Court relied upon the American case of McGrain v. Daugherty in 273 U.S. 135 (1926). Justice Ozatea quotes: "A legislative body cannot legislate wisely and effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information — which is infrequently true — recourse must be had to others who posses it. Experience has shown that mere requests for such information are often unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion is essential to what is needed."

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[8]FRANK NEWMAN and STANLEY SURREY, LEGISLATION: CASES AND MATERIALS, (1955).

[9]87 PHIL. 29 (1950).

[10]*Id.*

[11]*Id.*

Accordingly, the purposes of Congressional investigation should fall expectedly within one of the following groups:

> (a) To ascertain what new legislation is needed;
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> (b) To ascertain the existing laws to be repealed;
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> (c) To ascertain whether a new legislation is effectively accomplishing its purpose with a view to amending it.
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> (d) To inquire into the fitness of nominees for office before confirmation.
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> (e) To secure information on the advisability of ratifying a Treaty.
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> (f) To regulate the conduct of members of Congress.
>
> (g) To inquire into the conduct of public officers whether there should be impeachment.
>
> (h) To ascertain whether war should be declared.
>
> (i) To inquire into the need of proposing a constitutional amendment.[12]

Evidently, it is in the first three types of legislative investigations as enumerated above where the conflict between public interest and individual rights is most highlighted. For as the number of investigations increased, so has their scope. As the American Senator Sam Ervin wrote in 1976, "Congress can probe into every matter where there is legitimate federal interest. In the modern age, where government is involved in multifaceted aspects of our daily lives, there are increasingly few areas where Congress may not delve."[13]

The creation by the US House of Representatives of a Committee on Un-American Activities in 1938 eventually raised new

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[12]RIVERA, *supra* note 5.

[13]SAM ERVIN, JR., INTRODUCTION TO JAMES HAMILTON'S "THE POWER TO PROBE: A STUDY OF CONGRESSIONAL INVESTIGATIONS" (1976) cited in Ghio, *supra* note 4.

problems concerning the powers of Congress to investigate. The mandate of the committee to investigate all aspects of subversive activities and "all other questions in relation thereto" was both broad and vague. This led it to conduct inquisitorial trials, rather than serious investigations for legislative purposes.[14]

The Philippines, too, has some experience regarding this nefarious activity with the revival in the 1970s of the House Committee on Un-Filipino Activities.[15] Both the American and Philippine versions have been characterized as no more than modern day witch-hunts -- even as they are claimed and justified as aiding Congress in enacting legislation. And at times, the price paid is quite costly.

II. WHO STOLE THE TARTS? (THE POWER OF LEGISLATIVE INVESTIGATIONS AND CONSTITUTIONAL RIGHTS)

The first witness was the Hatter. He came in with a teacup in one hand and a piece of bread-and-butter in the other...
"Take off your hat," the King said to the Hatter.
"It isn't mine," said the Hatter.
"Stolen!" the King exclaimed, turning to the jury who instantly made a memorandum of the fact.

It goes without saying that there are limitations in all areas of legislative investigations. Theoretically, at least, there are express limitations to this effect. There are three requisites provided for in our Constitution:

(a) First, that the investigation is "in aid of legislation"

(b) Second, that it is conducted "in accordance with duly published rules of procedure"

(c) Third, "(t)he rights of persons appearing in or affected by such inquiries shall be respected."

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[14]WOLL, *supra* note 7.

[15]Vicente Mendoza, *The Use of "Legislative Purpose" as a Limitation of the Congressional Power of Investigation*, 46 PHIL. L.J. 707 (1971).

In line with the second requisite both the Senate and the House of Representatives have adopted and published rules concerning legislative investigations.[16]

On the other hand, the third requisite is just another way of saying that the anticipated legislation must be "subject to the limitations placed by the Constitution on governmental action."[17] as all governmental action must be exercised subject to constitutional limitations, principally found in the Bill of Rights.[18]

Following this requirement, the Rules of Procedure of either House of Congress have provided for the protection of Constitutional rights of witnesses. Section 18 of the Senate rules provide: "No person may be required to answer any question which may tend to incriminate him. However, he may offer to answer any question in executive session."

On the other hand, Section 13 of the House Rules provides: "No person may be required to give an answer which may tend to incriminate him. The rights of persons appearing in or affected by the inquiry shall be respected."

From the foregoing there appears every indication of theoretical soundness as far as the scope and conduct of legislative investigations are determined. Practice, however, fails the delusion of theory.

The right to silence, as also the privilege against self-incrimination, is ordinarily available in courts where the question tends to elicit any one of the elements of a crime or a criminal act. The right thus includes the right to testify to a fact which would be a

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[16]*See* RULES OF PROCEDURE GOVERNING INQUIRIES IN AID OF LEGISLATION, adopted by the House of Representatives, 2 September 1987 and the Senate version adopted 13 August 1992.

[17]*Barenblatt v. United States*, 360 U.S. 112 (1959).

[18]The limitation really creates no new constitutional right as asserted BY JOAQUIN BERNAS, 2 THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY (1992).

necessary link to a chain of evidence to prove the commission of a crime by a witness.[19]

After an objection is raised, the judge rules whether the question propounded tends to incriminate the witness. However, in legislative hearings, no judge is present to rule on any such objection. The legislator and the witness are left to their own devices, leading either to a possible violation of rights or a considerable waste of time.

And as if to further the dilemma, this troubling appraisal of a witness' assertion of his right to silence comes from former U.S. Senator McCarthy: "If a witness before a Congressional committee and under oath is asked whether he is a member of the Communist Party and he refuses to answer and tells the committee that a truthful answer would tend to incriminate him, this can mean only one thing, namely, that he is a Communist because if he were not a Communist the truth could not in any conceivable manner incriminate him".[20]

A particular wariness also concerns the possible conduct of the investigation in an executive session. As long as there is a press eager to expose and congresspersons and congressional staff members hungry for exposure, there will be leaks. Given this political reality, executive sessions cannot be relied upon to protect a witness from the risk that his testimony may be used against him.[21]

Notably, while said testimony may not be sufficient in itself to support a conviction, the same may be used, assuming the requisites are present, as a means by which his subsequent testimony may be impeached in court as a prior inconsistent statement on record.[22]

Another important matter is that the first requisite provided for in the Constitution requiring the investigation to be "in aid of legislation" can readily be seen as contributing practically nothing

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[19]*Isabela Sugar Co. v. Macadaeg*, 98 Phil 995 (1953).

[20]Excerpt from telegram 9 November 1963 from Senator McCarthy to President Pusey of Harvard University, in Newman, *supra* note 8.

[21]Ghio, *supra* note 4.

[22]VICENTE FRANCISCO, THE REVISED RULES OF COURT IN THE PHILIPPINES (1991).

towards protecting witnesses. Practically any investigation can be in aid of the broad legislative power of Congress.[23]

American Supreme Court history on this matter has seen the rise and fall of doctrines relating to the areas where a difficult appraisal between public interest and individual rights had been required of the Court -- from the almost cynical attitude of the Court in *Kilbourn v. Thompson*,[24] to the gradual, but unambiguous surrender by it to Congress in determining the scope of legislative inquiry in subsequent cases.[25]

In *Kilbourn*, the Court called "fruitless" the investigation and called for the release of reluctant witness who had been imprisoned for contempt after having refused to produce certain books and papers relating to the bankruptcy of a real estate pool that led to the disadvantage of the government as a creditor of the firm. The ponente in that case, Justice Miller said, "By `fruitless' we mean that it could result in no valid legislation on the subject to which the inquiry is referred."[26] The Court even volunteered this prophecy: "(this) case will stand for all time as a bulwark against the invasion of the right of the citizen for protection in his private affairs against the unlimited scrutiny of investigation."

But as it thereafter would, apparently on hindsight, admit in *Watkins v. United States*, "accommodation of the congressional need for a particular information with the individual and personal interest in privacy is an arduous and delicate task for any court."

And proof of such difficulty is the fact that in a span of a few years, decisions have come in line with the objections raised in Kilbourn and the courts have removed virtually all judicial restraints from congressional action in the field of investigation. The case of McGrain set forth the new precedent that the power is essential and appropriate to legislative function. A valid legislative object need not

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[23]BERNAS, *supra* note 18.
[24]103 U.S. 168 (1881)
[25]*See McGrain v. Daugherty*, 273 U.S. 135 (1926).
[26]*Id.*

be expressed but may be presumed to exist.[27] This presumption can have important repercussions, however, when balancing a witness' Fifth Amendment right to silence against the questionable value of many congressional investigations.[28]

The recent Senate Joint Committee investigation into the "reported continuing extra-judicial killings of purportedly known criminals"[29] is a case in point. During the said investigation, the police officers supposedly in charge of the government operation that resulted supposedly in an exchange of gunfire with or the summary killing of eleven persons, repeatedly refused to answer questions on ground of the privilege against self-incrimination. In the public eye, the assertion of the privilege undoubtedly diminished the expected breakthroughs in terms of the event's media value and quite distantly, in terms of legislation.

The very consideration for the investigation, the issues presented, the conduct, and indeed, the findings and recommendations arrived at by the investigation prove this. Supposedly "in response to a plea" against such alleged practices, the Committee on Justice and Human Rights raised two issues: first, whether the policy of "salvaging" under the martial law regime lingers till the present, resulting in extra-judicial killings. And second, how legislation can help improve the Philippine National Police in the performance of its duty to maintain peace and order.[30]

It is evident that there is, at best, only a tangential relation of the first issue with the other. And besides, more importantly, it cannot be subject to reasonable dispute that the conduct of the investigation has become adversarial in nature.

Arguably, the repeated assertion of the privilege against self-incrimination is a sure sign that Congress has departed from its

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[27]Legislative Reference Service, Library of Congress of the United States, *Procedural Reform in Congressional Investigating Committees*, reprinted in 9 M.L.Q.U. L. Q'LY (1959)

[28]Ghio, *supra* note 4.

[29] S. JOINT REP. No. 1021, 9th Cong., 3rd Sess. at 1-2 (1995):

[30]*Id.*

constitutional role and is attempting to usurp the judicial function of determining the guilt or innocence of particular individuals.[31] This perception only sustains the entire gamut of objections raised against what has been characteristic congressional investigations "in aid of legislation."

At this point, the question of judicial intervention becomes significant. In most cases where the issue of the legislative investigations is at hand, the Court is given a choice whether or not to abdicate in favor of Congress the determination of the scope of congressional investigations.

This judicial abdication, as it were, is said to be justified by the assertion that "no restrictions are imposed on such committees by reason of possible invalidity of legislation emanating therefrom; that the courts will not determine in advance whether legislation may be constitutional thereby curtailing the power of Congress to create a committee does not effect its validity." [32]

In other words, the argument follows — one cannot deprive Congress, or any branch of government for that matter, of power simply because it may abuse such power. Hence, "the power to compel attendance of witnesses cannot be denied to Congress because it may be abusively or oppressively exercised".[33]

As a result, however, unaffected though it may sound, the qualification of legislative purpose has lent itself to both positive use and abuse. Unfortunately, as earlier mentioned, the Court, relying on the legislative purpose test, whether the purpose has been expressed or implied by the legislature, apparently has deemed itself without power "to second guess the motives behind an act of a House of Congress."[34]

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[31]Laurent B. Frantz and Norman Redlich, The Nation, 6 June 1953 in NEWMAN and SURREY, *supra* note 8.

[32] *See U.S. v. Dennis*, 71 F.Supp. 417 (1947); *Townsend v. U.S.*, 95 F.2d. 352 (1938).

[33]*McGrain v. Daugherty, supra.* note 25.

[34]Dissenting opinion of Justice Gutierrez in *Bengzon v. Senate Blue Ribbon Committee*, GR 89914, 20 November 1991, 203 SCRA 767 (1991).

It is clear, for example, that it is not within the investigatory power of the legislature to discover evidence of past crimes, simply for the purpose of ferreting out wrong doers. But the clear delineation is wiped out easily by references, albeit tenuous, if not imaginary ones, to possible legislation on, say, how police enforcement may be improved or some such justification.

Given the foregoing, it appears that testing the extent of legislative inquiry on the basis of legislative purpose has become utterly insufficient. Professor Vicente Mendoza observes that saying congressional inquiries may only be justified in terms of the need for legislation is to assume two things: (a) that the powers of government can be neatly divided into legislative, judicial, and executive, and (b) that the function of Congress is confined strictly to lawmaking. Only a doctrinaire view supports the first. The second, Mendoza asserts, is based on unreality.[35]

For indeed, if one concedes the power of the legislature to inquire into matters to determine whether it has legislative jurisdiction over them, then there are few things beyond the investigatory power if invoked by a properly drafted resolution.[36]

At any rate, what must be borne in mind is that there is no congressional power to expose for the sake of exposure.[37] A congressional investigation is not a trial for the punishment of wrongs but a device to enable Congress to know what remedial legislation is needed. Congress in not the grand inquest of the nation.[38]

As recourse of the individual deprived of his or her rights, the court must set aside the test it knows full well to be useless. Only then can it be truly effective in checking the emergent Orwellian legislature.

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[35]MENDOZA, *supra* note 15.

[36]HORACE READ et. al., CASES AND OTHER MATERIALS ON LEGISLATION (1959).

[37]*Watkins v. United States*, 354 U.S. 178, 77 S. Ct. 1173 (1957).

[38]MENDOZA, *supra* note 15.

The courts must recognize legislative investigations for what they are without stretching the limits of presumption or crossing the limits of self-deprecating gullibility.

Professor Mendoza quotes Martin Shapiro, thus, "by recognizing exposure as the normal purpose of investigations, while at the same time stressing its potential danger to individual rights, the Court can begin to act as a real balancer of interest, striking down inquiries which needlessly destroy constitutional rights and upholding those in which exposure of some danger or misdeed is essential to society". [39]

In short, the courts must not consciously ignore what cannot be ignored. That the investigatory power has not only been used for the purposes of lawmaking, for turning a powerful searchlight on government, for supervising the executive, for molding public opinion, for judging or disciplining members of legislative bodies -- it has also been used for making political capital, for embarrassing opponents, for exposure of private individuals and groups for publicity. [40]

Only recently, a divided Court in the case of *Bengzon v. Senate Blue Ribbon Committee*[41] shot down a Senate committee investigation of a "possible violation" of the Anti-Graft and Corrupt Practices Act on a matter of one senator's "personal privilege." The Court granted the petition for prohibition on ground that a civil case against the petitioners had already been filed and jurisdiction has already acquired jurisdiction over the case.

The Court then warned: "To allow the respondent Committee to conduct its own investigation of an issue already before the Sandiganbayan would only pose the possibility of conflicting judgments between a legislative committee and a judicial tribunal, but if the Committee's judgment were to be reached before the

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[39]Martin Shapiro, *Judicial Review, Political Reality and Legislative Purpose: The Supreme Court's Supervision of Congressional Investigations*, 15 VAND. L. REV. 535 (1962) quoted in MENDOZA, *id.*

[40]Dimock, *Congressional Investigating Committees*, 47 JOHN HOPKINS UNIVERSITY STUDIES 153 (1929) in Cohen, *supra*, at note 3.

[41]*Supra*, note 34.

Sandiganbayan (sic), the possibility of its influence being made to bear on the ultimate judgment of the Sandiganbayan can not be discounted."[42]

The warning seems now to have fallen on deaf ears.

III. THROUGH THE LOOKING GLASS (CONCLUSIONS AND RECOMMENDATIONS)

"Please you Majesty," said the Knave, "I didn't write it, and they can't prove I did: there's no name signed at the end."

"If you didn't sign it," said the King, "that only makes the matter worse. You must have meant some mischief, or else you'd have signed your name like an honest man."

Lewis Carroll's nineteenth century tale for children, Alice's Adventures in Wonderland, takes us to a quaint ride into the absurd. Delving into the illogic of "adult rules," the story speaks of, among others, a madhouse trial for stealing a plate of tarts. Fortunately for the trial witness, Alice, just as the Queen cries "Off with her head," she awakes to find it was all a dream.

Of course, the reference here to the tale bears no half-hopeful fancy that an individual whose rights are in danger of being violated in the course of an investigation could, at the instance of trouble, simply wake up to find a more rational world. Indeed, the compulsion and the resultant difficulties of the individual in the face of legislative power to investigate is much more potent than dealing with a kingdom of comical cards, notwithstanding, the more than literary parallelisms herein traced.

There are plainly no simple and correct answers to such a complex problem. The defense of rights must be no less equal to the assault against rights. Where the challenges are manifold, so must be the responses to them.

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[42] *Id.*

First, it is by all means accepted that congressional investigations are necessary and their scope is as wide and multifaceted as the concerns of government are in our time. However, its necessity cannot justify its incursion into the very foundation from which it stands.

Original power resides with the people, who by their collective will organized the State, established its Government, and apportioned its tasks and functions, and defined its powers. The authority of the Government is derived from the people, and the Government is but their instrument in their quest for the common good and welfare.[43]

Thus, the laws regulating the exercise of government power seek not merely to mollify the basic ruthlessness of such power, they are precisely the means by which the rule of law, from which incidentally that consequent power itself emanates, is preserved.

As asserted by Circuit Judge Clark in McGrain: "The right of congressional investigation has been so important, so productive of good in so many instances in our history, that no one would wish to hamper it improperly. And it is true, as many urge, that the force of public opinion and the expression of the electorate at the polls must remain its main source of control. But in the narrow, though important, field of constitutional liberties, more control is desirable. For the extreme power thus wielded carries the seed of its own ruin, if not constitutionally exercised."

Civil liberties may not be abridged, therefore, in order to determine whether they should be abridged. What Congress may not restrain, Congress may not restrain by exposure or obloquy.[44]

Second, from the first assertion emerges the necessity to qualify this power. But if the same cannot be availed by the vague and insufficient words of women and men, then it must be availed of in the positive actions of women and men.

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[43]PERFECTO FERNANDEZ, CONSTITUTIONAL LAW (1974).

[44]Justice Edgerton dissenting in *Barsky v. US*, 167 F2d 241 (1948).

In this regard, a code of ethics for legislative investigations have been time and again suggested. U.S. Senator Paul Douglas proposes the following guidelines:

> (a) Testimony and evidence which are markedly harmful to a person's reputation should be heard first in executive session where both the press and the public are barred. Leakages must be checked.
>
> (b) If evidence justifies it, a public hearing should be held with previous notice to those who may be criticized of the nature of the charges against them.
>
> (c) Any person involved be given the earliest opportunity to answer charges and to produce witnesses for himself.
>
> (d) Witnesses should not be brow-beaten by the committee and they should be assisted by counsel.
>
> (e) No report should be made public unless it is approved by a majority of the committee members.
>
> (f) The hearings should not be televised except with consent of the witness.45

Third, the final arbiter of rights and obligations is still the courts. In performing this task in cases concerning legislative investigations, the courts must first recognize the investigation for what it is, then from thereon balance the public interest and the individual rights involved.

Again to borrow the words of Prof. Mendoza: "By regarding legislative investigations as any other legislative act (*e.g.*, a statute) and recognizing them for what they are, courts would be freed from the distorting illusion created by the demand for legislative purpose and would thus be able to measure the tension created by the tug and pull of competing interest in public order and in freedom of speech".[46]

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[45]As reproduced in RIVERA, *supra* note 5.

[46]Note here that reference is made by Prof. Mendoza to "public order" and "freedom of speech" because the author was writing about the revival of the House investigations of alleged "Un-Filipino activities."

Lastly, the profusion of highly controversial legislative investigations that are adversarial in nature is indicative of many things. One is the emergence of an over-eager assemblage of legislators, whether sincere or politically motivated, who may be ready to expose and oppose every issue or event, even at the risk of violating constitutional rights. This in turn is indicative only either of two things — a bustling democracy or an emergent tyranny. Experience must alert us against the latter. On the other hand, the former, if truly bustling as it is made to appear, ought to provide enough channels for the people to complain of its utter boisterousness, of the legislature's propensity for prioritizing the utterly unproductive. In both cases, the possibility of abuse must be guarded against either in the formal tribunals of justice or in the tribunal of public opinion.

Another message that comes across is the likelihood of public dismay with the regular forums of justice, in the areas of law enforcement as well as the courts. In both areas, reforms must be relentlessly pursued to promote credibility, stamp out corruption, hasten the resolution of cases, and the like.

Certainly, in a democracy, if one seeks to protect the right of all, he or she must seek to protect the right of one. Though the violation of the rights of one may not necessarily mean the demise of democracy, nevertheless what is allowed to be done one-fold assures that it shall be done a hundred-fold. For abuse is such that it will never stop until it is willed to be stopped.

At bar, dangerous as felons, thugs, or murdering police generals are to society, their rights are nevertheless deserving of utmost respect and protection. The way it is, one does not break faith with democracy by providing even its enemies with the enjoyment of the very sustenance by which this democracy survives.

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